

TITLE 165. CORPORATION COMMISSION

CHAPTER 5. RULES OF PRACTICE

[**Authority:** OKLA. CONST. art IX, § 18, 18a, 19; 17 O. S., §§ 1, 2, 6.1, 39.2, 40.1, 52, 83, 92, 131 et seq., 139.101 et seq., 140.4, 152, 160.11 et seq., 166.1, 166.1a, 180.11, 281, 301 et seq., and 503; 20 O.S., § 106.4; 27A O.S., § 1-3-101; 47 O. S., §§ 162, 170.1, 170.2, 1013, 230.24, and 966 et seq.; 51 O. S., § 24 A.5(3); 52 O. S., §§ 1 through 67, 24, 24.4, 24.5, 86.1 through 320.2, 101, 471 through 477, 524 through 528, and 570.1 through 614]
[**Source:** Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-1. Purpose

The purpose of this Chapter is to provide procedural rules to govern all proceedings coming before the Corporation Commission for disposition and to address the implementation of an electronic case filing system.

[**Source:** Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-2. Scope

- (a) The rules of this Chapter shall be known as the Oklahoma Corporation Commission Rules of Practice, and may be cited as OAC 165:5.
- (b) The rules of this Chapter shall govern all proceedings before the Commission, any Oil and Gas Appellate Referee, any Administrative Law Judge, attorney, or other officer or employee of the Commission.
- (c) The rules of this Chapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

[**Source:** Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96]

165:5-1-3. Definitions

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

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means any person commencing a proceeding.

"Application" means any written request by an applicant commencing a proceeding for Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Case" or **"cause"** means a proceeding filed with the Court Clerk, for Commission action or relief. The terms "case" and "cause" are used interchangeably herein.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a case and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Confirmation of electronic filing" means the electronic confirmation generated by the Electronic Case Filing System.

"Document" means any written matter filed in a case. A "document" includes any attached appendices.

"Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic Case Filing System" or **"ECF System"** means the Commission's online filing system used to file documents with the Court Clerk in Commission proceedings.

"Electronic Case Filing System filer" or **"ECF filer"** means an Electronic Case Filing user whose electronic mail address and password can be used to file documents electronically in the Electronic Case Filing System.

"Electronic Case Filing System user" or **"ECF user"** means a person who has registered and been approved to access the Electronic Case Filing System.

"Electronic filing" means the tender of documents in Commission proceedings to, and acceptance by, the Court Clerk through the Electronic Case Filing System.

"Electronic mail address" is the primary electronic mail address provided by the registered Electronic Case Filing user or Electronic Case Filing filer. An electronic mail address must have the functionality required by the Electronic Case Filing System.

"Electronic signature" means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"File(d)" or **"filing"** means tender of documents in Commission proceedings to, and acceptance by, the Court Clerk.

"Filer" means a person tendering documents to the Commission's Court Clerk for filing in a Commission proceeding, whether submitting those documents in paper or electronically.

"Intervenor" means any party of record who is not an applicant or named respondent.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

"Official ECF service list" means the list, for each case, of designated recipients of electronically mailed notice of filing of pleadings subsequent to the original Application or Complaint. This list does not include pro se persons or other persons entitled to notice who have not elected to accept electronic service, and must receive notice by other means.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a case whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Pro se" means self-representation in a Commission proceeding without representation by an attorney.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

- (A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;
- (B) Transcript of proceedings at all hearings or the electronic recording of hearings or proceedings as provided by OAC 165:5-13-1(d);
- (C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;
- (D) Exhibits, together with attachments, appendices, and amendments thereto;
- (E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;
- (F) Exceptions and motions subsequent to the hearing;
- (G) Orders or rules of the Commission; and
- (H) Any other document or matter relevant to the issues ordered to be included by the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Register" or **"registration"** means the process for a person to request authority from the Commission to access the Electronic Case Filing System.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Respondent list" means a list of named persons against whom relief is sought in a proceeding, or persons who are entitled to receive the application and notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant". The "Respondent list" is distinguished from the Official ECF service list as defined herein.

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail

outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

"Staff counsel" means an attorney with the Commission's Judicial and Legislative Services, or the Commission's Agency Counsel.

"Technical failure" means a malfunction of Electronic Case Filing System hardware, software, and/or telecommunications facility which results in the inability of a registered Electronic Case Filing filer to file a document. It does not include the failure of a registered Electronic Case Filing filer's equipment, software, and/or telecommunications facility.

"User manual" means the instructions for the Commission's Electronic Case Filing System.

"Website" means the Commission website.

[Source: Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 26 Ok Reg 2493, eff 7-11-09; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office in Tulsa, Oklahoma, at an address listed on the Commission's website.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Judicial and Legislative Services Division shall develop and maintain a system for providing telephone and/or videoconference communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records that are not available in the ECF System, when implemented, or on the Commission's website may be viewed during regular office hours. Copies of public records retained in the Court Clerk's Office may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office. Either regional service office may be selected as the venue when an application is filed.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** Until the Commission implements the ECF System, every oil-and-gas-related document or order tendered to the Court Clerk shall be filed, deposited with, or mailed to the Court Clerk at a regional service office unless the Director of Judicial and Legislative Services, or his or her designee directs otherwise. All documents related to other matters shall be filed, deposited with, or mailed to the Court Clerk at the Commission's principal office unless the Director of Judicial and Legislative Services, or his or her designee, directs otherwise. No document will be mailed to anyone who obtains an immediate file-stamped copy, unless a self-addressed postage paid envelope large enough for the return of a file-stamped or processed copy is included. All documents shall be deemed received upon the date file stamped by the Court Clerk, subject to the provisions of OAC 165:5-1-5(g). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-4.1. Open records requests

(a) Records available to the public pursuant to the Oklahoma Open Records Act, 51 O.S. § 24A.1 et seq., may be obtained by directing written requests for records to the respective division directors or their designated appointees. This Section does not apply to records specifically required by the Commission to be kept confidential, including records subject to proprietary agreements, confidentiality orders and sealed exhibits. Charges for copies and research of such records shall be in accordance with OAC 165:5-3-1 and the Open Records Act, 51 O.S. § 24A.5(3).

(b) Any records, reports or information obtained pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act and/or OAC 165:15, 165:16, 165:25, 165:26, 165:27 and 165:29 shall be available to the public unless a showing satisfactory to the Commission by any person that the records, reports or information, or a particular part thereof, if made public would divulge production of sales figures, methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such record, report or information or particular portion thereof.

[Source: Added at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-1-5. Filing of documents

(a) **Document form.** Upon implementation of the ECF System, all persons filing documents with the Court Clerk shall file through the ECF System, unless otherwise directed by the Court Clerk, or these rules. Documents presented in paper to the Court Clerk will only be accepted and filed if such documents are submitted by a pro se filer or contain confidential information as set forth in subsection (h).

(b) Document Format. Documents filed with the Court Clerk by electronic mail or through the ECF System shall be in portable document format ("PDF"), or another format stated in the User Manual. Documents filed in paper format may be printed, typewritten or reproduced by any legible method. All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing and uploading to the ECF System by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the case number assigned by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page. No document may be altered after filing; pages may not be otherwise inserted and no interlineations, additions or deletions may be made. If a filing error is made, the correct document or information, as appropriate, shall be submitted as a separate filing to the Court Clerk as soon as possible.

(c) Filing stricken by motion. Upon the motion of the Commission or Administrative Law Judge, or the filing of a motion pursuant to OAC 165:5-9-2(b), the Administrative Law Judge is authorized to recommend to the Commission an order to strike the filing of any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such recommendation to grant a motion to strike a filed document, the subject document shall be presented to the Commission for ruling on acceptability for filing.

(d) Required information. The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, and electronic mail address. All documents signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number. Anyone who disputes the authenticity of any electronic signature may file an objection to the document within five (5) business days of service.

(e) Requirement conflicts. Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(f) Informal communications. Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail, electronic mail, or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(g) Electronic Mail transfers.

(1) Until the Commission implements the ECF System, the Court Clerk shall accept pleadings submitted by electronic mail, at an address posted to the Commission's website, pending payment of the appropriate filing fees. A new case filing must be sent to the Court Clerk by electronic mail before 3:30 p.m. of each business day, otherwise it will have a file stamp reflecting the next regular business day.

(2) Unless otherwise delivered the same day, if an application for emergency relief in a spacing, location exception, increased density or

multiunit horizontal well proceeding is submitted by electronic mail, a copy of such emergency application shall be sent by electronic mail to the Technical Services Department of the Commission at an electronic mail address to be designated by the Director of the Conservation Division, on the date of the filing.

(3) Until the Commission implements the ECF System, a CD case number may be requested by sending an electronic mail to the Court Clerk with the entire caption of the proposed application, a statement that only a case number is being requested, and contact information for the party requesting the case number. This will not be considered an electronic mail filing of the application and the date of filing the application will be the date the complete application is received in the Court Clerk's office. In order to minimize gaps in the numbering of cases, the case number requested by electronic mail must be followed by filing original documents containing the exact same caption in the Court Clerk's office or filed by electronic mail, within three (3) business days of the request, or the case number will be cancelled and may not be reused for any purpose.

(h) Confidential documents. All documents and information considered to be confidential must be clearly marked as such on a cover page of the document. Until such time as the ECF System provides for the electronic filing of documents subject to a protective order or otherwise considered confidential, unredacted documents which contain materials subject to a protective order, or otherwise considered confidential, shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk within one (1) business day of the electronic filing of the cover page. All documents deemed and marked as confidential shall be docketed and retained by the Court Clerk. Until the Commission determines otherwise, the cover page only of such filings will be viewable by the public for identification purposes. The responsibility for following these rules concerning confidential documents and information rests solely with counsel, the parties, or any other filer. The Court Clerk does not have any duty to review documents for compliance with this rule. Paper copies of confidential documents may be returned to the party, or destroyed by agreement of the party, following the issuance of a final order and the expiration of the appeal period.

(i) Personal Identifier Information. If a filer includes personal identifier information such as Social Security numbers, tax identification numbers, financial account numbers, driver's license numbers, dates of birth, addresses or other sensitive information, in any document filed with the Court Clerk, electronically or otherwise, the document becomes a public record as filed, unless otherwise ordered by the Commission. Further, unless otherwise ordered or as otherwise provided by law, every filer, whether filing electronically or otherwise, shall redact the following information, except the last four digits, in documents prior to filing with the Court Clerk, including but not limited to:

- (1) Social Security numbers;
- (2) Taxpayer identification numbers;
- (3) Financial account numbers; and/or
- (4) Driver's license numbers.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-6. Time computations and extensions; effective date

- (a) **Computation of time.** In computing any period of time prescribed by statute, by the rules of this Chapter, or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall be omitted and the last day of the designated period shall be included, unless the last day falls on a Saturday, Sunday, or legal holiday or official agency closing, in which case the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday or official agency closing. Additionally, in computing any such period of time of five (5) calendar days or less, any period of time that would otherwise begin to run on a Saturday, Sunday, or legal holiday or official agency closing will begin to run on the next business day after the day of the act, event, or default from which the designated period of time begins to run. This computation of five (5) calendar days or less shall not be applicable to OAC 165:5-13-5.
- (b) **Extension of time.** Whenever an act is by the rules of this Chapter or by order of the Commission required or allowed to be done at or within a specified time, the Commission may, in its discretion upon its own motion or upon motion of any person, after notice and hearing, order the period extended if the order therefore is made prior to expiration of the period originally prescribed or as extended by previous order. Statutory time limits cannot be extended by the Commission.
- (c) **Effective date of orders.** Every order of the Commission issues and is effective, unless an effective date is otherwise stated in the order, the date such order is signed by the Commissioners or by the Secretary upon approval of the Commissioners.

[Source: Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 33 Ok Reg 588, eff 8-25-16; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-7. Procedure for adoption of rules

- (a) The Commission shall comply with all applicable provisions of the Administrative Procedures Act ("APA"), 75 O.S. §250 et seq., and Article IX of the Oklahoma Constitution.
- (b) In addition to the statutory requirements of the APA, notice of proposed rulemaking action shall be published one time at least thirty (30) days prior to public hearing in a newspaper of general circulation published in Oklahoma County. If, however, the Commission finds that a rule is necessary as an emergency measure, the Commission may promulgate, pursuant to applicable provisions of the APA, any such rule without notice and hearing.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 21 Ok Reg 2015, eff 7-1-04; Amended at 23 Ok Reg 2225, eff 7-1-06; Amended at 31 Ok Reg 959, eff 9-12-14]

165:5-1-8. Place of hearing

- (a) **General.**
- (1) The Commission may set a case for hearing anywhere in the State.
 - (2) Unless otherwise ordered, all hearings in a case shall be held at the regional service office venue where the case is set for hearing on the merits.
- (b) **For non-oil and gas dockets.** Unless otherwise ordered by the Commission, all cases except matters on the CD, PD, GG, and oil and gas related EN dockets shall be set for hearing in Oklahoma City.
- (c) **For CD, PD, GG, and oil and gas related EN dockets.**

- (1) All hearings on any oil and gas application including but not limited to appellate hearings shall be held in the regional service office where the application is filed or at the regional service office venue selected for any such application filed through the ECF System. In the case of a protested application where a protestant objects to venue on the basis that the holding of the hearing in a certain regional service office would not be at the convenience of any respondent having standing to protest by statute or rule of the Commission, the Commission shall permit such protesting respondent to present testimony by telephone in the other regional service office or any other approved location.
- (2) Requests to change the place of a hearing may be made by motion, notice of protest or written response filed with the Court Clerk not less than five (5) business days before the scheduled hearing. Applicant's reply to a request to change venue shall be governed by OAC 165:5-9-2. Disposition of requests to change the hearing location may be decided upon documents submitted unless oral arguments are ordered by the Commission.
- (3) Failure to timely object to the location of a hearing may be deemed a waiver of the objection. However, the Commission may grant leave to file or otherwise make the objection out of time. Excusable neglect, inexperience with the Commission rules, or other good cause shown shall be grounds for granting such leave.

[Source: Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-9. Telephone or videoconference participation

- (a) In an unprotested hearing, testimony by witnesses, appearances by parties of record, and arguments made by parties of record may be offered by telephone or videoconference, unless the Commission or Administrative Law Judge determines that the presence of the witnesses or parties of record in the courtroom is necessary for the effective and efficient presentation of evidence or argument.
- (b) In a protested hearing, testimony by witnesses, appearances by parties of record, and arguments made by parties of record may be offered by telephone or videoconference with the consent of all parties of record and the Commission or Administrative Law Judge. With the agreement of all parties, the Administrative Law Judge may conduct a hearing remotely by videoconference. It shall be the responsibility of the proponent of telephone or videoconference testimony or argument to obtain the required consent before the hearing. No continuance shall be granted for failure to obtain the required consent.
- (c) The cost of telephone or videoconference service shall be paid by the party requesting its use. If participation through a telephone or videoconference service in a proceeding is sought, the proponent must indicate the capability to establish the participation using its own digital device or other means of access.
- (d) A proceeding conducted by telephone or videoconference shall be conducted in the same manner as if the parties had appeared in person, and the Commission or Administrative Law Judge presiding over the matter may exercise all powers consistent with the proceeding.
- (e) In any proceeding conducted by telephone or videoconference, the remote location(s) shall be considered an extension of the courtroom and held before the Commission or Administrative Law Judge who is presiding. The Commission or Administrative Law Judge's pronouncements, instructions, recommendations and/or rulings shall have the same force and effect as if all participants had been physically present in the courtroom. The Commission or Administrative Law Judge

shall consider and rule on any objections of a party of record prior to beginning the proceeding.

(f) An oath administered by the Commission or Administrative Law Judge in a proceeding conducted by telephone or videoconference shall have the same force and binding effect as if the oath had been administered to a person physically present in the courtroom.

(g) In any proceeding conducted by telephone or videoconference, a court reporter, who can see (if videoconference) and hear the witness and other participants, may record notes and transcribe the proceeding without being physically present in the same location as either the Commission or Administrative Law Judge or the remote participants.

(h) In any proceeding conducted by telephone or videoconference, an interpreter, who can see (if videoconference) and hear the witness and other participants, may provide interpreter services without being physically present in the same location as either the judge or the remote participants.

(i) Any system used for conducting a proceeding by telephone or videoconference shall conform to the following minimum requirements:

(1) Participants shall be able to see (if videoconference), hear, and communicate with each other simultaneously;

(2) Participants shall be able to see (if videoconference), hear, and otherwise observe any physical evidence or exhibit presented;

(3) Video and sound quality shall be adequate to allow participants to observe demeanor and nonverbal communications and to clearly see (if videoconference) and hear what is taking place to the same extent as if they were present in the courtroom;

(4) When feasible, a party and the party's attorney should be allowed to communicate privately off the record by use of a private communication facility (cellphone, landline, facsimile, Skype, etc.) during the proceeding, or during a break. The Commission or Administrative Law Judge is not required to provide a private communication facility if none is available.

(j) Any pleading, other document, or exhibit used in a proceeding conducted by telephone or videoconference may be transmitted between the Commission's location and any remote site by electronic means, including, but not limited to, facsimile, scan, or electronic mail address. Signatures on any document transmitted by electronic means shall have the same force and effect as an original signature.

(k) Unless otherwise ordered by the Commission or Administrative Law Judge, any original exhibit offered and/or admitted into evidence from a remote site shall be transferred by the moving party to the court reporter within three (3) business days of the close of the proceeding. If no court reporter was utilized during the proceeding, the Commission or Administrative Law Judge shall instruct the moving party regarding the transmission and custody of the exhibit.

(l) Any stipulation/waiver of any right to be present in the courtroom shall be obtained at the commencement of the proceeding, either on the record or in writing. A written stipulation/waiver shall be filed in the cause and made a part of the record.

(m) Within three (3) business days following the hearing, each witness testifying by telephone or videoconference shall be required to sign an affidavit verifying the witness's identity, affirming that the witness was provided copies of all documents presented or relied upon, and exhibits offered and/or admitted into evidence, to which the witness testified during the hearing, and affirming that the testimony was unassisted and not prompted or directed by any person. Said affidavit shall be filed

in the cause prior to the issuance of an order. A copy of the filed affidavit shall be submitted to the Commission or Administrative Law Judge. Appendix "K" to this Chapter contains a sample affidavit.

[Source: Added at 11 Ok Reg 4623, eff 9-4-94 (emergency); Added at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-1-10. Out of State Attorneys

An attorney who is not a member of the Oklahoma Bar Association shall comply with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes, prior to appearing before the Oklahoma Corporation Commission.

[Source: Added at 22 Ok Reg 488, eff 1-10-04 (emergency); Added at 22 Ok Reg 1730, eff 7-1-05; Amended at 27 Ok Reg 2098, eff 7-11-10]

PART 2. ELECTRONIC FILING OF DOCUMENTS

165:5-1-11. Scope

(a) All documents submitted electronically to the Court Clerk for filing in a proceeding shall conform to the rules and User Manual. Any filing not conforming to the rules and User Manual may be rejected by the Court Clerk.

(b) ECF Users and filers shall comply with applicable Commission rules and the instructions for ECF System registration and use set forth in the User Manual.

(c) The Director of Administration is authorized to establish, maintain, and update the User Manual.

(d) The User Manual shall be available on the Commission's website, and may be obtained from the Court Clerk.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-11.1. ECF System registration

(a) Only those persons registered as filers with the ECF System shall be authorized to file documents through the ECF System with the Commission.

(b) Instructions for registering as filers and/or users of the ECF System will be stated in the User Manual.

[Source: Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-12. Time of filing

Documents can be filed through the ECF System with the Court Clerk 24 hours a day, seven days a week. Filing a document electronically does not, however, alter the filing deadline for that document. If the Commission or Administrative Law Judge has ordered a document to be filed with the Court Clerk by a time certain, it must be filed by that time. Otherwise, a filing must be completed before midnight Central time on the date it is due to be considered timely filed. The official filing time is the filing time indicated on the confirmation of electronic filing which will be generated by the ECF System at the time of filing.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-12.1. Acceptance of filing

(a) A document shall not be considered to be electronically filed until submitted to the Court Clerk via the ECF System and a confirmation of electronic filing is

generated by the ECF System.

(b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.

(c) Unless otherwise directed by the Court Clerk, payment of any applicable filing fees in the ECF System shall be made by electronic payment prior to the completion of filing.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-13. Technical failures

(a) An ECF filer whose filing is made untimely as the result of a technical failure of the ECF System may seek relief from the Commission by filing a motion with the Court Clerk. If an ECF filer is unable to access the ECF System, the filer should check the Commission's website or contact the Court Clerk's Office to see if a technical failure has been declared.

(b) During a technical failure of the ECF System, documents may be filed in paper or by electronic mail at the discretion and direction of the Director of Judicial and Legislative Services, or his or her designee. During a technical failure, the filer will be responsible for sending any documents to all parties of record and payment of any applicable filing fees.

(c) Failures not originating with the ECF System, such as phone line problems, problems with the filer's Internet service provider, power outages, or hardware or software problems, will not constitute a technical failure under (a) above. Upon the filing of a motion, the Commission may grant appropriate relief regarding an untimely filed document.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-13.1. Correction of electronic filings

A filer cannot make changes to a document after the document has been electronically filed. If a filing error is made, the filer shall electronically file the correct document or filing information, as appropriate.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-14. Signatures on electronically filed documents

(a) Electronic signatures are required on all documents filed electronically. By use of an electronic signature, the person represents that all requirements of the applicable authority requiring the person's signature have been satisfied and all duties and obligations imposed by law have been fulfilled.

(b) An electronic signature placed on a document is deemed to constitute a signature on the document for purposes of all signature requirements imposed and or/any other applicable law. An electronic signature placed on a document shall have the same force and effect as a handwritten signature.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-1-14.1. Official ECF service list and certificate of service

(a) Upon the filing of a case, the ECF System will generate the Official ECF Service List. A person will be added to the Official ECF Service List upon the filing of an entry of appearance, in accordance with OAC 165:5-9-4.

(b) After a document is filed in a specific case, the ECF System will automatically send notice of the filing to all persons on the Official ECF Service List.

(c) For any parties, or other persons entitled to notice, who are not included on the Official ECF Service List, the certificate of service shall list the name and address of each such person and state the manner of service.

(d) Service through the ECF System is not effective if the person making service receives notice from the ECF System that the attempted service was not electronically delivered to the person to be served. To be considered effective service, the person making service will need to provide notice by other means available under these rules or by statute, and file a certificate of service reflecting the subsequent service.

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-1-14.2. Documents subject to protective order and other confidential documents

Unredacted documents which contain materials subject to a protective order, or otherwise considered confidential, shall be filed in accordance with OAC 165:5-1-5(h).

[Source: Added at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

PART 3. REVIEW OF ENVIRONMENTAL PERMIT APPLICATIONS

165:5-1-15. Definitions

As used in this Part, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise:

"Administratively complete" means an application that contains the information specified in the application form and rules in sufficient detail to allow the Division to begin technical review.

"Application" means a document prepared in accordance with the rules and the forms and instructions provided by the respective Division and submitted with the expectation of providing that information necessary for review and determination of the permit. The application consists of the initial submittal and all supplements.

"Division" means any operating Division of the Commission that issues environmental permits if such permits are not issued through an individual proceeding.

"Environmental permit" means any permit issued by the Oil and Gas Division, Petroleum Storage Tank Division, and Transportation Division, or their successors, that directly regulates the potential introduction of pollutants into the environment. Permits requiring an individual proceeding are not included in this definition.

"Supplement" means a response to a request for additional information following completeness and technical reviews, and information submitted voluntarily by the applicant.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99]

165:5-1-16. Review period

Applications for environmental permits shall be either granted or denied within sixty (60) days of receipt of an administratively complete application by the Division responsible for such issuance.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

165:5-1-17. Application submittal

Each Division shall make available to the public, for each type of environmental permit required, permit application forms and instructions that clearly delineate the information necessary for a permit application to be deemed administratively complete. Upon determining that an application is not administratively complete, the Division shall immediately notify the applicant by mail, facsimile or electronic mail and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Upon such notification, and until receipt of the supplemental information requested, the sixty (60) day environmental permit review period shall be suspended.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-18. Extension of review period

The 60-day administrative review period set forth in 165:5-1-16 may be extended:

- (1) By written agreement with the applicant pending submission of Division requested supplemental information deemed necessary for adequate Division review.
- (2) If circumstances beyond the Division's control prevents it from reaching a determination within sixty (60) days. The applicant shall be notified in writing by mail, facsimile, or electronic mail of the reasons for delay and of the anticipated date of review completion.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-19. Withdrawal of application

If the applicant fails to provide the Division requested supplemental information within six (6) months of the request, the application shall be considered withdrawn unless the time is extended by written request for good cause shown.

[Source: Added at 10 Ok Reg 51, eff 10-13-92 (emergency); Added at 10 Ok Reg 4241, eff 8-12-93]

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-25. Definitions

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

"Pollution complaint" means any communication, whether verbal or written, from any person not acting within the scope of employment of an environmental regulatory agency, which alleges that any site specific pollution has occurred or is imminent, or that a site specific pollution control law or rule has been violated, and for which the complainant expects action to be taken by an environmental regulatory agency. The term "pollution complaint" as used in this Part shall include anonymous pollution complaints, although the requirements of this Part regarding written or telephonic reply to the complainant shall not apply.

"Site specific" means limited in geographical extent to a specific well site, service yard, section of pipe, disposal or other pit, petroleum storage tank, or other such site or facility and its immediate surroundings; or originating from an identifiable and definite source at a specific well site, service yard, section of pipe, disposal or other pit, petroleum storage tank, or other such site or facility.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 33 Ok Reg 588, eff 8-25-16]

165:5-1-26. Receipt of pollution complaints

(a) Any pollution complaint received by the Commission or any of its Divisions, including any regional or district offices, shall be recorded immediately upon receipt in such format as the Commission may designate.

(b) A written acknowledgement of pollution complaint receipt will be sent by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within two (2) business days following receipt of the pollution complaint and shall provide the status of the pollution complaint at that time.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-27. Review of pollution complaints

(a) The appropriate Divisions of the Commission shall immediately review each pollution complaint and immediately, in writing, by mail, facsimile, or electronic mail, refer any pollution complaint concerning a site or facility permitted by or clearly within the jurisdiction of another state or federal environmental agency, to that agency or agencies for resolution.

(b) Pollution complaints that are not referred shall be reasonably and sufficiently investigated, which may include on site inspection, to determine whether or not a response action or actions should be initiated by the Commission.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-28. Closure

Pollution complaints referred to other agencies, pollution complaints that involve issues not within the Commission's jurisdiction, and pollution complaints that involve issues for which an adequate remedy has already been implemented to the extent possible shall be closed in writing and a copy of the referral or other closure document shall be sent by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of closure.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-29. Pollution complaint resolution

(a) All pollution complaints received by the Commission that are not closed pursuant to 165:5-1-28, and that involve issues over which the Commission has jurisdiction, shall be handled in such manner as to ensure that pollution complaint resolution shall be achieved within 180 days of receipt of the pollution complaint.

(b) Pollution complaint resolution is not achieved until a written determination is made by the Commission, or any duly authorized representative of the Commission, that:

- (1) the facts and circumstances of a pollution complaint do not constitute a violation of law or rule within the Commission's jurisdiction; or
- (2) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction but for which an adequate remedy including abatement and mitigation of pollution or appropriate punishment has been implemented to the extent possible; or

(3) the facts and circumstances of a pollution complaint constitute a violation of law or rule within the Commission's jurisdiction and for which an individual proceeding has been initiated before the Commission, an Administrative Law Judge of the Commission, or before a court of competent authority; or

(4) a long term site remediation has been initiated that is expected to take longer than 180 days from receipt of the pollution complaint to complete, and such remediation is being performed pursuant to an administrative or judicial order.

(c) A copy of the written determination shall be sent, by mail, facsimile, or electronic mail, within seven (7) days of its preparation, to the complainant, alleged violator, and other relevant parties, if known.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-1-30. Reporting

(a) All pollution complaints as defined in this Part shall be summarized monthly and the previous month's summary reported to the Conservation Commission as required by 27A O.S. § 3-2-107. When a pollution complaint has been resolved as provided in this Part, it shall be reported to the Conservation Commission as resolved and removed from all subsequent monthly reports.

(b) All final judicial decisions regarding pollution complaints will be conveyed by mail, facsimile, or electronic mail to the complainant, alleged violator, and other relevant parties, if known, within seven (7) days of Commission knowledge of the decision and shall also be reported to the Oklahoma Conservation Commission.

(c) All remediations completed in accordance with an administrative or judicial order shall be summarized in writing, including a description of the final outcome and the results of any required final environmental analyses performed on site, and a copy of the summary conveyed to the complainant, alleged violator, and other relevant parties, if known. The completion of the remediation shall also be reported to the Conservation Commission.

[Source: Added at 10 Ok Reg 1271, eff 3-17-93 (emergency); Added at 10 Ok Reg 4243, eff 8-12-93; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 34 Ok Reg 905, eff 9-11-17]

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees, fines and bonds

(a) General.

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-3-31, Use of vacuum at the well head.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Judicial and Legislative Services pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(L) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(F) No filing fee shall be required for any application filed on the Oklahoma Universal Service Fund ("OSF") docket.

(G) No filing fee shall be paid by a party filing a protest to a nonconsensual towing Violation Notification issued by the Transportation Division.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. For documents that are being filed in paper form, all associated filing fees must be paid and the documents submitted to the Court Clerk's Office for filing prior to 3:30 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) **Returned payments.** A service fee of \$20.00 shall be assessed on each check returned to the Commission as a result of the refusal of the bank upon which the check was drawn to honor the same. Upon the return of any check by reason of the refusal of the bank to honor it, the Commission may file a bogus check complaint with the appropriate district attorney. In the event that a payment transaction for any fee, fine or bond fails, the Commission reserves the right to require payment of that fee, fine or bond, and any future fee, fine or bond owed to the Commission by the same individual or entity, to be made by cash, cashier check, certified check, money order or another secured form of payment.

(6) **Petroleum Storage Tank Division fees.** All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - \$1,500.00

(B) Commercial earthen pit application - \$1,250.00

(C) Commercial soil farming site application - \$1,250.00

(D) Commercial recycling facility application - \$1,000.00

- (E) Noncommercial injection or disposal well application - Form 1015 - \$250.00
- (F) Commercial facilities annual fee due on October 1 of each year:
 - (i) Commercial earthen pit facility - \$750.00
 - (ii) Commercial soil farming facility - \$750.00
 - (iii) Commercial recycling facility - \$750.00
- (G) Conservation docket, pollution docket, and gas gathering base applications - \$200.00
- (H) Emergency application on the conservation or pollution docket - \$250.00
- (I) Permit to drill - Form 1000:
 - (i) Directional well - \$350.00
 - (ii) Horizontal well - \$400.00
 - (iii) Multiunit well - \$600.00
 - (iv) Vertical well - \$350.00
- (J) Expedited permit to drill - Form 1000:
 - (i) Directional well - \$600.00
 - (ii) Horizontal well - \$600.00
 - (iii) Multiunit well - \$800.00
 - (iv) Vertical well - \$600.00
- (K) Temporary permit to drill - Form 1000:
 - (i) Directional well - \$350.00
 - (ii) Horizontal well - \$350.00
 - (iii) Multiunit well - \$350.00
 - (iv) Vertical well - \$350.00
- (L) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant
- (M) Permit for one-time land application of materials - Form 1014S - \$150.00
- (N) Expedited permit for one-time land application of materials - Form 1014S - \$250.00
- (O) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00
- (P) Transfers of well operatorship - Forms 1073 and 1073I - single well - \$25.00
- (Q) Transfers of well operatorship - Forms 1073IMW and 1073MW - multiple wells - \$250.00
- (R) Notification of intent to plug - Form 1001 - \$100.00
- (S) Operator agreement-annual fee-Form 1006B-based on the number of unplugged wells for which the operator is responsible according to Commission records:
 - (i) No wells being operated - \$100.00
 - (ii) From 1-25 wells - \$250.00
 - (iii) From 26-100 wells - \$500.00
 - (iv) From 101-500 wells - \$750.00
 - (v) Over 500 wells - \$1,000.00
- (T) Fluid disposal/injection reports:
 - (i) Commercial disposal well fluid disposal report-Form 1012C-semiannual per well-\$500.00
 - (ii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-annual per well-\$25.00

- (iii) Noncommercial disposal and injection well and LPG storage well report-Form 1012-more than 100 wells-annual fee-\$2,500.00
- (U) Permit to use earthen pit, noncommercial disposal or enhanced recovery well pit for temporary storage of saltwater, and pit associated with commercial disposal well surface facility-Form 1014:
 - (i) Capacity of pit less than or equal to 10,000 barrels-\$250.00
 - (ii) Capacity of pit greater than 10,000 barrels-\$1,000.00
- (V) Permit for seismic operations-Form 1000S-\$100.00
- (W) Application for temporary exemption from well plugging-Form 1003A-\$100.00
- (X) Permit to vent or flare gas from well-Form 1022-\$50.00
- (Y) Application for multiple zone well completion, production of well through a multiple choke assembly, and commingling of well production-Form 1023-\$50.00
- (2) Transportation fees.**
 - (A) Transportation docket application - \$500.00
 - (B) Other transportation fees:
 - (i) Intrastate license.
 - (I) Original application filing fee - \$100.00
 - (II) Sub application filing fee - \$100.00
 - (III) Renewal application filing fee - \$50.00
 - (IV) Reinstatement application filing fee - \$100.00
 - (V) Name change application filing fee - \$50.00
 - (VI) Identification device or per vehicle fee - \$7.00
 - (ii) Deleterious Substance License Permit application filing fee - \$350.00
 - (iii) International Fuel Tax Agreement (IFTA) fees.
 - (I) IFTA decal - \$2.00 per vehicle per decal set
 - (II) IFTA reinstatement fee - \$100.00
 - (iv) Trailer registration processing fee per trailer registered through the IRP System - \$2.00
 - (v) Temporary registration and fuel permit fees (a \$10.00 services fee is added to each permit in this unit):
 - (I) Temporary registration (72 hour trip permit) - \$12.00
 - (II) Temporary fuel permit (120 hours) - \$25.00
 - (III) Unladen or hunters permit (45 days) - \$25.00
 - (vi) Harvest permit fees (power units only).
 - (I) Thirty day permit - \$20.00 per axle
 - (II) Sixty day permit - \$35.00 per axle
 - (III) 15 day extension - \$8.75 per axle
 - (vii) Transportation Network Company annual permit fee - \$5,000.00
 - (viii) Household goods certificate fees:
 - (I) Original application filing fee - \$350.00
 - (II) Sub application filing fee - \$300.00
 - (III) Renewal application filing fee - \$300.00
 - (IV) Reinstatement application filing fee - \$250.00

- (V) Name change application filing fee - \$50.00
- (VI) Identification device or per vehicle fee - \$7.00
- (ix) Apportioned commercial motor vehicle registration services fee - \$100.00 per vehicle (apportioned)
- (x) Apportioned commercial motor vehicle registration application reprocessing fee - \$100.00 per application
- (xi) Application for lawful fence - \$500.00. If the Transportation Division determines a lawful fence is required to be constructed by the railroad, the railroad shall have sixty (60) days from the date of notice to refund the application filing fee to the landowner
- (3) **Utility fee.** Public utility docket application - \$100.00
- (4) **Enforcement fee.** Enforcement docket application - \$100.00
- (c) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.
- (d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:
 - (1) Certificate of non-development (maximum of one quarter section) - \$10.00
 - (2) Copies of any file or order -
 - (A) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
 - (B) Postage - actual cost
 - (3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25
 - (4) Batch reproduction on continuing basis (per page) - \$0.25
 - (5) Copy of any document prepared in OCC offices (per page) - \$0.25
 - (6) Copy of any Chapter of Commission rules and regulations - \$10.00
 - (7) Copy of Oil and Gas Conservation rules - \$20.00
 - (8) Current ownership/lienholder information - \$1.00 per vehicle record page
 - (9) Computer generated title history - \$5.00 per vehicle
 - (10) Manual title history - \$7.50 per vehicle
 - (11) Copy of lien release - \$7.50 per vehicle
 - (12) Certified copy of lien release - \$10.00 per vehicle
 - (13) Certified copy of title history - \$10.00 per vehicle
 - (14) Preparation of the record on appeal to the Oklahoma Supreme Court - \$200.00
- (e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with 51 O.S. § 24A.5.
- (f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.
- (g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page.
- (h) **Payments by Credit Card and other means of electronic funds transfer.**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 3559, eff 7-12-93; Amended at 11 Ok Reg 3679, eff 7-11-94; Amended at 12 Ok Reg 1003, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2013, eff 7-1-95; Amended at 13 Ok Reg 2361, eff 7-1-96 ¹; Amended at 13 Ok Reg 2367, eff 7-1-96 ¹; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 15 Ok Reg 2939, eff 3-30-98 (emergency); Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 17 Ok Reg 596, eff 12-16-99 (emergency); Amended at 17 Ok

Reg 1853, eff 7-1-00; Amended at 23 Ok Reg 506, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2225, eff 7-1-06; Amended at 24 Ok Reg 1781, eff 7-1-07; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 26 Ok Reg 2493, eff 7-11-09; Amended at 29 Ok Reg 947, eff 7-1-12; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 33 Ok Reg 588, eff 8-25-16; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

EDITOR'S NOTE: ¹The agency promulgated two permanent amended versions of this Section (165:5-3-1) with the same effective date in 1996. Both versions were published in the 1996 Edition of the OAC. The agency later reconciled the two versions through permanent rulemaking on 7-1-97.

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) General.

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, money orders, credit cards and other means of electronic funds transfer. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(4) Payments by credit card and other means of electronic funds transfers.

(A) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(B) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(C) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(i) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(ii) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(D) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(E) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(F) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(G) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(H) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(I) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(b) Fees.

(1) **Application fee.** The fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is \$100.00.

(2) **Variance review fee.** The fee for administrative review of a Petroleum Storage Tank Division variance application is \$250.00.

(3) **Annual storage tank permit fee.** Owners of regulated petroleum storage tanks, whether in use or not, are required to pay an annual permit fee as follows:

(A) For petroleum storage tanks - \$25.00 per tank or tank compartment.

(B) For noncommercial agricultural underground storage tanks containing petroleum products - \$10.00 per tank.

(C) For any tank installed or permanently closed during a calendar year, the full yearly fee shall be assessed.

(D) Invoices will be mailed out approximately 60 days in advance of the due date as noted on the invoice.

(4) **UST Installer License.** The fees for an Underground Storage Tank Installer License are:

(A) Application fee - \$50.00

(B) License fee - \$100.00

(C) Annual License renewal fee - \$100.00

(5) **Environmental Consultant License.** The fees for an Environmental Consultant License are:

- (A) Application fee - \$50.00
- (B) License fee - \$100.00
- (C) Annual License renewal fee - \$100.00

(6) **UST Remover License.** The fees for an Underground Storage Tank Remover License are:

- (A) Application fee - \$50.00
- (B) License fee - \$100.00
- (C) Annual License renewal fee - \$100.00

(7) **AST Licensee.** The fees for an Aboveground Storage Tank Licensee are:

- (A) Application fee - \$50.00
- (B) License fee - \$100.00
- (C) Annual License renewal fee - \$100.00

(8) **Vapor Monitor Well Technician License.** The fees for a Vapor Monitor Well Technician License are:

- (A) Application fee - \$50.00
- (B) Examination fee - \$25.00
- (C) License fee - \$100.00
- (D) Annual License renewal fee - \$100.00

(9) **Groundwater Monitor Well Technician License.** The fees for a Groundwater Monitor Well Technician License are:

- (A) Application fee - \$50.00
- (B) License fee - \$100.00
- (C) Annual License renewal fee - \$100.00

(10) **Antifreeze Permit.** The manufacturer of any antifreeze displayed, distributed, manufactured, marketed, produced, sold, used and/or offered for sale or resale, held with intent to sell, or transported within the State of Oklahoma is required to pay the following fees:

- (A) Application fee - \$100.00 per brand per type
- (B) Annual permit renewal fee - \$100.00 per brand per type

(11) **Miscellaneous fees.**

(A) **Certified copies.** A fee of \$1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

- (i) Batch reproduction on continuing basis (per page) - \$0.25
- (ii) Copy of any document prepared in OCC offices (per page) - \$0.25
- (iii) Copies of any file or order -
 - (I) Non-certified copies - \$0.25 per page; certified copies \$1.00 per page
 - (II) Postage - actual cost

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with 51 O.S. § 24A.5.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page when not submitted for filing with the Court Clerk's office.

(12) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus for storage tank permits: a penalty of 50% of the computed total fee and/or suspend tank operation until payment of any fee or penalty assessed under this subsection is received.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99; Amended at 21 Ok Reg 2015, eff 7-1-04; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

PART 3. PUBLIC UTILITY ASSESSMENT FEES

165:5-3-20. Purpose

The purpose of this Part is to assess, pursuant to 17 Okl.St. Ann. §180.11, a fee upon each public utility to provide the level of funding established by the legislature for the Corporation Commission Public Utility Division for the regulation of Oklahoma public utilities.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-21. Definitions

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

"Director" means the Director of the Public Utility Division of the Oklahoma Corporation Commission.

"Filing tariffs with the Commission" means submission of the tariffs to the Director.

"Fiscal year" means the period beginning July 1 and ending June 30 of each year.

"Public utility" means:

(A) Those companies as defined by 17 O.S. §151, excluding those companies encompassed by paragraph (d) of Section 151.

(B) Any telephone or telecommunications company subject to 17 O.S. §131 et seq., including interexchange telecommunications companies as defined by 165:55-1-4, resellers as defined by 165:56, operator service providers as defined by 165:57, and pay phone service providers as defined by 165:58.

(C) Any association or cooperative corporation doing business under the Rural Electric Cooperative Act except for generation and transmission associations or cooperative corporations, or

transmission associations or cooperative corporations.

"Regulated Oklahoma jurisdictional gross operating revenues" means those revenues which are recorded in the accounts of the public utility, resulting from sales of commodities or services provided to Regulated Oklahoma Jurisdictional Customers. For telecommunications companies this shall include, but should not be limited to, revenues received for intrastate services from all Oklahoma and Federal universal service and low income funds for regulated and non-regulated services, revenues received from the Oklahoma Universal Service Fund for Special Universal Services, revenues received from the Oklahoma Universal Service Fund for Primary Universal Services, and revenues received from the Oklahoma Lifeline Fund and Federal Lifeline support received pursuant to 47 CFR Subpart E. The inclusion of revenues described in the previous sentence as Regulated Oklahoma jurisdictional gross operating revenues shall be for the limited purpose of the calculation of allocations for payment into the Public Utility Assessment Fee according to this Part 3 of Subchapter 3 of OAC 165:5 and shall not be construed as affecting the jurisdictional nature of the funds as determined by the telecommunications companies in accordance with 47 CFR Parts 32 and 36 for separations purposes or other purposes such as determining jurisdictional tax liability.

"Regulated Oklahoma Jurisdictional Customers" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision, or the United States or the State of Oklahoma, receiving utility service from a public utility pursuant to rates and charges established by, or filed with the Commission and recipients of Special Universal Services as defined in 17 O.S. §139.102.

"Special Universal Services" means the same as is defined in 17 O.S. §139.102.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 30 Ok Reg 1033, eff 7-1-13; Amended at 31 Ok Reg 959, eff 9-12-14]

165:5-3-22. Fee allocation

(a) Pursuant to 17 O.S. §180.11, an annual fee shall be assessed as follows:

(1) The assessment shall, after excluding the amount allocated to the interexchange telecommunications companies, resellers, pay phone service providers and operator service providers in paragraph (2) of this subsection, be borne by the affected public utilities as follows:

(A) One-half shall be allocated based on that proportion which the total Regulated Oklahoma jurisdictional gross operating revenues of each public utility bears to the total Regulated Oklahoma jurisdictional gross operating revenues of all public utilities; and

(B) One-half shall be allocated based on that proportion which the total number of Regulated Oklahoma Jurisdictional Customers of each public utility bears to the total number of Regulated Oklahoma Jurisdictional Customers of all public utilities.

(2) For interexchange telecommunications companies, resellers, pay phone service providers and operator service providers, the allocation shall be based on the proportion that each interexchange telecommunications company's, reseller's, pay phone service provider's, and operator service provider's total Regulated Oklahoma jurisdictional gross operating revenues bears to the total Regulated Oklahoma jurisdictional gross operating

revenues of all public utilities.

(b) The fees assessed pursuant to this Section shall be on a fiscal year basis and shall equal the amount of the budgetary limit for the Public Utility Division established by the legislature for said fiscal year.

(c) After final legislative and gubernatorial approval of the budgetary limit for the Public Utility Division, notice of the annual assessed amount pursuant to (a)(1) and (2) of this Section shall be sent by electronic mail or certified mail, return receipt requested, to each public utility.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 18 Ok Reg 2369, eff 7-1-01; Amended at 30 Ok Reg 1033, eff 7-1-13; Amended at 31 Ok Reg 959, eff 9-12-14]

165:5-3-23. [RESERVED]

[Source: Reserved at 10 Ok Reg 4517, eff 9-1-93 (emergency); Reserved at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-24. Payment of assessments

(a) Each public utility shall pay an assessment in equal amounts on a quarterly basis. For each fiscal year, the first quarterly payment shall be due no later than thirty (30) days from the mailing date of the notice provided by 165:5-3-22(c). Subsequent payments will be due as follows:

- (1) Second quarterly payment due no later than October 1.
- (2) Third quarterly payment due no later than January 1.
- (3) Fourth quarterly payment due no later than April 1.

(b) A public utility may, at its discretion, pay its annual assessment prior to the due date of the quarterly payments.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-3-25. Reporting requirement

(a) On or before April 1 of each year, each affected public utility shall submit to the Director a report based on the preceding calendar year containing the following data:

- (1) Prior calendar year end Regulated Oklahoma Jurisdictional Customers.
- (2) Total prior calendar year Regulated Oklahoma jurisdictional gross operating revenues.

(b) The reporting requirement set forth in (a)(1) of this Section does not apply to interexchange telecommunication companies.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94; Amended at 30 Ok Reg 1033, eff 7-1-13; Amended at 31 Ok Reg 959, eff 9-12-14]

165:5-3-26. Failure to comply

Any public utility which fails or refuses to file the report required by 165:5-3-25 or pay the required assessment within the time and in the manner prescribed by 165:5-3-24 shall be deemed delinquent and may be assessed such fines and penalties as are permitted by Article 9, Section 19 of the Oklahoma Constitution.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

165:5-3-27. Fee recovery

(a) Each public utility may recover amounts assessed pursuant to 165:5-3-22(a) by filing tariffs with the Commission and after approval of said tariffs by the Director. Tariffs recovering amounts assessed must meet the following conditions:

- (1) Distribute the recovery equally per customer bill rendered or access line.
- (2) Distribute recovery over the fiscal year for which the assessment is levied.
- (3) Include a provision to true-up any over or under recovery by the public utility of assessed amounts by no later than the end of the following fiscal year.

(b) No public utility may recover any portion of the penalty assessed pursuant to 165:5-3-26, above the amount of fees actually due for the assessed period.

[Source: Added at 10 Ok Reg 4517, eff 9-1-93 (emergency); Added at 11 Ok Reg 3681, eff 7-11-94]

PART 4. ASSESSMENTS ON UNREGULATED ENTITIES

165:5-3-30. Purpose

The purpose of this Part is to assess, pursuant to Section 45 of Senate Bill 575 (1993), a fee in public utility docket causes filed by Unregulated entities, to assist in providing funding to the Public Utility Regulation Revolving Fund.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15]

165:5-3-31. Definitions

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

"Unregulated entity" means any person, firm or corporation which is not a public utility as defined in Title 17 O.S. §180.11.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15]

165:5-3-32. Commission determination of assessment

(a) In causes on the Public Utility Docket where the cause was filed by an Unregulated entity, fees may be assessed to the Unregulated entity upon a motion of the Staff of the Public Utility Division made within ninety (90) days after the cause is filed. Notice of the hearing on the motion shall be given to all parties of record in the cause pursuant to Commission rules; provided, however, the final amount of assessment on the Unregulated entity shall be made within sixty (60) days following the issuance of the final order in the cause, or if a final order is not issued then upon conclusion of the cause whether it be by dismissal or otherwise. If an Unregulated entity makes a material change in its application or adds a separate cause after 90 days, the Commission may make an additional assessment.

(b) In considering whether or not to assess fees to the Unregulated entity, the Commission shall consider, although not be limited to, the following factors:

- (1) The benefit(s) to the Unregulated entity if the relief requested by the Unregulated entity is granted.
- (2) The benefit(s) to the State of Oklahoma if the relief requested by the Unregulated entity is granted.
- (3) The public interest.
- (4) Compliance with any other state or federal law under which this Commission has jurisdiction.
- (5) Whether the Unregulated entity is a consumer group filing a case on behalf of themselves as consumer/members and the composition of the consumer group.

- (c) The Commission shall make a determination of the estimated costs which will be incurred by the Commission for Commission resources and/or consulting services that are required to process an application.
- (d) In the event the actual costs of the Commission are less than the assessed amount, the difference will be refunded to the Unregulated entity.
- (e) The Commission shall issue an order which shall include the following:
- (1) Whether or not the Unregulated entity will be assessed a fee.
 - (2) The amount of the fee to be assessed, which shall be no greater than the estimated amount, and which shall not be subject to modification, regardless of the cause being delayed or to which exceptions are filed, except as provided in 165:5-3-32(a).
 - (3) The date the payment shall be paid.
- (f) All Unregulated entities who in their capacity as customers of a regulated utility file a complaint with the Commission seeking compliance with existing Commission rules and regulations and/or Commission approved tariffs shall not be assessed fees beyond the filing fee set forth in 165:5-3-1.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 32 Ok Reg 752, eff 8-27-15]

165:5-3-33. Option to withdraw application

If the Commission orders that a fee be assessed, the Unregulated entity shall have the option of proceeding with the cause or withdrawing its application. If the Unregulated entity withdraws its application, no assessment beyond the filing fees set forth in 165:5-3-1 shall be required.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15]

165:5-3-34. Payment of assessment

Failure by an Unregulated entity to pay an assessed fee by or on the date ordered by the Commission shall either result in denial of the relief requested by the Unregulated entity without prejudice, after notice and hearing, or postponement of the procedural schedule as directed by the Commission.

[Source: Added at 11 Ok Reg 3683, eff 7-11-94; Amended at 32 Ok Reg 752, eff 8-27-15]

PART 5. WIND ENERGY FACILITY FEES

165:5-3-40. Purpose

The purpose of this Part is to assess, pursuant to 17 O.S. § 160.22, a fee upon each wind energy facility to provide funding to the Public Utility Division in the execution of duties and responsibilities required by the Oklahoma Wind Energy Development Act.

[Source: Added at 36 Ok Reg 517, eff 8-1-19]

165:5-3-41. Definitions

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

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Decommissioned" means the retirement of a wind energy facility, including decontamination and/or dismantlement, and as defined in 17 O.S. § 160.14.

"Wind energy facility" means wind energy facility as defined in 17 O.S. § 160.13(9).

[Source: Added at 36 Ok Reg 517, eff 8-1-19]

165:5-3-42. Wind energy facility fee

- (a) Pursuant to 17 O.S. § 160.22, an annual fee of \$2,000.00 shall be assessed on each wind energy facility located in the State of Oklahoma.
- (b) Pursuant to 17 O.S. § 160.22, a submission fee of \$5,000.00 shall be paid to the Commission for processing of each initial Notification of Intent to Build a wind energy facility in Oklahoma.
- (c) For the first year of commercial generation, the annual fee shall be paid to PUD concurrently with the submission of the annual report, pursuant to OAC 165:35-45-3.
- (d) The wind energy facility fee shall be paid to PUD annually on or before March 1 of each year, concurrently with the submission of the annual report, pursuant to OAC 165:35-45-3.
- (e) The wind energy facility fee shall not be paid after PUD is notified that the wind energy facility is decommissioned.
- (f) A public utility, as defined in OAC 165:5-3-21, that pays into the PUD Assessment pursuant to 17 O.S. §180.11, shall not be required to pay the wind energy facility fee on each wind energy facility owned by the public utility.

[Source: Added at 36 Ok Reg 517, eff 8-1-19]

165:5-3-43. Failure to comply

A wind energy facility that fails or refuses to pay the required fee may be assessed fines and penalties as provided by law.

[Source: Added at 36 Ok Reg 517, eff 8-1-19]

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

- (a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:
 - (1) General Docket (GD), which shall consist of causes not coming within the purview of any other docket listed below, and which shall include notices of inquiry.
 - (2) Conservation Docket (CD), which shall consist of causes to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.
 - (3) Consumer Services Docket (CS), which shall consist of causes initiated by either the Director of the Consumer Services Division against a regulated utility provider or a customer against the customer's regulated utility provider seeking to require the regulated utility provider to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Regulated utility provider includes public utilities and telecommunications carriers as defined by 17 O.S. §§ 41, 139.102 and 151.
 - (4) Enforcement Docket (EN), which shall consist of causes initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or

other affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.

(5) Gas Gathering Docket (GG), which shall consist of causes initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.

(6) Motor Carrier Citation Docket (MCC), which shall consist of causes initiated by issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.

(7) Oklahoma Universal Service Fund Docket (OSF), which for causes filed on or after January 1, 2018, shall consist of causes relating to funding from the Oklahoma Universal Service Fund (OUSF) or the Oklahoma Lifeline Fund (OLF), including, but not limited to, requests for OUSF or OLF funding, submissions relating to OUSF administrative preapproval requests and the OUSF fee assessment.

(8) Petroleum Storage Tank Docket (PSD), which shall consist of causes initiated by the Director of the Petroleum Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

(9) Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of causes initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

(10) Pollution Docket (PD), which shall consist of causes initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

(11) Public Utility Docket (PUD), which shall consist of causes initiated by the Director of the Public Utility Division, a public utility, or other party with standing concerning any matter relating to public utilities, except rulemaking and, effective January 1, 2018, the Oklahoma Universal Service Fund.

(12) Rulemaking Docket (RM), which shall consist of causes initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. [75 Okla. Stat. § 250.3(17)] Formal petitions by the public for rulemaking shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition, the rulemaking proceeding shall be part of the Rulemaking Docket.

(13) State Fund Plugging Docket (SF), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

- (14) Transportation Docket (TD), which shall consist of causes initiated by:
- (A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;
 - (B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;
 - (C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;
 - (D) an application by the Transportation Division modifying a previously issued order;
 - (E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;
 - (F) an interested party protesting a license, certificate, permit or registration being issued or renewed;
 - (G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;
 - (H) a pipeline operator seeking a pipeline acceptance;
 - (I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or
 - (J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

(15) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, GG, SF and oil and gas related EN docket.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

- (1) File-stamp each document received with the date of receipt.
- (2) Record every document filed in the cause.
- (3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission or an Administrative Law Judge, after consultation with the Court Clerk, determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Judicial and Legislative Services shall send the order transferring the application to the proper docket to the applicant by mail, facsimile, or electronic mail, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

(e) For the purposes of documentation produced by the case management feature of the Electronic Filing System, individual applications or causes may be denoted as dockets and daily and weekly court calendars may be denoted as agendas.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20]

SUBCHAPTER 7. COMMENCEMENT OF A CASE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, the provisions of this Section shall govern the commencement of a case filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every case shall be commenced by:

- (1) An application.
- (2) A complaint.
- (3) An order of the Commission commencing a case.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

- (1) The heading, "Before the Corporation Commission of the State of Oklahoma".
- (2) The applicant.
- (3) The relief sought. In the case of a conservation docket or pollution docket case, the statement shall contain the legal description of the lands involved in the case.
- (4) The docket identifying initials, year prefix, and case number, pursuant to OAC 165:5-5-1.
- (5) The title of the document.
- (6) In the case of an enforcement docket case, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

- (1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, electronic mail address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the case; and the name and address of each person (if any) named as respondent.
- (2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.
- (3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.
- (4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, telephone number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:

(1) He has read the application.

(2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.

(3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the case is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.

(g) **Manner of service.** All documents subsequent to the application in a case shall be served on a party of record through the ECF System, or by regular mail, electronic mail, or in person, except where the rules of this Chapter or a statute requires a specific mode of service which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service through the ECF System, or by mail, or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Chapter or by statute; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, mailed electronically or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing shall contain the typewritten name of each current Commissioner at the bottom of the notice, which shall serve as the Commissioner's electronic signature, followed by the signature of the person filing the application.

(l) **Content of notice.** The notice shall contain:

- (1) The caption from the application.
- (2) The time, date, and place of hearing.
- (3) Briefly the general nature of the order, rule, regulation or other relief sought.
- (4) In oil and gas cases, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
- (5) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

- (1) When a case other than an oil and gas or Petroleum Storage Tank Division case is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.
- (2) In oil and gas cases, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.
- (3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the case.
- (4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 37 Ok Reg 1082, eff 10-1-20; Amended at 38 Ok Reg 1726, eff 10-1-21]

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the

application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to such order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed. Notwithstanding the foregoing, the Commission may vacate any non-horizontal drilling and spacing unit upon a proper showing of a change of conditions or change in knowledge of conditions to justify such vacation or deletion, and any such request to vacate or delete any such non-horizontal drilling and spacing unit may be included in and made a part of any application to form one or more horizontal well units.

(1) In any spacing proceeding to establish or form a horizontal well unit, the application filed in such proceeding shall set forth and describe any non-horizontal drilling and spacing unit that exists concurrently with such horizontal well unit, including the API numbers of the well or wells located in any such non-horizontal drilling and spacing unit.

(2) The order entered in such proceeding shall describe any non-horizontal drilling and spacing unit that exists concurrently with the horizontal well unit, including the API numbers of the well or wells located in such non-horizontal drilling and spacing unit. The order establishing or forming a horizontal well unit that exists concurrently with any non-horizontal drilling and spacing unit shall state, based on the evidence presented, that the consent in writing required by subsection (h) of this Section has been obtained and filed or that a waiver of such consent requirement as authorized by subsection (i) of this Section has been granted by the Commission.

(h) No order of the Commission authorizing a horizontal well unit that overlies any existing well, or portion of any existing drilling and spacing unit with any existing well, producing from the same common source of supply shall be entered until:

(1) at least fifty percent (50%) of the ownership having a right to drill in each such well and drilling and spacing unit consents in writing to the formation of such horizontal well unit and such written consent or consents are filed with the Court Clerk of the Commission in the applicable spacing proceeding or otherwise entered into the record in such proceeding; or

(2) such consent is waived by the Commission. Provided, however, in the event any such order is entered by the Commission without the written consent required above or a waiver of such consent, any horizontal well unit purported to be formed by such order for which such consent is required shall not be effective until such consent is filed with the Court Clerk of the Commission in such spacing proceeding or is otherwise entered into the record of such proceeding or such consent is waived by the Commission. Requests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement. For purposes of this subsection, a showing of good cause means applicant must present sufficient testimony and evidence, and the Commission must find in the order, that applicant has established the following:

(1) Due diligence was exercised to locate each owner having a right to drill in any existing well and/or any existing drilling and spacing unit producing

from the same common source of supply as the proposed horizontal well unit;

(2) A bona fide effort was made to obtain the required percentage of consent;

(3) Alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created; and

(4) Any correlative rights or vested rights, or both, of owners in the existing well(s) and/or drilling and spacing unit(s), and in the proposed horizontal well unit, will be adequately protected if the consent requirement is waived and the proposed horizontal well unit created.

(j) If a horizontal well unit formed under subsection (g) of this Section is determined to exist concurrently with any previously formed non-horizontal drilling and spacing unit, or any portion thereof, the order forming such horizontal well unit shall provide that each concurrently existing unit may be separately developed in that a well may be drilled into, completed in, and produce hydrocarbons from the same common source(s) of supply in each such concurrently existing unit, with production from such well to be governed by and allocated pursuant to the applicable unit. If a unit is determined to exist concurrently with another unit and is subject to a prior pooling order, which is in full force and effect, the rights relinquished by a non-participating owner which became vested under such prior pooling order in the same common source(s) of supply shall be treated and recognized as vested rights in any subsequent pooling proceeding covering such other unit. An owner, who participated as a working interest owner under an existing pooling order covering a unit that exists concurrently with another unit, need not participate or continue to participate as a working interest owner under any other pooling order covering such other unit in order to continue to participate as a working interest owner under such existing pooling order; provided, however, if such owner does not participate as a working interest owner under such other pooling order, such owner shall relinquish its rights to participate in any well drilled under or otherwise covered by such other pooling order.

(k) Any spacing order entered by the Commission pursuant to 52 O.S. §87.1(f) which forms a horizontal well unit or units that exceed six hundred forty (640) acres plus tolerances and variances as allowed by statute shall provide that the contemplated lateral length of the initial horizontal well drilled in any such horizontal well unit formed by such order shall be at least seven thousand five hundred (7,500) feet. Such spacing order shall further provide that upon the initial horizontal well drilled under such spacing order reaching its total depth, an affidavit shall be filed in the spacing proceeding in which such order is entered setting forth the lateral length of such initial horizontal well in any horizontal well unit formed by such order.

(l) At the hearing, except for good cause shown, a production plat, type log, and any other exhibits necessary to support the requested relief (e.g. isopach map or structure of the target zone(s)) shall be provided.

(m) The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 30 Ok Reg 1033, eff 7-1-13; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 35 Ok Reg 67, eff 9-8-17 through 9-14-18 (emergency)¹; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20]

EDITOR'S NOTE: ¹This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-18 (after the 9-14-18 expiration of the emergency action), the text of section 165:5-7-6 reverted back to the permanent text that became effective 8-27-15, as was last published in the 2016 Edition of the OAC, and remained as such until amended by permanent action on 10-1-18.

165:5-7-6.1. Horizontal well unitization for targeted reservoirs

(a) The application, and the notice of hearing on the application, for an order creating a horizontal well unitization for a targeted reservoir pursuant to 52 O.S. §87.9 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon:

- (1) Each person or governmental entity having the right to share in production from the proposed unitization covered by the application; and
- (2) The operator, as shown by the records of the Commission, of each well that is commencing to or currently producing from the targeted reservoir in any unit or any separate tract of land for which no unit has been formed for such targeted reservoir adjoining, cornering or adjacent to the proposed unitization.

(b) If the applicant is the operator of a well commencing to or currently producing from the targeted reservoir in a unit or a separate tract of land for which no unit has been formed for such targeted reservoir adjoining, cornering or adjacent to the proposed unitization, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each owner, as shown by the records of the operator, with a working interest in such well in the targeted reservoir.

(c) Notice of hearing regarding an application for an order creating a horizontal well unitization for a targeted reservoir pursuant to 52 O.S. §87.9 shall be published as provided in OAC 165:5-7-1(n)(2).

(d) The application for an order creating a horizontal well unitization for a targeted reservoir shall contain the following:

- (1) The legal description of the lands covered.
- (2) The names and addresses of the applicant and proposed operator or operators of the proposed unitization.
- (3) Allegations concerning the existence of facts relating to the proposed unitization as provided in 52 O.S. §87.9(B).
- (4) A map or plat showing the governmental sections included within the proposed unitization and the location of proposed horizontal well(s) to be drilled for the recovery of oil and gas from the targeted reservoir. If applicable, the map or plat should show the location of all other wells, including abandoned and drilling wells and dry holes, within the targeted reservoir.
- (5) The name and depth of each targeted reservoir to be affected, including any potential adjacent common source of supply.
- (6) A log of a representative well completed in the targeted reservoir which is the subject of the application.
- (7) A plan of development of the area included within the proposed unitization as provided in 52 O.S. §87.6(B)(11) and 52 O.S. §87.9(E). The plan of development must also address the conditions upon which the unit shall terminate.
- (8) Reference to any companion application, identified by the type of requested relief, such as any application for location exception, for pooling, or for any other relief that may be appropriate under the specific facts of a

cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for horizontal well unitization.

(e) Each application for an order creating a horizontal well unitization for a targeted reservoir shall be limited to two (2) governmental sections, although the size of the unitization may be expanded by including additional governmental sections up to a maximum unit size of four (4) governmental sections for good cause shown pursuant to 52 O.S. §87.9(C).

(f) An order approving an application for a horizontal well unitization for a targeted reservoir shall include the elements identified in 52 O.S. §87.9(F) and other applicable portions of 52 O.S. §87.9.

(g) Any pooling application filed pursuant to 52 O.S. §87.9(I) regarding a horizontal well unitization for a targeted reservoir shall be filed pursuant to OAC 165:5-7-7.

[Source: Added at 28 Ok Reg 1893, eff 5-19-11 (emergency); Added at 29 Ok Reg 938, eff 7-1-12; Amended at 35 Ok Reg 67, eff 9-8-17 through 9-14-18 (emergency)¹; Amended at 35 Ok Reg 946, eff 10-1-18]

EDITOR'S NOTE: ¹This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-18 (after the 9-14-18 expiration of the emergency action), the text of section 165:5-7-6.1 reverted back to the permanent text that became effective 7-1-12, as was last published in the 2016 Edition of the OAC, and remained as such until amended by permanent action on 10-1-18.

165:5-7-6.2. Multiunit horizontal wells in targeted reservoirs

(a) The application, which shall be limited to a single well, and the notice of hearing on the application, for an order approving a multiunit horizontal well in a targeted reservoir pursuant to 52 O.S. §87.8 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to share in production from each of the affected units covered by the application.

(b) Notice of hearing regarding an application for an order approving a multiunit horizontal well in a targeted reservoir pursuant to 52 O.S. §87.8 shall be published as provided in OAC 165:5-7-1(n)(2).

(c) The application for an order approving a multiunit horizontal well in a targeted reservoir shall contain the following:

- (1) The legal description of the affected units.
- (2) The name and address of the applicant and proposed operator of the proposed well.
- (3) The name and depth of each targeted reservoir to be affected, including any potential adjacent common source of supply.
- (4) The information required by 52 O.S. §87.8(B)(4).
- (5) Allegations concerning the existence of facts relating to the proposed well as provided in 52 O.S. §87.8(B)(6).
- (6) Reference to any companion application, identified by the type of requested relief, such as any application for spacing, for location exception, for increased density, for pooling, for modification of any previous pooling order, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for multiunit horizontal well(s).

(d) An order approving an application for a multiunit horizontal well in a targeted reservoir shall require the allocation of the reasonable drilling, completion and production costs and of the commingled production and proceeds in accordance

with 52 O.S. §87.8(B) and the map(s) addressed in 52 O.S. §87.8(B)(4)(b) must be attached to the order.

(e) Any pooling application filed pursuant to 52 O.S. §87.8(B)(3) involving a multiunit horizontal well for a targeted reservoir shall be filed pursuant to OAC 165:5-7-7.

(f) In the event a multiunit horizontal well covered by 52 O.S. §87.8 is intended to be the initial unit well in any horizontal well unit that exceeds six hundred forty (640) acres plus tolerances and variances allowed by statute, the contemplated completion interval of such well shall exceed ten thousand five hundred sixty (10,560) feet, absent a showing of reasonable cause.

(g) The units that are covered by any multiunit well application filed under this Section, in which the subject multiunit horizontal well is proposed to be drilled and completed, shall not constitute "an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved" under OAC 165:5-7-9.

[Source: Added at 28 Ok Reg 1893, eff 5-19-11 (emergency); Added at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 35 Ok Reg 67, eff 9-8-17 through 9-14-18 (emergency)¹; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19]

***EDITOR'S NOTE:** ¹This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-18 (after the 9-14-18 expiration of the emergency action), the text of section 165:5-7-6.2 reverted back to the permanent text that became effective 8-27-15, as was last published in the 2016 Edition of the OAC, and remained as such until amended by permanent action on 10-1-18.*

165:5-7-7. Pooling

(a) Each pooling application shall include a statement by the applicant that the applicant exercised due diligence to locate each respondent and that a bona fide effort was made to reach an agreement with each such respondent as to how the unit would be developed. The applicant shall present evidence to this effect at the time of hearing.

(b) Notice of hearing for a pooling order, together with the application, shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by restricted mail, upon each respondent.

(c) Notice of hearing for a pooling order shall be published pursuant to 165:5-7-1(n)(2).

(d) An Authorization for Expenditure (AFE) which was prepared or revised within forty-five (45) days of the date of the hearing at which it is offered into evidence shall be submitted at the hearing. An AFE for a horizontal well drilled pursuant to 52 O.S. §§87.1(f), 87.8, or 87.9 shall provide well cost estimates for the total footage of the proposed well. If the well is a multiunit horizontal well drilled pursuant to 52 O.S. §87.8, the costs listed in the AFE should be allocated in the pooling order according to the allocation factor assigned to each of the subject drilling and spacing units in the applicable multiunit horizontal well order.

(e) If the applicant anticipates that some other owner of the right to drill may be designated as the operator of the unit well, the body of the application and notice shall so state. In the notice, the request that the applicant or some other owner may be designated operator shall be placed in the special relief paragraph.

(f) No pooling order shall be extended in time except upon the same notice as provided for in the initial application. Such request shall be in the form of a motion filed under the original CD number of the pooling.

(g) Notice of hearing for a redetermination of well costs shall be as provided in the initial application. Such request shall be in the form of a motion filed under the original CD number of the pooling.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 35 Ok Reg 67, eff 9-8-17 through 9-14-18 (emergency)¹; Amended at 35 Ok Reg 946, eff 10-1-18]

EDITOR'S NOTE: ¹This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-18 (after the 9-14-18 expiration of the emergency action), the text of section 165:5-7-7 reverted back to the permanent text that became effective 6-25-93, as was last published in the 2016 Edition of the OAC, and remained as such until amended by permanent action on 10-1-18.

165:5-7-8. Exception to escrowing monies for unknown or unlocated owners

(a) Notice of hearing for an order granting an exception for the escrowing of monies in a financial institution for unknown or unlocated owners and permitting the escrowing of such monies in an in-house account shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in the county where the holder's principal office in the state is located.

(b) Notice of hearing shall be served on the Commission's Manager of the Mineral Owners Escrow Account by mail at least ten (10) days prior to the hearing.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 3675, eff 7-11-94]

165:5-7-9. Well location exception

(a) The application, which shall be limited to a single well, and notice of hearing for an order granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a location other than that authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved. The application and notice of hearing shall specify the name(s) of the well(s) and operator(s) of the well(s) towards which the location exception well is moving. The application and notice of hearing also shall be served, in the manner required above, upon the operator of any well located in an adjoining or cornering tract of land or drilling and spacing unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be authorized to drill or otherwise operate the subject well, is the operator of any of the wells identified above, then the application and notice of hearing shall be served, in the manner required above, upon each working interest owner in any such well.

(b) An application and notice of hearing for an order granting a well location exception pursuant to this Section may also include a request for an exception to OAC 165:10-3-28(c)(2). The application and notice of hearing shall be served in the manner required in subsection (a) of this Section, and shall contain the information required in such subsection. Where an application includes requested relief for both a location exception and exception to OAC 165:10-3-28(c)(2), such application shall separately identify respondents for the location exception and respondents for the exception to OAC 165:10-3-28(c)(2).

(c) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(d) For a directionally drilled well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. For purposes of this section, a directionally drilled well does not include a horizontal well.

(e) For a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(f) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(g) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(h) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(i) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an administrative review by the Commission's Technical Services Department of the following documents, which the applicant must file with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the

Commission's Technical Services Department in any cause handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(j) Notice of hearing on an application for an order granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

(k) An application for an exception to the minimum distance requirements specified by OAC 165:10-3-28 (c)(2) and (c)(3) for the completion interval of a horizontal well, the notice of hearing for such exception proceeding and any resulting order in such proceeding shall include the API numbers of the existing well or wells being encroached upon by such horizontal well requiring such exception. Such application shall set forth the proposed subsurface location tolerance area or if available, the actual subsurface locations of the completion interval of such horizontal well requiring such exception. The proposed or actual subsurface locations, as applicable, of the completion interval of the horizontal well requiring such exception may be amended at the hearing on any such application. If the results of the well survey required by OAC 165:10-3-28(c)(1) are not available at the time of the hearing on such an application, the Administrative Law Judge may recommend the issuance of an order granting the application on an interim basis. Any final order issuing in such a proceeding shall specify the distance in feet between the completion interval of the subject horizontal well and the well or wells being encroached upon by such horizontal well requiring such exception.

(l) At the hearing, except for good cause shown, a production plat and any other exhibits necessary to support the requested relief (e.g. isopach map or structure of the target zone(s), and cross section) shall be provided.

(m) The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 24 Ok Reg 1781, eff 7-1-07; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-7-10. Increased well density

(a) Notice of hearing.

(1) For increased well density applications, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing by regular mail upon:

(A) Each person or governmental entity entitled to oil or gas or the proceeds of oil or gas produced from the common source of supply in the drilling and spacing unit for which the application for an increased density well has been filed; and

(B) The operator, as shown by the records of the Commission, of each well which is commencing or currently producing from the same common source of supply in the drilling and spacing unit or

any separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such an increased density well.

(2) If the applicant is the operator of a well commencing or currently producing from the same common source of supply applicable to the increased density well in a drilling and spacing unit or a separate tract of land for which no drilling and spacing unit has been formed for such common source of supply adjoining, cornering or adjacent to the drilling and spacing unit for such increased density well, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon each owner, as shown by the records of the operator, with a working interest in such well in such common source of supply.

(3) If the applicant is seeking approval of an increased density well to be completed in a common source of supply for which the Commission has established field rules, and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of hearing by regular mail upon the operator, as shown by the records of the Commission, of each well commencing or currently producing from that same common source of supply governed by the field rules.

(4) Where some person other than the applicant may be authorized to drill an increased density well, the notice shall so state.

(5) No person except for those persons provided for in this subsection shall be entitled to notice of the hearing on an application for approval of an increased density well in any drilling and spacing unit.

(b) **Publication of notice.** Notice of hearing for an increased density well shall be published pursuant to 165:5-7-1(n)(2). If the increased density well is to be completed in a common source of supply for which the Commission has established field rules and for which no application for an increased density well in such common source of supply has been approved by the Commission subsequent to January 1, 1998, and prior to June 21, 1999, notice of the hearing shall also be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in each county in which the lands subject to the field rules are located.

(c) **Commingled production.** Where production from an original unit well has been commingled and the operator has failed to obtain a commingling order for that well, an increased density well shall not be produced from the commingled common sources of supply until such time that proof of a commingling order is entered at the hearing for increased density.

(d) **Exhibits.** At the hearing, except for good cause shown, a production plat, isopach map, and any other exhibits necessary to support the requested relief shall be provided.

(e) **Additional Information.** The Commission may request that the record be reopened to receive additional information from the applicant prior to issuance of an order.

165:5-7-11. Change of operator

(a) **Scope.** This Section addresses designation of operators under forced pooling orders, location exception orders, and increased density orders.

(b) **Designation of operator under a forced pooling order.** Each order forced pooling the rights and equities in a drilling and spacing unit shall designate at least one operator to operate the well or unit. In addition, the Commission may designate one or more alternate operators in the order.

(c) **Procedure for obtaining a change of operator under a forced pooling order.** Application, notice and hearing shall be prerequisites to the issuance of an order changing or deleting a designation of operator in any forced pooling order. Notice shall be given by certified mail at least fifteen (15) days prior to the hearing to the respondents to the pooling order or to their successors in interest and shall be published as required in OAC 165:5-7-1. Provided, however, this procedure shall not be the exclusive method of obtaining a change of operator under a forced pooling order as the use of the optional procedure set forth in OAC 165:5-7-11(g) below is still available. If such optional Form 1073A application is used, Applicant must still provide personal notice by certified mail to the respondents to the pooling order or their successors in interest as well as notice by publication.

(d) **Optional designation of operator for location exception and increased density orders.** A designation of operator shall not be necessary for an order for either a well location exception or increased well density. In any situation where a location exception or increased density order designates an operator, the Commission may issue an order either appointing a successor operator or removing the designation of operator provision.

(e) **Procedure for obtaining a change in operator designation regarding increased density and location exception orders.** Application, notice and hearing shall be prerequisites to issuance of an order changing or deleting a designation of operator; provided, that no application, notice, or hearing shall be required to change or delete the designation of operator in increased density or location exception orders when:

- (1) The interest of the currently designated operator is transferred to its subsidiary or parent company, or a subsidiary of a parent company;
- (2) The interest of the currently designated operator is transferred to a surviving or resulting corporation or business entity due to, respectively, a merger, consolidation or reorganization involving the transferor and transferee. As used in this paragraph, "business entity" means a domestic or foreign partnership, whether general or limited; limited liability company; business trust; common law trust, or other unincorporated business; or
- (3) The currently designated operator undergoes a name change. The relief afforded by this paragraph is not applicable to situations where the name change involves the following conditions:
 - (A) The assignment of a new Federal Employer Identification number by the Internal Revenue Service to the new company;
 - (B) The name change is accompanied by a change in the majority of partners in a partnership;
 - (C) The name change is associated with a divorce between a husband and wife when the husband and wife comprise a partnership;
 - (D) The name change is associated with the death of one spouse in a partnership comprised of a husband and wife;

- (E) The name change involves a sole proprietorship; or
- (F) The name change is associated with such other circumstances where the Commission determines upon application, notice and hearing that the relief provided in this paragraph is not applicable, or that an exception to any exclusion should be granted.
- (G) As used in this subsection, the term "partnership" means a domestic or foreign partnership, whether general or limited.

(4) In such events, the parent, subsidiary, surviving or resulting corporation or business entity or currently designated operator who has undergone a name change shall be substituted as designated operator upon filing and approval of Form 1073, required by OAC 165:10-1-15.

(f) **Amendment of multiple orders.** The applicant may use one application to amend two or more orders, even though the orders grant different types of relief. For purposes of this Chapter, such an application shall be considered as an application for a single form of relief.

(g) **Use of Optional Form 1073A application.**

(1) An applicant shall have the option to use Commission Form 1073A for the application and Form 1073B for notice of application or Form 1073C for notice of hearing.

(2) The Form 1073A shall include the following information:

- (A) The order number and type of order.
- (B) The name and legal description of the applicable well or drilling and spacing unit.
- (C) The OTC operator numbers of the current operator and the proposed operator.
- (D) The OTC lease number and API number.
- (E) The classification of the well.

(3) If the space provided on the form is insufficient to include the necessary information related to amendment of multiple orders, then the applicant shall attach to the form an exhibit with the necessary information.

(h) **Personal notice requirements for location exception and increased density orders.** With respect to a location exception or increased density order, the applicant shall mail or deliver a copy of the application and notice of hearing to each current working interest owner in the well.

(i) **Special notice provisions applicable to notices of hearing.** For purposes of this Section, the notice of hearing shall contain a special provision apprising the respondent of the requirements for protests under (j) of this Section.

(j) **Requirements for protests.** Any person desiring to protest an application shall have fifteen (15) days after receipt of notice in which to file a written protest to the application. Failure to submit a written protest within the fifteen (15) day period shall be deemed consent to the granting of the application. If the application is protested within the fifteen (15) days allowed, the applicant shall have the notice of hearing published pursuant to 165:5-7-1(n)(2).

(k) **Summary disposition of unopposed applications.** Applications not contested may be disposed of by announcement, without necessity of counsel appearing.

(l) **Compliance with Form 1073 requirement.** The applicant is required to file a Form 1073 transfer of operator with the Oil and Gas Conservation Division pursuant to OAC 165:10-1-15.

165:5-7-12. Applications; determination of allowables

(a) **Scope.** Any applicant seeking relief under 165:10-13-5, 165:10-13-8, 165:10-15-1(g), 165:10-15-1(h), 165:10-15-16, and 165:10-15-18 shall have the option to proceed under either (b) through (i) of this Section or 165:5-7-1 and other applicable rules of practice.

(b) **Application.** The application shall be submitted on Form 1030 to the Technical Department of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105-4993 for filing with the Commission.

(c) **Exhibits.** The applicants shall submit at the time of filing of the application all exhibits and data.

(d) **Notice of application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of application to substantially comply with the example shown in Appendix H to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application upon:

(A) The operator of the well subject to the application if the applicant is not the operator of the subject well.

(B) All operators of wells offsetting the well for which the relief is requested.

(C) All working interest owners of all offset wells operated by the applicant, if the applicant is the operator of the subject well.

(4) **Publication of notice.** The applicant shall have the notice of application published pursuant to 165:5-7-1(n)(2).

(5) **Proof of notice.** The applicant shall submit a certificate of mailing and an affidavit of publication to show compliance with the requirements of this Section.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk of the Commission its protest which shall be entitled "Protest" and which shall contain the following information:

(A) Caption from application.

(B) Title - Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The Protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) Protest periods.

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period, which shall run for fifteen (15) days from the date of the latest of the following events:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date on which the last publication was made.

(D) The date of completion of service of process on all respondents in the cause.

(2) **Additional protest period.** After expiration of the protest period, an additional fifteen (15) day protest shall run if:

(A) The applicant amends the application to change the location or nature of the requested relief; or

(B) The applicant files amended applications in order to re-notice original parties, or initially notice new parties to the application.

(C) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) Unprotested applications.

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report pursuant to 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) Protested applications.

(1) **Hearing required.**

(A) A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(B) A hearing may also be requested by the subject operator upon denial of the administrative application by the Technical Department of the Oil and Gas Conservation Division of the Commission.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Judicial and Legislative Services. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix I to this Chapter.

165:5-7-13. Applications filed under the Production Revenue Standards Act, 52 O.S. Section 570.1, et seq.

(a) Each application for relief under 165:10-27-8 and 165:10-27-9 shall be filed in the Office of the Court Clerk and assigned a number on the Conservation Docket (CD).

(b) The applicant shall serve a copy of the application and notice of hearing, by regular mail, upon each named respondent and the operator of the well. If the applicant is the operator of said well, then notice shall be served on each working interest owner in the well.

(c) Notice of hearing filed pursuant to this Section shall be published Pursuant to 165:5-7-1(n).

[Source: Added at 10 Ok Reg 2589, eff 6-25-93]

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 13 Ok Reg 2371, eff 7-1-96; Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 20 Ok Reg 2293, eff 7-15-03 ¹; Amended at 21 Ok Reg 2015, eff 7-1-04; Amended at 23 Ok Reg 2225, eff 7-1-06; Amended at 25 Ok Reg 2179, eff 7-11-08]

EDITOR'S NOTE: ¹The text of 165:5-7-14(a)(3) that became effective on 7-15-03 and was published in the 2003 OAC Supplement included a cross reference to a new Part 14A. Part 14A, however, was editorially renumbered to Part 17.

165:5-7-15. Tertiary crude oil recovery project certification [REVOKED]

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked at 34 Ok Reg 905, eff 9-11-17]

165:5-7-16. Priority schedule for supply demand imbalance

(a) Notice of hearing for an order relating to the priority schedule for supply demand imbalance in relation to a single well shall be published pursuant to 165:5-7-1(n)(2).

(b) Notice of hearing for an order relating to the priority schedule for supply demand imbalance, where an exception for a single well is sought or where it is sought to classify a well in a different priority, together with the application, shall be served by the applicant not less than fifteen (15) days prior to the hearing, by regular mail, upon any purchaser or purchasers from the well and to all operators of offsetting wells in sections adjoining the section where the well is located which are producing from the same common source of supply. In addition, the operator of any well producing from the same common source of supply located in the same section as the well which is the subject of the application shall be given the same notice as required in this Section. Where the applicant is also the operator of an offsetting well, then the applicant shall mail the application and notice to all working interest owners in the offsetting well as required in this Section.

(c) Notice of hearing for a system-wide deviation from the priority schedule shall be published pursuant to 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-17. Ratable sharing of revenues; order of enforcement

(a) Notice of hearing for an order of enforcement relating to ratable sharing of revenues shall be published pursuant to 165:5-7-1(n)(2).

(b) Notice of hearing for an order of enforcement relating to ratable sharing of revenues shall be served by the applicant not less than fifteen (15) days prior to the

hearing, by regular mail, upon each interest owner in the well.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-18. Natural Gas Policy Act determinations [REVOKED]

[Source: Revoked at 13 Ok Reg 2367, eff 7-1-96]

165:5-7-19. NGPA - additional well in existing proration unit [REVOKED]

[Source: Revoked at 13 Ok Reg 2367, eff 7-1-96]

165:5-7-20. Unitized management of a common source of supply

(a) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon each person who would be entitled to share in the production from the proposed unit.

(b) Notice of hearing for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall be published pursuant to 165:5-7-1(n)(2).

(c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 52 O.S. §§287.1, et seq. When a unit is terminated in accordance with the terms of the Plan of Unitization, a copy of the certificate of dissolution filed in the county in which the lands are located shall also be filed with the Commission's Well Records Department. In such causes, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of Unitization. Where the Plan of Unitization does not provide for amendment or termination of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original cause.

(d) The application for an order creating a unit pursuant to 52 O.S. §287.1, et seq., shall contain the following:

- (1) The names and addresses of the operator or operators of the unit.
- (2) A plat showing the lease, group of leases or unit(s) included within the proposed unit; the location of the proposed injection well or wells and the location of all oil and gas wells, including abandoned and drilling wells and dry holes; and the names of all operators offsetting the area encompassed within the unit.
- (3) The common source of supply in which all wells are currently completed.
- (4) The name, description, and depth of each common source of supply to be affected.
- (5) A log of a representative well completed in the common source of supply.
- (6) A description of the existing or proposed casing program for injection wells, and the proposed method of testing casing.
- (7) A description of the injection medium to be used, its source and the estimated amounts to be injected daily.
- (8) For a unit with an allocated pool, a tabulation showing recent gas-oil ratio and oil and water production tests for each of the producing oil and gas wells.
- (9) The proposed plan of development of the area included within the unit.

(e) A copy of the application, without the attachments provided in (d)(1) through (9) of this Section, and notice of hearing shall be mailed to the owner or owners of the surface of the land upon which the unit is located. A copy of the application, with attachments and notice of hearing shall be mailed to each operator offsetting the unit as shown on the application.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-7-21. Unitized management of a common source of supply; brine and associated gas

(a) Notice of hearing for an order creating a unit pursuant to

(b) Notice of hearing for an order creating a unit pursuant to 165:10-3-40 shall be published pursuant to 165:5-7-1(n)(2).

(c) Provision for amending or terminating the unit shall be in the Plan of Unitization. To amend the Plan of Unitization, the order creating the unit shall be amended and notice shall be as provided for an application seeking an order creating a unit pursuant to 165:10-3-40. When a unit is terminated in accordance with the terms of the Plan of Unitization, a copy of certificate of dissolution filed in the county in which the lands are located shall also be filed with the Commission. In such causes, no Commission action shall be required to terminate a unit if terminated in accordance with the Plan of Unitization. Where the Plan of Unitization does not provide for amendment or termination of a unit, an application may be filed seeking relief from the order creating the unit and notice shall be given as provided for the filing of an application in the original cause.

(d) The application for an order creating a unit pursuant to 165:10-3-40 shall contain the following:

(1) The names and addresses of the operator or operators of the unit.

(2) A plat showing the lease, group of leases or unit(s) included within the proposed unit, the location of the known proposed injection well or wells, and the location of all existing brine wells including abandoned, drilling and dry holes, and the names of all operators offsetting the area encompassed within the unit producing from or injecting into the common source of supply affected by the unit.

(3) The common source of supply in which all wells are currently completed.

(4) The name, description, and depth of each common source of brine supply to be affected.

(5) A log of a representative well completed in the common source of supply.

(6) The proposed plan of development of the area included within the unit.

(7) The approval of fifty-five percent (55%) of the ownership named in the unit application has been obtained, or will be obtained prior to the unit becoming effective.

(e) A copy of the application, with attachments, and notice of hearing shall be served by regular mail to each person who would be entitled to share in production from the proposed unit, and to each operator offsetting the unit as shown on the application.

(f) Category B surety shall be a requirement of a person, company, corporation, partnership, etc., filing an application to produce brine for the extraction of minerals and the reinjection of minerals and the reinjection or disposal of the effluent. The amount of surety shall be twenty-five thousand (\$25,000) dollars per well or a maximum of one hundred thousand (\$100,000) dollars for each authorized

operator.

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-22. Multiple zone completions [REVOKED]

[Source: Revoked at 25 Ok Reg 2179, eff 7-11-08]

165:5-7-23. Production through multiple choke assembly [REVOKED]

[Source: Revoked at 25 Ok Reg 2179, eff 7-11-08]

165:5-7-24. Commingling of well [REVOKED]

[Source: Revoked at 25 Ok Reg 2179, eff 7-11-08]

165:5-7-25. Vacuum at the wellhead [REVOKED]

[Source: Revoked at 27 Ok Reg 2098, eff 7-11-10]

165:5-7-26. [RESERVED]

165:5-7-27. Application for approval of injection and disposal wells

Each application for the approval of a proposed injection well or disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator. See OAC 165:10-5-5.

[Source: Amended at 9 Ok Reg 2327, eff 6-25-92; Amended at 11 Ok Reg 3685, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97 (emergency); Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 26 Ok Reg 2493, eff 7-11-09; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 30 Ok Reg 1033, eff 7-1-13; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-7-28. Procedure for aquifer exemption

(a) Each application for an order designating a USDW as an exempted aquifer shall comply with the requirements of OAC 165:5-7-1.

(b) Within two (2) days after filing an application, the applicant shall file with the Court Clerk and submit to the Director of Underground Injection Control (UIC) for the Conservation Division the following:

(1) Plat of the governmental section(s) underlain by the aquifer with the production for the area designated thereon.

(2) Copies of completions records (1002A) for the oil and gas disposal and injection well(s) in the aquifer or a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.

(B) The present status of the wells.

(3) Analysis of total dissolved solids for the waters produced from the aquifer to be exempted.

(4) An affidavit stating that the aquifer does not currently serve as a source of drinking water.

(5) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, that the aquifer cannot now or has no reasonable future prospect of serving as a source of drinking water because:

(A) It is mineral, hydrocarbon or geothermal energy producing.

(B) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically

impractical.

(C) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, as to the hydrological connection of the aquifer to any other aquifer or portion thereof with a TDS content of 5,000 ppm or less.

(7) The requirements of (4) and (5) of this subsection may be waived by the Director of UIC (Underground Injection Control) if the applicant intends to present the information by testimony at the time of hearing.

(8) Any order issued pursuant to this Section granting an application shall set forth the legal description of the lands underlain by the exempted aquifer and describing the exempted aquifer by approximate depth.

(c) Notice of public hearing shall be made by publication in the county(ies) where the aquifer is located and in Oklahoma County not less than thirty (30) days prior to the hearing date. The notice shall substantially conform to Appendix A to this Chapter. In addition, the notice shall contain a statement that supporting exhibits are available from the Court Clerk for review or copying, under the cause number.

(d) Notice of Hearing, together with a copy of the application, shall be served by the applicant by regular mail, no less than thirty (30) days prior to the hearing, upon the chief executive officer of each incorporated town or municipality, chairman of any rural water district in the area covered by the application, the Oklahoma Water Resources Board, and the Oklahoma State Department of Health, Water Supply Branch.

(e) Objection to granting the application or notice of interest in the cause must be filed no less than five (5) days prior to hearing.

(f) The Commission upon the filing of an application under this Section, shall designate a panel to serve as Administrative Law Judges in the matter, with a designated chairman, pursuant to the rules of the Commission. The panel shall be composed of three (3) members, one with each of the following qualifications:

(1) An attorney experienced in oil and gas matters.

(2) A geologist.

(3) An engineer.

(g) The panel shall make its recommendation to the Commission based upon the record in the cause.

(h) All exceptions to the recommendation of the panel shall be directly to the Commission en banc.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-7-29. Request for exception to certain underground injection well requirements

(a) Each application for an exception to 165:10-5-1 through 165:10-5-10 shall comply with the requirements of OAC 165:5-7-1(a) through (g).

(b) Each application shall be filed at the UIC Department and shall be verified by a duly authorized representative of the operator. The application and one complete set of attachments, with additional copies as may be required by the Court Clerk, shall be furnished to the Court Clerk.

(c) The application shall be accompanied by the information required in OAC 165:10-5-5(b). The Manager of UIC may waive any particular information depending on the nature of the exception.

(d) Notice of the application shall be published pursuant to 165:5-7-1(n)(2).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and if the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file the Manager's report and make the Manager's recommendations.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-7-30. Amending existing orders or permits authorizing injection for injection, disposal, or LPG storage wells

(a) Each application for an amendment to an existing order or permit shall be filed on Form 1015 and comply with the requirements of OAC 165:10-5-5(a) and (b).

(b) The application shall also include a statement of facts explaining in detail the nature of and the reason for the amendment, and shall be signed by a duly authorized agent of the operator.

(c) Notice of the application relating to the nature of the amendment shall be published pursuant to OAC 165:5-7-1(n)(2). The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10-acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum B/D or MCF/D injection rate.
- (9) The type of well (injection, disposal, commercial, LPG storage).

(d) If a written objection to the application is filed with the Commission within fifteen (15) days after notice of the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and if the Commission does not require a hearing, the application may be approved administratively by the Manager of Underground Injection Control.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-7-31. Injection of reserve pit fluids

(a) Each application for the approval of the onsite injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed by the well operator on Form 1015-T and shall be verified by a duly authorized representative of the operator. The application and one complete set of attachments, with additional copies as may be required by the Court Clerk, shall be furnished to the Court Clerk, who shall mail one copy to the Department of Pollution Control.

(b) The application for approval of reserve pit fluid injection shall include:

- (1) Driller's log.
- (2) Electric or radioactivity log (if run).
- (3) Cement bond log (if run).
- (4) Schematic diagram of well showing:
 - (A) Total depth of well.

- (B) Depths of tops and bottoms of casing and cement.
- (C) Size of casing.
- (5) Certificate of service to surface owner.
- (6) Proof of publication.
- (7) Operating data:
 - (A) Maximum pressure.
 - (B) Volume of fluids to be injected.
- (8) Additional information, as the Commission may require.
- (c) Notice shall be provided by mailing or delivering a copy of the application to the owner(s) of the surface of the land on which the injection or disposal well is located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.
- (d) If a written objection to the application is filed within fifteen (15) days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall file his report and make his recommendations.
- (e) Any operator applying for temporary emergency authority to inject fluids into the annular space shall give written notice to:
 - (1) The Underground Injection Control Department.
 - (2) The surface owner.
 - (3) Each operator of a producing leasehold within one-half (1/2) mile of the well location at least five (5) days prior to the emergency hearing or submit a signed letter of consent from said parties.

[Source: Amended at 9 Ok Reg 2327, eff 6-25-92]

165:5-7-32. [RESERVED]

165:5-7-33. Extension of time for closure of a noncommercial pit

- (a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16 to extend time for closure of a pit.
- (b) **Application form.** The applicant shall prepare the application in a form which complies with OAC 165:5-7-1.
- (c) **Affidavit.** The applicant shall attach to the application an affidavit explaining the applicant's reasons for the extension.
- (d) **Site inspection.** The applicant shall be responsible for obtaining a site inspection by representative of the Conservation Division.
- (e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.
- (f) **Dismissal for noncompliance.** Failure to complete the application, submit the affidavit and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.
- (g) **Notice of the Application.**
 - (1) **Contents.** The notice of the application shall contain the following information:
 - (A) A brief description of the relief sought.
 - (B) The terms of the protest period.
 - (C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix B to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.

(B) Each surface owner and surface lessee of the tract on which the pit is located.

(4) **Publication.** Publication of the notice of the application is required.

(5) **Proof of notice.** The applicant shall submit a certificate of service.

(h) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The Protester shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date of completion of service of process on all respondents in the cause.

(D) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(l) **Protested applications.**

- (1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.
- (2) **Notice of hearing.** The applicants shall obtain a hearing date from the Judicial and Legislative Services subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.
- (3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.
- (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix C to this Chapter.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 35 Ok Reg 946, eff 10-1-18]

165:5-7-34. Waiver of pit closure requirements

- (a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16(e)(9) to exempt an operator from responsibility for closure of a pit and transfer to the surface owner responsibility for maintenance and closure of the pit.
- (b) **Names required.** Each application under this Section shall be filed in the name of the well operator and the surface owner of the land on which the pit is located.
- (c) **Surface owner signature.** The application shall not be approved without the signature of the surface owner on the application.
- (d) **Application form.** The applicants shall prepare the application with a caption in a format which complies with Appendix D to this Chapter.
- (e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.
- (f) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.
- (g) **Notice of the application.**
 - (1) **Contents.** The notice of the application shall contain the following information:
 - (A) A brief description of the relief sought.
 - (B) The terms of the protest period.
 - (C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.
 - (D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.
 - (2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix D to this Chapter.
 - (3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:
 - (A) The Soil Conservation District.
 - (B) Each adjacent surface owner and surface lessee.
 - (4) **Proof of notice.** The applicant shall submit a certificate of service.
- (h) **Protests.**
 - (1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the

protest period, said protest shall be deemed to have been timely filed.

(2) Late protests.

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) Form of protest. The protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) Notice to applicant of protest. The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) Protest period. Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(1) Filing of the application.

(2) Filing of all required exhibits.

(3) The date of completion of service of process on all respondents in the cause.

(4) Site inspection of the facility.

(j) Unprotested applications.

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(k) Withdrawal of protest. If all protests are withdrawn, the application shall be remanded for administrative review under (j)(1) of this Section.

(l) Protested applications.

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Judicial and Legislative Services subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix E to this Chapter.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 35 Ok Reg 946, eff 10-1-18]

165:5-7-35. Operation of commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application for authority to operate a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Exhibits.** At the time of the filing of the application, the applicant shall submit all exhibits and data.

(c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing of the application may be grounds for dismissal of the application.

(d) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.

(B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

(A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.

(B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.

(5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:

- (A) Caption from application.
- (B) Title: Protest.
- (C) Name, address, and telephone number of protesting parties.
- (D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:

- (A) Filing of the application.
- (B) Filing of all required exhibits.
- (C) The date on which the last publication was made.
- (D) The date of completion of service of process on all respondents in the cause.
- (E) Site inspection of the proposed facility.

(2) **Additional protest period.**

(A) After expiration of the protest period, an additional ten (10) day protest shall run:

- (i) If the applicant amends the application to change the location of the facility or increase its size; or
- (ii) If the applicant files amended exhibits changing the design of the facility.

(B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) **Unprotested Applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Judicial and Legislative Services subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application requesting the issuance of an order changing a designation of operator in an order authorizing a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 (collectively "commercial facility") shall comply with the application requirements of OAC 165:5-7-1(a) through (e).

(b) **Notice of application.** Notice of the application for a change of operator regarding a commercial facility shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the subject lands are located. The notice shall include the following information:

- (1) The legal description of the commercial facility.
- (2) The name and physical mailing address of the current operator of the commercial facility and the name and physical mailing address of any entity to whom transfer of operation of such facility is sought.
- (3) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.
- (4) The notice must also include the following language:
 - (A) Written protests to the relief sought must be filed with the Court Clerk's Office, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days of the later of the date of publication of the notice of application and service of the application and notice of application on all respondents in the cause. Written protests must specify the name of the applicant, cause number, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).
 - (B) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(c) Procedure.

- (1) If a written protest to the application is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department within fifteen (15) days of the later of the date the notice of application is published and service of the application and notice of application on all respondents in the cause, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.
- (2) If no written protest is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution

Abatement Department for administrative review.

(d) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application on:

- (1) The Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000,
- (2) The Oklahoma Conservation Commission, 2800 North Lincoln Boulevard, Suite 160, Oklahoma City, Oklahoma 73105.
- (3) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the facility.

(e) **Proof of notice.** The applicant shall file a certificate of service and affidavit(s) of publication with the Commission's Court Clerk's Office.

[Source: Added at 29 Ok Reg 938, eff 7-1-12; Amended at 32 Ok Reg 752, eff 8-27-15]

165:5-7-36. Road oiling [REVOKED]

[Source: Revoked at 25 Ok Reg 2179, eff 7-11-08]

165:5-7-37. [RESERVED]

165:5-7-38. License for pulling pipe and plugging wells

(a) The application for a license for pulling pipe and plugging wells shall state:

- (1) The name of the applicant.
- (2) The names and addresses of all partners, chief officers, and directors.
- (3) The experience of applicant.
- (4) Evidence of financial responsibility of the applicant.
- (5) The counties in which the applicant will operate.

(b) Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in the county where the applicant's principal place of business is located. The notice shall include:

- (1) The name of the applicant.
- (2) Generally what operations the applicant intends to conduct.
- (3) That applicant is financially responsible.
- (4) The counties in which applicant will operate.

(c) If a written objection to the application is filed within fifteen (15) days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Field Operations who shall file a report and make recommendations to the Commission.

(d) A license may be suspended or revoked for good cause upon application, after notice and hearing.

[Source: Amended at 9 Ok Reg 2327, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-7-39. Staff applications for state funds to conduct remedial action

(a) **Scope.** This Section establishes the procedure for applications by Commission staff to plug wells and repair or close commercial pits.

(b) **Forms.**

- (1) The applicant shall have the option to use the following forms:
 - (A) Form SFP2000 (Application).
 - (B) Form SFP2001 (Notice of Hearing).
 - (C) Form SFP2002 (Emergency Application).
 - (D) Form SFP2003 (Emergency Order).
 - (E) Form SFP2004 (Final Order).
- (2) Use of said forms shall be deemed compliance with all procedural rules of the Commission.

(c) **Referral of cause to the Oil and Gas Conservation Division.** Upon filing of the application, the cause shall be assigned to a geologist or engineer in the Oil and Gas Conservation Division. It shall be the responsibility of the designee to:

- (1) Give proper notice of the application.
- (2) Acquire affidavits and any other exhibits showing the status of the facility operator and the condition of the facility.
- (3) Prepare specifications and estimate of costs for remedial action.
- (4) Report his findings to the Commission.

(d) **Emergency application.** In an emergency, the applicant may file an emergency application for funds to conduct necessary remedial action. The Commission shall hear such applications with or without notice. At the time of hearing, the Commission shall receive the exhibits and recommendation required in (c) of this Section. The Commission shall rule on the request as to deems appropriate.

(e) **Hearing on the merits.**

- (1) The matter shall be set before the Commission en banc or such Administrative Law Judge as the Commission shall assign.
- (2) At the hearing, the Commission shall:
 - (A) Receive any exhibits not previously entered into evidence.
 - (B) Inquire of the designee as it deems necessary.
 - (C) Rule on the application as it deems appropriate.
- (3) Where the Commission has issued an emergency order in the cause, the applicant may move that the emergency order be made a final order. The Commission may grant such a request if further funds are not needed to accomplish the remedy.

165:5-7-40. Oil and gas conservation and pollution rulemakings

Notice of an application to make or prescribe or to alter, amend, or modify a permanent rule or regulation relating to oil and gas conservation or to pollution matters shall be published one time at least fifteen (15) days prior to the hearing or prior to the commencement of the comment period, whichever is applicable, in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in Tulsa, Oklahoma.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-7-41. Orders relating to oil and gas pollution

- (a) An application for an order relating to oil and gas operations, see OAC 165:10, and notice of hearing thereof shall be served by the applicant by restricted mail upon the named respondent.
- (b) Notice of hearing for an order relating to oil and gas operations under the provisions of OAC 165:10 shall be published pursuant to 165:5-7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

165:5-7-41.1. Complaint under 52 O.S., Sections 24.4 and 24.5, against a natural gas gatherer

- (a) Any action by the Commission under 52 O.S. §§ 24.4 and 24.5, shall be initiated by the filing of a Formal Complaint by the aggrieved party, following which the Commission shall conduct a hearing and take such evidence as is necessary to determine the merits of the Complaint; provided no hearing shall be conducted during such time as there is in effect an agreement of the parties for submission of the subject of the Complaint to the informal dispute resolution procedure under Subchapter 23 of this Chapter, if such agreement also expressly extends the one hundred twenty (120) day period of (c) of this Section. "Complaint" or "Formal Complaint" for these purposes does not include a Notice of Intent to Mediate or other pleading or papers filed under the informal dispute resolution procedure.
- (b) The Complainant shall send notice of hearing of the Complaint and a copy of the Formal Complaint to the gatherer by registered or certified mail with return receipt requested at least twenty (20) days prior to such hearing, but in no event shall the hearing be less than thirty (30) days from the filing of the Complaint.
- (c) Proceedings instituted under this Section shall be completed and a final, appealable order entered by the Commission within one hundred twenty (120) days of the filing of the Formal Complaint with the Commission's Court Clerk, unless such date is extended by the agreement of the parties. All matters to be determined by the Commission relative to a complaint filed under this Section shall be heard on an expedited basis.
- (d) When a Formal Complaint has been filed and the Complainant seeks to continue its existing gathering service, the Commission, upon motion of the Complainant, subject to the provisions of 52 O.S. § 24.5 (E), may enter an interim order requiring continuation of gathering service under the fees and terms and conditions of service of the last expired contract, if any, during the pendency of the complaint or set an interim fee and terms and conditions of continued service. Notice and hearing of such motion shall be in accordance with OAC 165:5-9-2(b), and any interim order entered by the Commission shall be temporary and subject to a final determination of the merits of the Complaint.
- (e) When a Formal Complaint has been filed, the Commission, upon motion of either party, may enter an order requiring the other party to produce designated documents or data, not privileged, which are in such party's care, custody and control, and which are relevant to the subject matter of the Complaint, for inspection and copying at a location stated in the order. Notice and hearing of such motion shall be in accordance with OAC 165:5-9-2(b), and any order entered shall direct production of the designated documents within ten (10) days of the date of such order. A copy of the order must be served by regular mail on the party required to produce the designated documents at least five (5) days prior to the date upon which production is required. This provision shall be in addition to any prehearing procedures provided under Subchapter 11 of this Chapter.

[Source: Added at 13 Ok Reg 2371, eff 7-1-96; Amended at 17 Ok Reg 596, eff 12-16-99 (emergency); Amended at 17 Ok Reg 1853, eff 7-1-00]

165:5-7-42. Oil and gas conservation and pollution causes other than specifically provided

Notice of hearing for an order relating to oil and gas conservation or pollution, that is otherwise not specifically provided for in this Chapter, shall be

published pursuant to 165:5- 7-1(n)(2).

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93]

PART 5. PUBLIC UTILITIES

165:5-7-50. Interim public utility rate relief

- (a) In order to obtain interim public utility rate relief, the applicant shall show:
- (1) That a proceeding before the Commission for an increase in rates will consume a considerable length of time.
 - (2) That the rates in effect do not yield a reasonable rate of return or yield sufficient coverage ratios.
- (b) Notice of hearing of an application for interim rate relief shall be published once each week for two (2) consecutive weeks at least fifteen (15) days prior to hearing in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission directs otherwise.

165:5-7-51. Applications affecting public utility rates

- (a) In utility rate cases where a general rate increase is sought, the applicant shall make a good faith effort to serve notice of the proposed rate change by mailing notice to all affected utility customers, unless the Commission directs otherwise. The notice shall:
- (1) Contain information concerning the nature of the proposed changes and the effect of the changes on customer billing.
 - (2) Give the date and location of the hearing to be held. This notice may be included in regular customer billings but in any case shall be served at least fifteen (15) days prior to the date of hearing. A customer entitled to such a notice shall not be a respondent within the definition of 165:5-1-3 unless such customer enters an appearance in the cause pursuant to 165:5-13-3(c).
- (b) Notice of hearing of an application for approval of any schedule, rate, charge, classification, rule or regulation which will directly or indirectly alter charges made for service performed, shall be published once each week for two (2) consecutive weeks at least fifteen (15) days prior to hearing in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission directs otherwise.

165:5-7-52. Public utility certificate of authority for issuance of securities

- (a) Any public utility, as defined in 17 O.S. §181, desiring to issue securities or to create liens to secure evidences of indebtedness pursuant to the above statute, shall file an application setting forth:
- (1) The amount and character of the proposed securities or liens.
 - (2) The general purposes for which they are to be issued or created, including a description and statement of the value of any property or services that are to be received in full or partial payment for the securities or in a proper case the evidence of indebtedness to be secured by the lien or liens.
 - (3) Any property or services already received by the public utility, the cost of which is to be reimbursed to the public utility by the proceeds of such securities or evidences of indebtedness.
 - (4) The most recent balance sheet of the public utility certified by their independent auditor.

(b) The application shall be verified by the public utility's president or vice president or by the signers of its articles of organization if it has not yet elected officers.

165:5-7-53. Certificate of convenience and necessity and service territory expansions for providing telecommunications services

(a) Pursuant to 17 O.S. §§131, et seq., notice that an application has been filed for a certificate of convenience and necessity to construct, build, equip or operate public telephone toll or long distance line or lines or any public telephone exchange or exchanges in any territory shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation in each territory affected.

(b) No certificate shall issue until the expiration of thirty (30) days from the date of the first publication of notice. If no protest is filed, the Commission may issue the certificate without a hearing. If a written objection to the application is filed within the thirty day period, the application shall be set for hearing and notice thereof shall be given by the Applicant filing notice of the hearing in the Office of the Commission's Court Clerk and providing said notice to all parties of record and the Attorney General, at least 10 days prior to the hearing.

(c) This Section shall not be construed to require any telephone company to secure such a certificate for any extension within or to any territory already served by it or for any extension into a territory contiguous to a territory already served by it on which it has heretofore filed with the Commission an exchange map showing the territory professed to be served by such telephone company.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-7-54. Certificate of convenience and necessity for water transportation lines

(a) Notice that an application has been filed for a certificate of convenience and necessity for water transportation lines shall be given by restricted mail or personal service to:

(1) The chief executive officer of the municipality or municipalities affected, if any.

(2) The board of county commissioners in any county the line enters or traverses.

(3) Any water transportation company having a water transportation line in any county in which the proposed line is to be built or having a transportation line in any county or counties having a common boundary at any point to any county in which the proposed line is to be built.

(b) Notice of an application for a certificate of convenience and necessity for water transportation lines shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each county affected.

(c) No certificate shall issue until the expiration of forty-five (45) days from the date of the first publication of notice. If a written objection to the application is filed within the forty-five (45) day period, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no protest is filed, the Commission may issue the certificate.

(d) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-55. Assignment of certificate of convenience and necessity; water transportation line

- (a) The holder of a certificate of convenience and necessity to construct, build or equip a water transportation line or amendments thereto may file its application seeking the consent of the Commission to assign, lease or alienate such certificate. Such certificate may be assigned, leased or alienated only when the physical assets of the water transportation company or that part thereof covered by the certificate are assigned, leased or alienated to the same assignee to assign a certificate of convenience and necessity.
- (b) The application shall be set for hearing and notice shall be given in writing at least ten (10) days prior to the date of the hearing to all persons who are served by the facilities covered by the certificate which is sought to be transferred.
- (c) The notice shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each county in which the line is located.
- (d) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-56. Extension of water transportation service

- (a) Notice of hearing for extension of water transportation service shall be given by mail at least ten (10) days prior to the date of hearing to all persons holding certificates nearest to those requesting service and to the municipal officers of all municipalities served or to be served by such water transportation companies.
- (b) Notice of hearing for extension of water transportation service shall be published once a week for two (2) consecutive weeks in a newspaper or newspapers of general circulation in the county or counties in which the line is proposed to be constructed.
- (c) Except as otherwise specifically provided in this Section, applications filed hereunder shall be governed by the provisions of the Administrative Procedures Act.

165:5-7-57. Acquisition, control, or merger of domestic public utilities.

(a) An application for approval of the acquisition, control or merger of a domestic public utility, pursuant to 17 O.S. §§191.1 et seq., excluding gas utilities, and an electric cooperative, pursuant to 17 O.S. §158.50, shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions

appropriate or similar to such positions. Such list shall include for each such individual the information required by (a)(1) of this Section.

- (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.
- (3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application.
- (4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.
- (5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition.
- (6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.
- (7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.
- (8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
- (9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(10) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.

(b) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (a) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (a) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(c) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change. Hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers at least twenty (20) days prior to the date of the hearing.

(d) Any merger or other acquisition of control shall be deemed approved unless the Commission has, within thirty (30) days after the conclusion of such hearing, entered an order disapproving the merger or other acquisition of control.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 25 Ok Reg 2179, eff 7-11-08]

165:5-7-58. Utility or transportation rulemaking and other general orders [REVOKED]

[Source: Revoked at 11 Ok Reg 3675, eff 7-11-94]

165:5-7-59. Reciprocity of final orders between states - telephone

(a) **Southwestern Bell Telephone Company.** When any exchange is served by a central office or offices located in an adjacent state and the lesser of ten percent (10%) or five hundred (500) of the customers served by such exchange are located in Oklahoma, except when the exchange has fewer than five hundred (500) customers the ten percent (10%) limitation shall not apply, the basic local exchange services within the Oklahoma portion of such exchange shall be furnished at the rates and charges prescribed for the adjacent state within which such central office or offices are located; provided that:

(1) The Company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state within which such central office or offices are located, or within ten (10) days of the effective date of this Section.

(2) The Company shall include with the notice an impact statement as directed by this Commission.

(3) The rates and charges prescribed by an order of the Regulatory Agency of such adjacent state, after a hearing on the merits has been held in such adjacent state, shall be filed with the Corporation Commission of the State

of Oklahoma.

(4) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall become lawfully effective for the Oklahoma customers served by such exchange upon the same date when such rates and charges are effective in the adjacent state.

(b) Other Telephone Companies with multi-state exchanges. When any exchange is served by a central office or offices located in an adjacent state and the lesser of ten percent (10%) or five hundred (500) of the customers served by such exchange are located in Oklahoma, except when the exchange has fewer than five hundred (500) customers the ten percent (10%) limitation shall not apply, the rates, charges and terms and conditions of service within the Oklahoma portion of such exchange shall be those prescribed by the Regulatory Agency of the adjacent state within which such central office or offices are located; provided that:

(1) The Company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state within which such central office or offices are located, or within ten (10) days of the effective date of this Section.

(2) The Company shall mail notice to the customers located within Oklahoma stating that the customer may contact the Oklahoma Corporation Commission regarding any objections to the proposed rate increase.

(3) The Company shall include with the notice an impact statement as directed by this Commission.

(4) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall become lawfully effective for the Oklahoma customers served by such exchange upon the same date when such rates and charges are effective in the adjacent state.

165:5-7-60. Reciprocity of final orders between states - electric companies

To facilitate the efficient use of resources for the benefit of ratepayers, when any electric company serves less than ten percent (10%) of its total customers or five hundred (500) of its members for rural electric cooperatives within the State of Oklahoma, the electric company may elect to allow all or a portion of the rates, charges, and terms and conditions of service within the Oklahoma portion of such service territory be those prescribed by the regulatory agency of the adjacent state within which the central office of the electric company is located; provided that, to demonstrate this election:

(1) The electric company shall file before the Commission an application to adopt the rates, charges, and terms and conditions of service prevailing in an adjacent state within ten (10) business days after the initiation of a ratemaking proceeding before the regulatory agency of the adjacent state. The electric company shall also file all pleadings and exhibits with this Commission and provide to the Office of the Attorney General of Oklahoma within ten (10) days subsequent to filing the pleadings and exhibits with the adjacent state where such central office or offices are located.

(2) The electric company shall provide notice to the individual customers located within Oklahoma, by direct mail and/or bill insert, concerning any

hearing set before the Commission to adopt the rates, charges, and terms and conditions of service pursuant to this Section, including notice that a protest may be filed with the Director of the Public Utility Division, Oklahoma Corporation Commission, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

(3) Such rates, charges, and terms and conditions prescribed by an order of the regulatory agency of such adjacent state, after hearing on the merits have been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma, along with the final order and recommendation of the administrative law judge, if any, of the regulatory agency of the adjacent state.

(4) To ensure that rates and terms and conditions of service resulting from this Section are just and reasonable and consistent with Oklahoma law and prevailing Corporation Commission policy, the electric company shall also file the following:

(A) A statement or testimony clearly describing the methods and standards relied upon in the ratemaking proceeding in the adjacent state, specifying any distinctions between the methods and standards prevailing in Oklahoma and in that adjacent state;

(B) A statement or testimony clearly describing how costs were allocated between Oklahoma customers and customers in other jurisdictions during the proceedings in the adjacent state; and

(C) A statement or testimony clearly describing any deviation from the Electric Utility Rules, OAC 165:35, or other applicable rules prescribed by the Commission, that would result from the use of the rates, charges, and terms and conditions of service in the adjacent state.

(5) Upon the submission of all filings identified in paragraphs 3 and 4 above, the Commission shall hold a hearing to receive testimony and/or statements from interested parties concerning if adjustments should be made to the rates, charges, and terms and conditions of service set in the adjacent state to set just and reasonable rates, charges, and terms and conditions of service consistent with Oklahoma law and prevailing Corporation Commission policy.

(6) If the Commission fails to enter a final order determining the rates, charges, and terms and conditions of service of an electric company pursuant to this Section within one hundred twenty (120) days after the submission of all filings identified in paragraphs 3 and 4 above, the electric company may impose interim rates not to exceed the rates listed on the filed rates and charges approved by the final order of the regulatory agency of the adjacent state, subject to being refunded by order of the Commission once a final order has been entered.

(7) The rates, charges, and terms and conditions of service prescribed by a final order of the regulatory agency of an adjacent state shall not be adopted by the Commission if:

(A) The electric company has not filed before the Commission, within the last four (4) years, an application under this Section or an application under the Commission's Minimum Standard Filing Requirements In Support of a Request by a Public Utility Doing Business in Oklahoma for a Proposed General Rate Change, OAC 165:70; or

(B) The rates resulting from the order would result in an average increase of more than ten percent (10%) above the currently applicable rates for the electric company's customers in Oklahoma.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70

(a) **Purpose.** The purpose of this Section is to establish procedures regarding rate change causes filed on the Public Utility Docket pursuant to OAC 165:70 which will allow the Oklahoma Corporation Commission to fulfill its responsibility to process rate changes within the time prescribed by Title 17 O.S. (Supp. 1993) § 152 et seq.

(1) This Section shall apply to all parties to the proceeding, including the utility, the Commission Staff, the Attorney General and any intervening party of record.

(2) To the extent this Section conflicts with other Sections of the Commission's Rules of Practice, OAC 165:5, the procedures established in this Section shall control.

(b) **Definitions.** The definitions set forth in OAC 165:70-1-2 shall be deemed applicable to this Section.

(c) **Intervening party requirement.**

(1) The Commission Staff, the Attorney General and any intervening party of record shall conform their testimony and exhibits to the format set forth in OAC 165:70-5-4. A waiver of any requirements of Chapter 70 shall be obtained as outlined in OAC 165:70-3-6.

(2) Any interested person seeking to intervene pursuant to OAC 165:5-9-4 shall request permission to intervene no later than ninety (90) days following the filing date of the application for a general rate change. The filing or granting of any Motion to Intervene shall not be grounds to delay, continue or extend any hearing date, deadline or time limit set or to be set in a proceeding.

(3) If the Commission does not rule on a motion to intervene within twenty (20) days from the date the motion to intervene is filed, the motion to intervene shall be deemed to have been granted.

(d) **Data requests/responses.** Any party, including but not limited to the utility, the Commission Staff, the Attorney General and any other intervening party of record, shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time. Any data requests received after 3:00 p.m. shall be deemed received the next regular business day.

(1) Data requests submitted by any party prior to the date of filing the application package shall be deemed received the date the application package is filed pursuant to OAC 165:70-3-1.

(2) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(3) The party served with the data request shall notify the issuing party within five (5) business days of receipt of the requests that the ten (10) business day requirement or otherwise agreed-upon response time cannot be met and provide an explanation for the delay. The party served with the data request shall commit, at the time of such notification, to a response

date.

(4) Any objection(s) relating to a data request or the date a response is to be provided shall be presented by the objecting party within five (5) business days of receipt of the data request. If the parties are unable to reach a resolution regarding the dispute within three (3) business days of the date of the objection, the objecting party shall file a written objection and a hearing on all such objections shall be set on the next Public Utility Motion Docket. It shall be the responsibility of the objecting party to notify the Commission or the Administrative Law Judge that the matter will appear on the Docket.

(e) General instructions regarding testimony and exhibits. The following instructions are applicable to all classes of utilities, the Commission Staff, the Attorney General and any intervening party of record who filed testimony and exhibits regarding a general rate change filed pursuant to OAC 165:70:

(1) All schedules and exhibits shall be mathematically correct and properly cross-referenced.

(2) All schedules and exhibits shall be designated as provided in 165:70-5-4.

(3) Headings on all schedules and exhibits shall clearly indicate the party's name, the nature and content of the schedule, the test period covered and the cause number.

(4) All schedules and exhibits shall be typed and/or clearly legible.

(f) Filing of responsive and rebuttal testimony, notice of major issues to be raised and oral surrebuttal.

(1) The Commission Staff, the Attorney General and any intervening party of record seeking to present evidence shall file responsive testimony and exhibits no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. Any party seeking only to cross-examine witnesses shall file a statement of position no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. At the time of filing testimony the Commission Staff, the Attorney General and any intervening party of record shall, upon request, provide a copy of the workpapers which support the recommendations contained in their testimony to the requesting party of record. The workpapers shall be organized and presented in the same format as required of the utility by Part 5 of OAC 165:70-5.

(2) If the utility elects to present rebuttal testimony, the rebuttal testimony shall be filed by the one hundred fortieth (140) day subsequent to the filing date of the application for a general rate change.

(3) A hearing on the merits shall commence no later than the one hundred fiftieth (150th) day subsequent to the date the application for a general rate change was filed pursuant to OAC 165:70-3-1.

(4) Parties filing direct testimony pursuant to this subsection (f) may present oral rebuttal testimony to any issue raised for the first time during the hearing. Parties filing responsive testimony pursuant to this subsection (f) may present oral surrebuttal.

(5) Nothing in this Section shall preclude the trier of fact from permitting parties who filed testimony to present oral surrebuttal regarding issues raised for the first time in oral testimony presented during the hearing, if deemed appropriate.

(g) Hearings regarding intervention, waiver of requirements, deficiencies, the confidentiality agreement and/or protective order. Any hearings regarding

motions to intervene, disputes related to the Waiver of Requirements contained in OAC 165:70, Deficiencies, the Confidentiality Agreement and/or the need for a protective order shall be set before an Administrative Law Judge.

(h) Amending an application.

(1) A utility may not significantly amend an application for a general rate change filed pursuant to OAC 165:70 after it has been docketed by the OCC Court Clerk, except as provided in this subsection.

(2) An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of OAC 165:70-5-1 and will be subject to the sanctions in OAC 165:70-5-2.

(3) For purposes of this Section, an amendment shall be deemed "significant" if it changes the test year, or if it requests more than a five percent (5%) increase in the previously requested revenue requirement, unless such changes are the result of arithmetical error or are mandated by law.

(4) A utility may incorporate a significant change without refile an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

(i) Limitations on active applications for a general rate change.

(1) A utility may not have more than one active general rate change application pending before the Commission at any one time, unless the Commission has failed to issue a final order upon the first application within two hundred seventy (270) days of that application's filing date. This shall not prohibit the utility from filing a new application for a general rate change if the utility can show its financial integrity or service reliability is materially impacted during the period from the closing of the record to the time in which the Commission makes a final determination on an active rate application.

(2) A cause which has been remanded to the Commission by the Oklahoma Supreme Court after appellate review shall not be deemed an active general rate change application pursuant to this Section.

[Source: Added at 11 Ok Reg 3687, eff 7-11-94; Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 33 Ok Reg 588, eff 8-25-16; Amended at 37 Ok Reg 1082, eff 10-1-20]

PART 7. MOTOR CARRIERS

165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses

Applications for an intrastate for-hire motor carrier license or intrastate private carrier license, renewal of an intrastate for-hire motor carrier license or renewal of an intrastate private motor carrier license and a household goods certificate or a renewal of a household goods certificate shall be processed administratively unless a protest is filed with the Court Clerk's office or the staff of the Transportation Division requests the application be set for hearing.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 23 Ok Reg 506, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2225, eff 7-1-06; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-7-66. Termination of bus service [REVOKED]

[Source: Revoked at 14 Ok Reg 2474, eff 7-1-97]

165:5-7-67. Termination of railroad agency service [REVOKED]

[Source: Revoked at 17 Ok Reg 1853, eff 7-1-00]

165:5-7-68. Collective ratemaking procedure/guidelines for motor carriers [REVOKED]

[Source: Revoked at 14 Ok Reg 2474, eff 7-1-97]

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-1. Response to initial pleading

(a) **Scope.** Except where otherwise specifically provided in this Chapter, including the Petroleum Storage Tank Division at OAC 165:5-21-5 and OAC 165:5-21-6, the provisions of this Section govern pleadings filed after a cause has been commenced by an application.

(b) **Form.** Every document in opposition to an application shall be styled a "Response" and shall contain:

(1) **Caption.** The response shall contain the same caption as in the application.

(2) **Body.** The response shall contain four numbered paragraphs, as follows:

(A) **Parties.** The respondent shall be identified, including:

(i) Name, address, and telephone number of his attorney or designated representative.

(ii) Nature of his interest in the subject matter of the cause.

(B) **Allegations of fact.** Response to the allegations of fact shall include:

(i) Admissions of all allegations of fact admitted by the respondent.

(ii) Specific denial of any allegations of fact respondent alleges and expects to prove to be untrue.

(iii) Allegations of all other facts necessary or appropriate to support respondent's position. Failure to deny specifically any allegation of fact will not relieve the person making the allegation of the burden of proving it.

(C) **Legal authority.** Citations of statutes, rules, orders, and decided cases in support of the response or in opposition to the granting of the relief sought in the application.

(D) **Relief sought.** A brief statement of the relief sought by respondent, including any affirmative relief sought which is not set out in the application.

(c) **Subscription.** The response shall be signed by the respondent, or an authorized agent of the respondent, or by the attorney for the respondent, and shall set out the mailing address, telephone number, facsimile number, electronic mail address and bar identification number, of the person so signing it, as applicable.

(d) **Time for filing.** Response to an application may be filed at or before the date of the hearing. Any person appearing at the hearing, as the Commission or Administrative Law Judge may deem appropriate, may be heard and permitted to offer evidence whether or not he has filed a written response or other pleading, except as provided in OAC 165:5-19-1.

(e) **Default.** Any named respondent who fails to file response within the time specified shall be deemed in default, and the Commission or Administrative Law Judge may proceed to hear the cause without further notice to a person in default. Except as provided in OAC 165:5-19-1, no applicant will by default of an adverse respondent be relieved from the burden of proving the material allegations of fact upon which his claim for relief is based.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service to all persons entitled to notice. Service of the motion shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person as provided in this subsection, unless otherwise provided by statute. The motion shall state in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a case has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given to all persons entitled to notice by the movant by serving at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. A copy of the motion and notice of hearing shall be provided to each respondent.

(B) After the record in the case has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given to all persons entitled to notice by the movant by serving, at least five (5) business days prior to the date set for hearing. Service of the notice shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. A copy of the motion and notice of hearing shall be provided to all parties of record.

(2) Exceptions to such motions may be lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the case has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a case shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said case by submitting a proposed order dismissing the case to the Judicial and Legislative Services, and all parties of record. Such dismissal shall not dismiss the case as to specifically stated affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has not received notice of the dismissal or who has requested specific affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a case, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a case, the case may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a case where a motion to dismiss has been filed, notice shall be served on each respondent in the case.

(3) Upon five (5) business days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

- (A) Failure to prosecute.
- (B) Unnecessary duplication of proceedings or res judicata.
- (C) Withdrawal.
- (D) Moot question or obsolete applications.
- (E) Lack of jurisdiction.
- (F) Failure to submit a proposed order in a timely manner.
- (G) For other good cause shown.

(4) Upon posting by the Judicial and Legislative Services fifteen (15) business days notice on a disposition docket, and emailing notice to all parties of record to a case, the Commission may dismiss cases for any of the following reasons:

(A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.

(B) Failure to set a case on a day certain.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) business days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 25 Ok Reg 2179, eff 7-11-08; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 938, eff 7-1-12]

165:5-9-4. Intervention and parties of record

(a) Any person, not subject to subsection d of this Section, interested in the subject matter of a cause may become a party of record by filing a motion for intervention, which shall be accompanied by a notice of hearing and set for hearing on the next motion docket or as agreed to by the parties of record and the Commission or Administrative Law Judge. The Commission or an Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.

(b) An intervention shall follow the form provided elsewhere in this Chapter for an application or a response. An intervention may seek affirmative relief.

(c) Each motion to intervene, accompanied by the notice of hearing, shall be served to all parties of record.

(d) The following persons shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause:

- (1) A person named as a respondent,
- (2) A person entitled to individual notice in a cause,
- (3) A person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge,
- (4) The Attorney General, or
- (5) The U.S. Department of Defense and/or the Federal Executive Agencies, but only for causes filed on the PUD docket.

(e) Nothing herein shall waive the requirement that attorneys comply with OAC 165:5-1-10.

[Source: Amended at 14 Ok Reg 2474, eff 7-1-97; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-9-5. Joinder and consolidation of parties and proceedings

(a) An application may join two or more separate requests for relief or Commission action, or may request two or more types of action or relief in the alternative. An application relating to oil and gas conservation or pollution shall seek only one type of relief.

(b) A complaint may join two or more grounds of complaint, whether or not arising out of the same transaction, but each separate action complained of shall be separately stated and numbered.

(c) Two or more complainants may join in one complaint if their respective complaints are against the same person or persons and involve substantially the same subject matter and grounds.

(d) The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

(e) Upon motion of a person, or upon its own motion, with or without notice, the Commission may order a person to be joined as a party of record and to appear in a proceeding. The movant shall cause a copy of such order to be served by regular mail, facsimile, electronic mail or in person upon such party of record.

(f) Upon motion of a person, or upon its own motion with or without notice, the Commission may order a proceeding dismissed as to one or more parties of record.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-9-6. Continuances

(a) **General.** The Commission or Administrative Law Judge before whom a case is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a case may be granted in advance of the date for hearing of the case in the following ways:

- (1) As provided in OAC 165:5-9-2(b)(1); or
- (2) The applicant in a case may request a continuance at least five (5) business days in advance of a hearing date from the Docket Clerk or, if the case has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the case has been assigned for hearing, the

Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the case, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent to all persons entitled to notice at least five (5) business days prior to the date of the hearing. Service of the notice of continuance shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person, unless otherwise provided by statute. Such case shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the case shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, notice of such continuance shall be provided to all respondents. Service shall be made through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person by the person requesting such continuance or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the case, notice of the continuance date shall be served on all parties of record at least five (5) business days prior to the date the continued case is set for hearing. The movant shall provide proof of service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued case on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Judicial and Legislative Services or an Administrative Law Judge may recommend dismissal of the case to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the case without prejudice by an Order Dismissing Case.

(e) **Continuances of the Motor Carrier Citation Docket when the Commission is closed.** In the event the Commission is closed due to inclement weather or other administrative reason on the date and/or time of the Motor Carrier Citation Docket, all citations scheduled to be heard on the Motor Carrier Citation Docket shall be automatically continued to the following month's docket as posted on the Commission's website.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20; Amended at 38 Ok Reg 1726, eff 10-1-21]

SUBCHAPTER 11. PREHEARING PROCEDURES

165:5-11-1. Deposition and discovery

(a) Depositions.

(1) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by the Commission or of a person. The order may direct that the deposition of a witness be taken inside or outside the State of

Oklahoma.

(2) The order shall state the time and place the deposition shall be taken, and the person taking the deposition shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date scheduled for taking the deposition.

(3) The manner of taking depositions shall otherwise be governed by the laws relating to taking of depositions for use in the District Courts of Oklahoma. Attendance of a witness for taking of his deposition shall be governed by OAC 165:5-11-3, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(4) A deposition may be offered in evidence at the hearing by any person.

(b) Production of documents.

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the case, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which production is required unless otherwise agreed by the applicant, respondent and intervenors.

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the case, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the case.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(c) Interrogatories.

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which answer is required unless otherwise agreed by the applicant, respondent and intervenors.

(d) Protective orders.

(1) The Commission, upon motion, may make such orders relating to discovery as may be necessary or appropriate for the protection of and to prevent hardship to and excessive burden upon a person. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed.

(2) The Commission may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this subsection.

(e) Discovery in proceedings on the PUD docket.

(1) Except as otherwise directed by the Commission, in proceedings on the PUD docket the parties of record may also obtain discovery by document request, data request or interrogatory without filing a motion for an order of the Commission. When discovery is sought without a prior order, the provisions of (b) (3), (4) and (5) of this Section shall apply, and the references to orders therein shall be deemed to mean requests for discovery.

(2) In a proceeding filed pursuant to 17 O.S. § 152(B), 17 O.S. § 137, or 18 O.S. § 438.31 et seq., discovery by document request, data request or interrogatory shall be governed by the provisions of OAC 165:5-7-61.

(3) In all other proceedings on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) calendar days after receipt of the same, unless:

(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The objecting party is not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,

(B) The party requesting discovery and the producing/responding party agree in writing to a different response time.

(4) The Commission may allow a shorter or longer time for response for good cause shown, but in no event may the Commission order a response to be served in less than ten (10) business days, except as otherwise agreed by the person ordered to respond.

(5) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next regular business day.

(6) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, electronic mail or in person at the same time they are issued or answered.

(7) Objections to a document request, data request, interrogatory, or the time in which to respond may be presented to the Administrative Law Judge unless otherwise ordered by the Commission en banc. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1).

(8) Any objection(s) relating to a discovery request or the time in which to respond shall be set on the next PUD motion docket unless the Administrative Law Judge and the requesting and responding parties of record agree to a different date and time.

(9) The responding party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

(f) Discovery in proceedings on the OSF docket.

(1) At any time prior to a determination being filed in an OUSF funding request filed pursuant to 17 O.S. §§ 139.101 *et seq.*, discovery by document request, data request or interrogatory by the OUSF Administrator shall be answered within five (5) business days. The responding party will be provided up to an additional five (5) business days to respond, if requested. The filing of an objection in response to a discovery request is not be required; however, the responding party may inform the OUSF Administrator that an answer or any supplemental answer will not be provided.

(2) If a request for reconsideration is filed in connection with an OUSF funding request, the Administrative Law Judge or Commission shall establish a discovery response time and allow for objections to discovery requests in a procedural schedule.

(3) For all other cases filed pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory by a party of record shall be answered within ten (10) business days, unless a different response time and objection period is established by the Administrative Law Judge or the Commission.

(4) Objections to discovery requests shall be filed within five (5) business days, and may be presented to the Administrative Law Judge, unless otherwise ordered by the Commission. The objection shall be set on the next available motion docket unless the Administrative Law Judge and the requesting and responding parties of record agree to a different date and time. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1). The filing of an objection pursuant to this subsection shall toll the time to respond pending the ruling on the objection.

(5) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next business day.

(6) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, electronic mail, or in person at the same time they are issued or answered.

(7) The responding party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

(g) This Section shall not be interpreted to limit the Commission's authority pursuant to Article IX, Sections 18, 19, and 28 of the Oklahoma Constitution.

(h) Pursuant to 17 O.S. § 330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted under the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. See also OAC 165:5-21-7.

[Source: Amended at 12 Ok Reg 2015, eff 7-1-95; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-11-2. Prehearing conference

(a) **Objective.** The Commission, with or without request of any party of record, may order the parties of record or their attorneys to appear at a designated time for a prehearing conference. The conference shall be attended by the parties of record or their attorneys who have full knowledge of the cause and who have authority to bind their clients by stipulations. The conference shall meet to consider:

- (1) Simplification of the issues and amendments to documents.
- (2) Presentation of issues of law, adjudication of which may simplify or eliminate issues of fact.
- (3) Admissions and stipulations of fact which will avoid unnecessary evidence and testimony. No stipulation, settlement or agreement between the parties of record, their attorneys, or representatives, with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by these rules to appear for them, and thereafter made a part of the record or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This Section shall not limit a party of record's ability to waive, modify or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.
- (4) Identification of documents to be offered at the hearing.
- (5) Identification of and numerical limit upon experts and other witnesses.
- (6) Discovery and production of documents, records, data and other information.
- (7) Audit, investigation and visitation by the Commission or its representatives.
- (8) Other matters as may aid in trial of the cause.

(b) **Notice.** Notice of the time and place of a prehearing conference shall be as prescribed by order of the Commission and shall be served by regular mail, facsimile, electronic mail or in person upon all parties of record by the person requesting the prehearing conference or by the Commission.

(c) **Preliminary order.** Actions taken at the prehearing conference may be embodied in a preliminary order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record, whether or not present, unless modified to prevent manifest injustice.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-11-2.1. Initial Screening Conference ("ISC")

(a) The following public utility causes may be set before the Commission for screening to determine if the Commission will retain that cause or refer the cause to an Administrative Law Judge for hearing. The Initial Screening Conference may apply to the following public utility causes:

- (1) Applications for general rate change.
- (2) Applications involving utility restructuring and/or competitive issues.
- (3) Other causes as may be decided by the Commission.

(b) The conference will be conducted as an on-the-record proceeding, open to the public and will convene to consider:

- (1) Whether the cause is judicial or legislative in nature.
 - (2) Identification of preliminary issues of law and fact including any policy issues.
 - (3) Discussion of the Public Utility Division Staff's participation in the cause and designation of advisory/deliberating counsel and counsel assigned to represent the Public Utility Staff.
 - (4) Whether the cause will be heard by the Commission, the Commission with a Public Utility Referee, or referred to an Administrative Law Judge for hearing.
 - (5) Any procedural matters including notice requirements.
 - (6) Any other matters that may assist in the disposition of the cause.
- (c) Deliberating counsel shall give notice of the time and place of the Initial Screening Conference to the Public Utility Division Director, the Attorney General, all parties of record, and any respondents named in the application not less than five (5) days prior to the Initial Screening Conference.
- (d) Actions taken at the Initial Screening Conference may be embodied in a preliminary procedural order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record unless otherwise ordered by the Commission.

[Source: Added at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-11-3. Commission subpoena

- (a) **Subpoena.** The Commission, upon motion of a person or upon motion of the Commission, may order the Secretary to issue a subpoena in the name of the Commission in any pending cause requiring attendance of a witness from any place in the State to the place of hearing. Praecipe for subpoena shall be filed with the Court Clerk and the order of the Commission endorsed thereon.
- (b) **Subpoena Duces Tecum.** A subpoena may require the witness to produce at the hearing books, records, accounts, papers and other documents and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to a person not an individual may direct that the records be produced by an officer or employee responsible therefor.
- (c) **Service of subpoena.** A subpoena may be served by a law enforcement officer, by an attorney, or by any other person competent to make an oath; and the person serving the same shall attach his affidavit of the person served, and the time and manner of service. Service also may be made in any other manner provided by law. A person may be served by leaving a copy thereof at the principal place of business of the person, with the person or an employee who customarily serves as the secretary or receptionist of the person. A subpoena shall be served on a witness not less than five (5) days prior to hearing.
- (d) **Return.** The original subpoena, with affidavit of service thereon, shall be filed with the Court Clerk. The attendance of a witness shall not be enforced unless the original subpoena is on file at the time of the hearing.
- (e) **Fees.** The attendance of a witness will not be enforced unless the person causing subpoena to be issued tenders the witness fee provided by law for a witness subpoenaed to testify in the district courts of Oklahoma. Attendance of a witness shall not be enforced at the second or subsequent day of hearing unless the person causing the subpoena to be issued tenders additional mileage to and from the place of hearing. The payment of fees shall not be required when a subpoena is issued on behalf of the Commission.

(f) **Testimony.** A witness present at a hearing pursuant to subpoena may be called to testify by the Commission or Administrative Law Judge or by any party of record.

(g) **Protective orders and orders quashing subpoenas.** The Commission may make any orders with respect to subpoena and attendance of a witness as may be appropriate for the protection of persons, including an order quashing subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(h) **Subpoenas regarding the Petroleum Storage Tank docket.** Pursuant to 17 O.S. § 330, subpoenas may be issued in proceedings on the Petroleum Storage Tank docket pursuant to the provisions of 12 O.S. § 2004.1. See also OAC 165:5-21-8.

[Source: Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2098, eff 7-11-10]

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

165:5-13-1. Sessions and hearings

(a) **Open to public.** All official sessions and public hearings of the Commission or any Administrative Law Judge will be open to the public and will be held in its official courtrooms at the principal office in Oklahoma City, Oklahoma, the regional service office in Tulsa, Oklahoma, or at such other place as provided by law or designated by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Courtroom conduct.** Conduct of attorneys before the Commission shall be governed by the applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person, witness, attorney, or other representative may be subject to punishment for contempt.

(d) **Record of hearing.** A stenographic or electronic record will be made of all proceedings before the Commission or an Administrative Law Judge pursuant to 20 O.S. §106.4(A). Audio and video recordings of all proceedings are official electronic records to be kept by the Commission of which a copy may be kept by the court reporter present during the proceeding. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it; or at the request of the Commission, in which case a copy will be made for any person requesting it, at that person's expense.

[Source: Amended at 12 Ok Reg 2005, eff 7-1-95; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17]

165:5-13-2. Setting of causes

(a) **General.** All hearings on the merits shall be set before an Administrative Law Judge, unless otherwise ordered by the Commission.

(b) **Specially set.** By a motion, the applicant or any party of record or respondent may, at any time up to commencement of a hearing, request of the Commission that a cause be specially set before the Commission for hearing. The Commission may advance any cause by sua sponte order at any time.

(c) **Exceptions.** For purposes of OAC 165:5-13-5, all exceptions to reports on hearings on the merits in matters on the GG, CD, PD, EN, SF, PSD and US dockets shall be heard by the Commission en banc unless referred to an Oil and Gas

Appellate Referee. Hearing dates for exceptions are to be secured from a docket clerk at the time of filing. The exceptions will be heard on that date or as soon thereafter as may meet the convenience of the Commission. Exceptions in all other matters shall be set before the Commission en banc.

(d) **Authority of Administrative Law Judge.** An Administrative Law Judge shall exercise all of the powers of the Commission in the conduct of a cause. An Administrative Law Judge shall rule upon admission of evidence, and objections thereto, and upon any other motion or objection arising during the pendency of the cause until the issuance of the report of the Administrative Law Judge. Review of a ruling of an Administrative Law Judge shall be by exceptions pursuant to OAC 165:5-13-5, and any objection to a ruling or other action of such Administrative Law Judge not included in such exceptions and amendments thereto, shall be deemed to have been waived.

(e) **Hearings on the PUD docket.** All hearings in causes filed pursuant to OAC 165:70 or 18 O.S. §438.31 et seq. shall be given priority status on the PUD docket in order to comply with 17 O.S. §152, 17 O.S. §137 (I) and 18 O.S. §438.31 et seq.

(f) **Hearings on the Petroleum Storage Tank docket.** All hearings regarding the exercise of the Commission's adjudicative authority pursuant to the Oklahoma Petroleum Storage Tank Consolidation Act, 17 O.S. §§301 et seq. shall be given priority status on the Petroleum Storage Tank docket ("PSD") in order to comply with 17 O.S. §-330 for the Commission to hear each case within one hundred eighty (180) days from the date of filing. See also OAC 165:5-21-9.

[Source: Amended at 12 Ok Reg 2015, eff 7-1-95; Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 19 Ok Reg 1939, eff 7-1-02; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-13-2.1. Appointment of Public Utility Referee

(a) In Public Utility cases, the Commission may determine that a cause is of such public interest that the Commission may sua sponte appoint a Public Utility Referee to serve as the Administrative Law Judge with and/or for the Commission conducting the hearing process in the cause.

(b) The Public Utility Referee shall confer with and assist the Commissioners on all matters regarding the pending cause.

(c) The Public Utility Referee may assist the Commission in conducting the hearing of the cause in accordance with all other provisions of this Chapter; except that all provisions of this Chapter providing for exceptions of any nature are not applicable.

(d) Upon conclusion of the hearing of the cause, the Commissioners may seek the assistance of the Public Utility Referee in reaching a determination in the cause.

[Source: Added at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-13-3. Hearings

(a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.

(b) **Scope of hearings.** The Commission, Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.

(c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless

specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or indicating corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.

(d) Protests.

(1) Except as otherwise permitted by this Chapter, any person desiring to protest the relief requested by the application shall file a notice of protest with the Court Clerk's office.

(2) Before the protest is filed or within a reasonable time thereafter, the protestant shall give notice to the applicant in a manner designed to advise the applicant of the protest prior to the scheduled hearing. Once filed, the written protest shall be provided to the applicant by regular mail, facsimile, electronic mail or in person.

(3) A protesting party initially may announce a protest to a case at the time of hearing, but shall subsequently file a written protest within a reasonable amount of time after the announcement of such protest.

(4) A protest form will be available on the Commission's website; however, such form is not required as long as the filed protest document contains the required information.

(5) A filed protest must contain the caption of the application and contact information of the protestant or the protestant's attorney.

(6) The provisions of this subsection shall not apply to causes filed on the PUD or OSF dockets.

(e) Preliminary matters. The following shall be addressed prior to receiving evidence:

(1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

(2) Ruling may be made on any pending motions, including requests pertaining to discovery.

(3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(f) Rules of evidence. The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be

received subject to final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(g) **Order of proof.** The applicant or complainant who institutes a cause may open and close the proof. Staff counsel may open and close a cause instituted by the Commission or a staff member. Intervenors may be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(h) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(i) **Adverse party.** A party of record may call an adverse person or an officer or employee of an adverse person, in which case the witness may be impeached and otherwise cross-examined.

(j) **Record.** All testimony shall be taken on the record.

(k) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(l) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.

(6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.

(7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(m) **Exhibits.** All exhibits shall be identified by docket type and cause number on the first page of each exhibit prior to submitting to the Commission. All pages of each exhibit shall have continuous pagination. Each exhibit shall conform to the following requirements:

- (1) all exhibits must be legible;
- (2) the font must be no smaller than a size 10 font;
- (3) if multiple colors are used, the colors shall be sufficiently distinguishable; and
- (4) data shall be included on each exhibit to support the relief requested.

(n) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:

- (1) The evidence summarized has been admitted in evidence, or is admissible; and
- (2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.

(o) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.

(p) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.

(q) **Reopening the record.** Any person may file and serve, by regular mail, facsimile or electronic mail on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC 165:5-9-2(b). The motion and notice shall include a statement that if the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(r) **Corrections to transcript.** Except as provided in OAC 165:5-13-1(d), an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested

corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(s) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

(1) Orders regarding non-emergency applications shall be submitted to the Administrative Law Judge within thirty (30) calendar days of the date the Administrative Law Judge announced the recommendation unless the Administrative Law Judge directs otherwise.

(2) Proposed orders regarding emergency applications shall be submitted to the Administrative Law Judge within ten (10) business days of the date the Administrative Law Judge announced the recommendation unless the Administrative Law Judge directs otherwise.

(3) Failure to submit a proposed order to the Administrative Law Judge within the time frame required by this subsection may result in the Administrative Law Judge reopening the record, with five (5) business days' notice to the party or parties of record, and the application being recommended for dismissal unless good cause is shown for the failure to supply the proposed order as required. Notice to the party or parties of record may be provided via electronic mail.

[Source: Amended at 17 Ok Reg 2299, eff 7-1-00; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-13-3.1. Optional procedure for spacing related applications

(a) If no protest to a spacing related application is filed prior to the docket call or is announced at docket call, an applicant for spacing, despadding, increased well density, or location exception may elect for consideration of the merits of the cause without a full evidentiary hearing. Such review of the cause shall be referred to as the optional procedure.

(b) After electing the optional procedure, the applicant shall provide the Administrative Law Judge with a proposed order and documentation supporting the application. With respect to documentation, any written testimony shall be presented in the form of a sworn, notarized affidavit which shall be marked as exhibits and entered into the record.

(c) The Administrative Law Judge shall prescribe the time period for completing the record and may request additional evidence as deemed appropriate.

(d) After closing the record, the Administrative Law Judge shall have seven (7) business days in which to make a recommendation to the Commission concerning disposition of the application.

(e) If the Administrative Law Judge's recommendation is unfavorable, the matter will be automatically set for a full evidentiary hearing before the same Administrative Law Judge. Any exceptions from the report issued after the full evidentiary hearing will proceed pursuant to OAC 165:5-13-5.

[Source: Added at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

- (1) Names of parties of record and their attorneys.
- (2) Brief statement of facts establishing jurisdiction of the cause.
- (3) Brief summary of the evidence of each party of record who offered evidence.
- (4) The pertinent facts as found by the officer upon consideration of all evidence offered.
- (5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.
- (6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) business days after the report is filed, if no exceptions are filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file exceptions.

(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

(f) When a recommendation is made by an Administrative Law Judge on the Motor Carrier Citation Docket, a report for individual citations shall only be required once a request has been received conforming with OAC 165:5-13-5(a)(3).

[Source: Amended at 20 Ok Reg 2293, eff 7-15-03; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-13-5. Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas related exceptions without a response being filed or hearing oral presentation on said motion.

- (1) **Oral exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on

the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Judicial and Legislative Services of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the Commission en banc. Written exceptions shall not be required. Oral exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, 25, 26, 27, 28, and/or 29. Oral exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral exceptions will be set on the next regularly scheduled day for such matters unless:

- (A) The parties agree to another date; or
- (B) The Commission specifies otherwise.

(2) **Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) business days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) business days after filing of the Report of the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) business day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) business days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.

(3) **Exceptions to Report from the Motor Carrier Citation Docket.** Any party of record adversely affected by a recommendation of an Administrative Law Judge on the Motor Carrier Citation Docket shall have five (5) business days from the date the oral recommendation is made to request a report of the Administrative Law Judge for the purpose of filing written exceptions. The request shall be sent jointly to the Administrative Law Judge who issued the recommendation and all other parties of record. Written exceptions shall be filed within ten (10) business days of issuance of the written report. The hearing on the written exceptions shall be heard by an Administrative Law Judge on the next available Motor Carrier Citation Docket or at the Commission en banc's discretion.

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing

of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.

(c) Responses to written exceptions. For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) business days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.

(d) Contents of the Oil and Gas Appellate Referee or Administrative Law Judge Reports. In a case where exceptions are referred to an Oil and Gas Appellate Referee or Administrative Law Judge, such Referee or Administrative Law Judge shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) Scope of review by the Commissioners. With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

[Source: Amended at 13 Ok Reg 1159, eff 11-15-95 (emergency); Amended at 13 Ok Reg 2361, eff 7-1-96; Amended at 16 Ok Reg 829, eff 1-25-99 (emergency); Amended at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 959, eff 9-12-14; Amended at 32 Ok Reg 752, eff 8-27-15; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20]

SUBCHAPTER 15. ORDERS

165:5-15-1. General form and procedure

(a) Contents of orders. The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

- (1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.
- (2) Appearances.
- (3) Date and place of all hearings.
- (4) Summary of allegations of applicant, and of all other parties of record.
- (5) Summary of evidence of applicant, and of all other parties of record.
- (6) Findings of fact, containing all ultimate facts found to have been established.
- (7) Conclusions of law, containing:

- (A) All legal conclusions found to be applicable to the facts; and
- (B) The directive of the order stated in concise and mandatory language.

(8) Signature of the Secretary certifying as to all Commissioners participating in making the order. The signatures of the Secretary and Commissioners participating in the making of the order may be electronic signatures as provided in OAC 165:5-1-14.

(9) Seal of the Commission.

(10) Date of filing, and effective date where appropriate.

(b) **Duty to send orders.** The Commission shall immediately provide a copy of the order to the applicant. Upon the implementation of electronic filing, delivery shall only be made by electronic mail, unless there are exigent or extraordinary circumstances. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.

(c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.

(d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number; provided that when a motion is withdrawn, no order shall be required to document the withdrawal.

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 34 Ok Reg 905, eff 9-11-17; Amended at 36 Ok Reg 517, eff 8-1-19; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-15-2. Unitization orders

In addition to the requirements of 52 O.S. §§287.1-287.15, to each order authorizing and providing for the unitized management, operation, and further development of oil and gas properties pursuant to the Unitized Management of Common Sources of Supply Act (52 O.S. §§287.1- 287.15) shall be attached a plat showing the outside boundaries of the surface area included in such order.

165:5-15-3. Pooling orders

(a) **Termination of order.** A pooling order shall contain language to the effect that if operations for the drilling of the well are not commenced within the time designated, the order shall terminate except as to the payment of cash bonuses.

(b) **Affidavit of mailing.** The applicant or other responsible person shall file with the Court Clerk, within ten (10) days from the date of the pooling order, an affidavit stating that a copy of said order was mailed within three (3) days from the date of the order, unless the Commission directs otherwise, to all parties of record and respondents whose addresses are known. The name and address, if known, of each respondent in the proceeding who has not previously been dismissed shall be set out in the affidavit.

(c) **List dismissed person.** The pooling order shall list all persons dismissed in the cause.

(d) **Elections.** A pooling order shall contain language to the effect that the respondents shall have at least twenty (20) days from the date of the order in which to communicate an election to the applicant or other responsible person as to the option selected under the order, unless the Commission directs otherwise. A respondent in a pooling order shall be deemed to have made a timely election if, as provided in the pooling order, the respondent has delivered his election by timely mailing as indicated by postmark of the U.S. Postal Service on or before the last day allowed in the order, or timely delivery as otherwise provided in the pooling order. The election shall be directed to the person designated in the pooling order to receive elections.

(e) **Escrow accounts.** A pooling order which pools interests of unknown or unlocated owners shall contain language to the effect that if any payment of bonus, royalty payments, or other payments due and owing under the order cannot be made because the person entitled to it cannot be located or is unknown, then the bonus, royalty payments, or other payments shall be paid into an escrow account in a financial institution within ninety (90) days after the order and shall not be commingled with any funds of the applicant or operator; that the Commission shall retain jurisdiction to grant to financially solid and stable holders an exception to the requirement that funds be paid into an escrow account with a financial institution and permit such holder to escrow such funds within such holder's organization; that responsibility for filing reports with the Commission as required by law and Commission rule as to bonus, royalty, or other payments deposited into escrow accounts shall be with the applicable holder; that such funds deposited in said escrow accounts shall be held for the exclusive use of, and sole benefit of, the person entitled to it; and that it shall be the responsibility of the operator to notify all other holders of this provision and of Commission rules regarding unclaimed monies under pooling orders.

(f) **Exhibit list of respondents.** A pooling order shall contain an attached exhibit listing all respondents or interests in the following manner:

(1) **Known respondents.** List all known respondents by name and address.

(2) **Unknown and/or unlocatable respondents.** List all respondents, with last known address if available, or if there are none so state under this section of the exhibit.

(3) **Respondents listed for curative reasons only.** List all respondents or if none so state under this section of the exhibit.

(g) **Horizontal wells: election.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit shall provide that if any owner should elect not to participate in the development of the horizontal spacing unit, said owner's interest in the production from the well or drilling and spacing unit which existed prior to the formation of the horizontal well unit shall not be affected.

(h) **Horizontal wells: conversion.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit may not provide for the conversion of an existing producing oil or gas well into the permitted well for the horizontal well unit unless all working interest owners in such existing well consent to such conversion. A pooling application for such conversion shall include a statement that all working interest owners in such well have agreed in writing to such conversion.

165:5-15-4. Location exception orders for increased density wells

(a) **Required language; allowable restrictions.** A location exception order for an increased density well where allowable restrictions have been imposed shall contain language obligating the applicant to:

- (1) Maintain a monthly allocation schedule for the well which schedule shall show the method used in calculating the allowable, production and the status as to overage or underage.
- (2) Furnish a copy of the schedule to each offsetting operator who entered an appearance in the cause.
- (3) File with the Gas Department of the Oil and Gas Conservation Division, no later than February 15 each year, a summary of the schedule showing the allowable and production for the calendar year and the status as to overage and underage as of December 31.

(b) **Termination of order.** A location exception order for an increased density well shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order.

165:5-15-5. Increased density orders

(a) **Required language; allowable restrictions.** An increased density order where allowable restrictions have been imposed shall contain language obligating the applicant to:

- (1) Maintain a monthly allocation schedule for the well which schedule shall show the method used in calculating the allowable, production and the status as to overage or underage.
- (2) Furnish a copy of the schedule to each offsetting operator who entered an appearance in the cause.
- (3) File with the Gas Department of the Oil and Gas Conservation Division, no later than February 15 each year, a summary of the schedule showing the allowable and production for the calendar year and the status as to overage and underage as of December 31.

(b) **Termination of order.** An increased density order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order.

165:5-15-6. Location exception orders

A location exception order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order. For directionally drilled wells, the location of the entry into and exit from the common source of supply must be specified.

[Source: Amended at 24 Ok Reg 1781, eff 7-1-07; Amended at 26 Ok Reg 2493, eff 7-11-09]

165:5-15-7. Emergency orders

An emergency order shall state, in addition to applicable provisions of OAC 165:5-15-1, the following:

- (1) The emergency or circumstances necessitating the order.
- (2) Any notice given or hearing held prior to entry of the order.
- (3) That the order is temporary, and subject to final determination of the cause.
- (4) The time limitations of the order, which shall be the date set for hearing or another day certain.

- (5) Continuance of the hearing shall not serve to extend an emergency order.
- (6) Any person affected by an emergency order may file written application for a hearing thereon, stating the precise grounds for objection to the order, which hearing may be held upon such notice to other persons as the Commission shall direct.
- (7) An order shall be issued determining the merits of any application for emergency relief relating to a Conservation Docket proceeding within thirty (30) days from the filing of the application.
- (8) An order granting emergency relief relating to a Conservation Docket proceeding shall be effective for a period not to exceed ninety (90) days.

[Source: Amended at 17 Ok Reg 2299, eff 7-1-00]

165:5-15-8. Interim order for horizontal well drilling and spacing unit [REVOKED]

[Source: Revoked at 27 Ok Reg 2098, eff 7-11-10]

165:5-15-9. Termination of horizontal well unit [REVOKED]

[Source: Revoked at 27 Ok Reg 2098, eff 7-11-10]

SUBCHAPTER 17. POST ORDER RELIEF

165:5-17-1. Within 10 days; motion

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

- (1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.
- (2) The specific modifications or other relief sought by the motion.
- (3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. The movant is required to serve copies of the motion and notice of hearing on all respondents and parties of record at least five (5) business days prior to the hearing date. The motion and notice of hearing shall be served through the ECF System to those on the Official ECF service list, by regular mail, electronic mail, or in person.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 33 Ok Reg 588, eff 8-25-16; Amended at 38 Ok Reg 1726, eff 10-1-21]

165:5-17-2. After 10 days; application

(a) At any time subsequent to ten (10) days after entry of an order of the Commission, an application to vacate or modify the order, or for any other form of relief from the order, filed by any person, whether or not a party of record in the original cause, shall be treated as a separate cause, and shall be governed by rules applicable to the commencement of a cause. The application shall:

- (1) Identify the order sought to be modified or vacated.
- (2) State specifically the parts or provisions sought to be modified or vacated.
- (3) State specifically the modifications or vacations sought.

(4) State specifically the grounds upon which such relief is sought.

(b) Notice of hearing of the application shall be served and published as required upon the commencement of the cause. The application shall be set for hearing before the Commission or Administrative Law Judge or Public Utility Referee, as provided in this Chapter as to the commencement of a cause.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-17-3. Motions related to public utility orders

An order of the Commission, granted to a public utility pursuant to 17 O.S. §§181 through 189, approving the issuance of securities or the creation of liens on property in this state to secure the payment of evidences of indebtedness shall not be vacated or modified pursuant to motion or application to vacate or modify filed by any person other than the public utility.

165:5-17-4. Nunc Pro Tunc

With or without notice or hearing, the Commission may make or cause to be made an order nunc pro tunc to correct any clerical errors, mistakes, or omissions in an order, or as to timely mailing of the order by the Commission or otherwise to cause the order to correctly reflect the judgment or action of such Commission.

165:5-17-5. Appeals

All causes on appeal shall be as prescribed by the applicable rules of the Supreme Court of Oklahoma. All appellate petitions, motions, briefs and other filings shall be served on the Commission by mail addressed to the Commission's Agency Counsel.

[Source: Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 35 Ok Reg 946, eff 10-1-18]

SUBCHAPTER 19. CONTEMPT

165:5-19-1. Contempt procedure

(a) **Commencement.** A contempt proceeding is commenced with the filing of a verified Complaint. Prior to the filing of a contempt proceeding by the Commission, or a division thereof, the self-reporting of an apparent violation and corrective actions taken by the Respondent, along with plans to prevent future violations, and/or other mitigating factors should be considered.

(b) **Complaint.** The complaint shall state:

- (1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.
- (2) Each law, order, rule, regulation of which violation is charged.
- (3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

- (1) The name of the complainant and the date the complaint was filed.
- (2) A brief description of the nature of the complaint.
- (3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records, and, if applicable, to the respondent's registered agent as listed with the Oklahoma Secretary of State. The respondent is responsible for notifying the Commission of any change of address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective on the date of receipt, or if refused, on the date of refusal of the complaint by the respondent. If the certified mailing is returned as undeliverable, the Commission or Administrative Law Judge shall determine sufficiency of service and may recommend additional service requirements. The Commission or Administrative Law Judge may use the service of process requirements in 12 O.S. § 2004 as guidance to ensure effective service.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first determine whether jurisdiction and service are proper, then hear all objections and defenses other than to the merits of the complaint and shall enter appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

[Source: Amended at 11 Ok Reg 3675, eff 7-11-94; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-19-2. Waiver or reduction of fines and penalties upon small business

(a) **Fines and penalties may be waived against small business.** Pursuant to 75 O.S. § 506, any fine or penalty levied against a small business pursuant to the

contempt procedure provided in this Subchapter may be waived or reduced by the Commission if:

- (1) The small business corrects the violation within thirty (30) days of receiving a complaint, summons and notice of citation for contempt, or other form of citation; or
- (2) The violation was the result of an excusable misunderstanding of the Commission's interpretation of a rule.

(b) **Circumstances when no waiver or reduction may occur.** A waiver or reduction of a fine or penalty may not occur under any of the following circumstances:

- (1) A small business has been notified of the violation of a statute or Commission rule by the Commission pursuant to proper procedure and has been given a prior opportunity to correct the violation on a prior occasion;
- (2) A small business fails to exercise good faith in complying with the statute or Commission rule;
- (3) A violation involves willful or criminal conduct;
- (4) A violation results in serious health, safety, or environmental impact; or
- (5) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

(c) **Small business defined.** For the purposes of the waiver or reduction of a fine or penalty pursuant to 75 O.S. § 506, the term "small business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees.

[Source: Amended at 20 Ok Reg 2293, eff 7-15-03]

SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET

165:5-21-1. Purpose

The purpose of this Subchapter is to provide rules to govern proceedings filed before the Commission concerning the Oklahoma Petroleum Storage Tank Consolidation Act. Accordingly, all procedural rules necessary to initiate, regulate and litigate the above stated programs have been centralized in this Subchapter for user friendliness, with the exception of the rules contained in Chapter 5 which are "general" rules of procedure. To avoid repetitive rule language, the following rules apply to all proceedings subject to this Subchapter:

- (1) OAC 165:5-1-3 (Definitions)
- (2) OAC 165:5-1-4 (Office location; office hours; records)
- (3) OAC 165:5-1-5 (Filing of documents)
- (4) OAC 165:5-1-6 (Time computations and extensions; effective date)
- (5) OAC 165:5-1-8 (Place of hearing)
- (6) OAC 165:5-1-9 (Telephonic testimony)
- (7) OAC 165:5-5-1 (Dockets; identifying initials)
- (8) OAC 165:5-9-3 (Emergency applications)
- (9) OAC 165:5-11-2 (Prehearing conference)
- (10) OAC 165:5-13-1 (Sessions and hearings)
- (11) OAC 165:5-13-2 (Setting of causes)
- (12) OAC 165:5-13-3 (Hearings)
- (13) OAC 165:5-13-4 (Report of Administrative Law Judge)
- (14) OAC 165:5-13-5 (Exceptions to Report of the Administrative Law Judge)

- (15) OAC 165:5-15-1 (General form and procedure [orders])
- (16) OAC 165:5-15-7 (Emergency orders)
- (17) OAC 165:5-17-1 ([Post order relief] Within 10 days)
- (18) OAC 165:5-17-2 (After 10 days; applicants)
- (19) OAC 165:5-17-4 (Nunc Pro Tunc)
- (20) OAC 165:5-17-5 (Appeals)
- (21) OAC 165:5-19-1 (Contempt procedure)

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-21-2. Scope

- (a) The rules of this Subchapter shall be known as the Oklahoma Corporation Commission Rules of Practice for the Petroleum Storage Tank Division, and may be cited as OAC 165:5-21-1 et seq.
- (b) The rules of this Subchapter shall govern all proceedings concerning the Petroleum Storage Tank Division before the Commission, any Administrative Law Judge, attorney, or other officer or employee of the Commission.
- (c) The rules of this Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-3. Application and notice requirements for Petroleum Storage Tank cases

- (a) Every case will start with the filing of an application in the Court Clerk's Office. The following must be on the application:
 - (1) A caption with the heading of "Before the Corporation Commission of the State of Oklahoma."
 - (2) The name of the applicant(s).
 - (3) The relief sought (what the applicant wants done).
 - (4) The docket and case number.
- (b) The application must have four numbered parts as follows:
 - (1) The first part must have (i) the applicant's name, address, and telephone number of his attorney or designated representative; (ii) the nature of the applicant's interest in the subject matter of the case; and (iii) the name and address of each person (if any) named as respondent(s).
 - (2) The second part must have the allegation of facts which are important to the case. The allegations must be stated simply in numbered subparagraphs as necessary for clarity.
 - (3) The third part must have the citations of statutes, rules, orders, and decided cases authorizing the relief sought.
 - (4) The fourth part must have a short and concise statement of what the applicant(s) wants the Commission to do.
- (c) The application must be signed by the applicant or, an authorized agent of the applicant or by the attorney for the applicant. The address and telephone number of the person signing must be under the signature. The person signing the application shall be deemed to certify that:
 - (1) He has read the application; and
 - (2) To the best of his knowledge, formed after reasonable inquiry, the facts contained in the application are true; and

- (3) That the application is not filed to harass or to cause unnecessary delay or needless expense.
- (d) A document may be served on a party of record by regular mail or in person. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney.
- (e) Every application and notice of hearing shall be served on the respondent and the Judicial and Legislative Services staff counsel by certified mail by the person filing the application; publication is not required. Thereafter, every document shall be served by regular mail upon all parties.
- (f) A certificate of service will be included on every document. The certificate shall contain a list of the persons to whom a copy of the document was mailed, postage prepaid, or to whom it was hand delivered.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99; Amended at 35 Ok Reg 946, eff 10-1-18]

165:5-21-3.1. Applications for a variance

- (a) **Administrative review.** Any variance sought from rules in Chapters 15, 16, 25, 26, 27, or 29 must be made by application. At the time the application is filed, applicant must provide the Petroleum Storage Tank Division all documents or evidence supporting the proposed variance. The Petroleum Storage Tank Division shall review the application administratively without the necessity of a hearing. If the Petroleum Storage Tank Division approves the relief requested by the application, it shall submit a proposed order to the Commissioners to determine whether the variance and/or other relief, if any, should be granted.
- (b) **Remedies after denial or modification.** If the Petroleum Storage Tank Division denies the relief requested by the application as reflected in the notice of denial provided to applicant, or the Petroleum Storage Tank Division cannot agree to a modification, the applicant will have ten (10) business days from receipt of the denial letter to withdraw its application or file a notice of hearing before an Administrative Law Judge and present its application for a recommendation on the merits of the variance sought. If the application for the variance is denied by the Administrative Law Judge, the applicant may file exceptions as more fully defined under OAC 165:5-13-5. If a notice of hearing is not timely filed, the Petroleum Storage Tank Division shall submit a proposed order to the Commissioners to deny the variance.

[Source: Added at 34 Ok Reg 53, eff 9-30-16; Added at 34 Ok Reg 905, eff 9-11-17; Amended at 35 Ok Reg 946, eff 10-1-18; Amended at 36 Ok Reg 517, eff 8-1-19]

165:5-21-4. Response to application

- (a) The response to an application shall contain the same caption as in the application and shall contain four numbered parts as follows:
- (1) The first part will give the name of the respondent, address and telephone number of his attorney or designated representative and the nature of his interest in the subject matter of the case.
 - (2) The second part will be a response to the allegations of fact. It will include (i) admissions of specific allegations of fact; (ii) specific denial of any allegations of fact and (iii) a statement of all other facts necessary or appropriate to support respondent's position. Failure to deny specifically any allegation of fact will not relieve the person making the allegation of the burden of proving it.

- (3) The third part states the citations of all statutes, rules, orders, and decided cases in support of the response or in opposition to the granting of the relief sought in the application.
- (4) The fourth part must give a short and concise statement of what the respondent wants the Commission to do.
- (b) The response shall be signed by the respondent or by the attorney for the respondent, and will include the address and telephone number of the person signing.
- (c) The Petroleum Storage Tank Division must file a response to an application within twenty (20) days of the receipt of the application.
- (d) Amendment of a document may be permitted at any time. An amendment may take the form of a substitute document, an amendment or supplement, or any correction(s) by addition or deletion of language. A response may be made to an amended document, but it is not required.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-5. Motions

(a) Pleadings other than the application or response shall be made by motion.

- (1) Each motion shall state in plain language the action or relief sought and the facts and circumstances upon which the motion is based.
- (2) All motions, including motions to dismiss and motions for summary judgment, will be set on a regularly scheduled motion docket to be heard by an Administrative Law Judge unless otherwise directed by the assigned Administrative Law Judge.
- (3) The filing of a motion will not automatically delay the hearing on the merits.
- (4) The Court Clerk will advise the person filing the motion when it will be heard and what Administrative Law Judge will hear it. A notice of the time of hearing must be included on the motion document, below the certificate of mailing.
- (5) The notice of hearing shall be sent to other parties of record by regular mail at least five (5) days prior to the date set for hearing.
- (6) All motions will be decided by the Administrative Law Judge.

(b) Reply to motions. Any person may file and serve a reply to any motion at any time before the motion is heard.

(c) Specific motions.

- (1) **Motion to Intervene.** Any person with a substantive interest in the subject matter of a case may become a party by filing a motion for intervention.
 - (A) The Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.
 - (B) The Administrative Law Judge will not grant intervention if the motion is filed less than 20 days before the date of the hearing on the merits.
 - (C) The filing or granting of any motion to intervene shall not be grounds to delay any hearing date or time limit set in a proceeding.
 - (D) An intervention may seek affirmative relief.
- (2) **Motion to Dismiss or Motion for Summary Judgment.**
 - (A) The applicant may dismiss his application with or without prejudice at any time. The dismissal shall not dismiss the cause as to affirmative relief sought by any respondent.

(B) At any time prior to the hearing on the merits a respondent may file a motion to dismiss or a motion for summary judgment.

(C) A case may be dismissed by agreement of all parties or recommended for dismissal with or without prejudice by the Administrative Law Judge upon a motion by the Administrative Law Judge or any party of record.

(D) Upon five (5) days notice to parties of record, the Administrative Law Judge may entertain motions to dismiss or summary judgement for any of the following reasons:

(i) Failure to state facts which would justify any Commission action

(ii) A showing that facts set out by the parties, including materials in attached affidavits, answers to interrogatories, documents produced or testimony elicited in deposition show that it is possible for only one party to win.

(iii) Failure to prosecute.

(iv) The case has already been decided.

(v) The question is moot.

(vi) Lack of jurisdiction.

(vii) Failure to submit a proposed order in a timely manner.

(viii) For other good cause shown.

(3) **Motion for Joinder and/or Consolidation.** Upon motion, a case may:

(A) Have two or more complainants joined in one complaint if their respective complaints are against the same person(s) and involve substantially the same subject matter and grounds;

(B) Have a person ordered joined as a party of record and to appear in a proceeding; and

(C) Have consolidation of two or more cases for hearing.

(4) **Motion for Continuance.** Pursuant to 17 O.S. § 330, no more than two (2) continuances shall be granted by the Commission in any case unless further continuance is agreed to by all of the parties actively participating in the case.

(A) The Commission may grant additional continuances upon the showing of exigent or extraordinary circumstances.

(B) Notice of the continuance date shall be served on all respondents and parties of record and shall be sent by regular mail at least five (5) days prior to the date of the hearing.

(C) Every continuance shall be to a specific day.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-6. Discovery

Pursuant to 17 O.S. §330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted pursuant to the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. No motion to permit discovery is required. Parties or their attorneys may issue notices for deposition or requests for production as provided in the discovery code. Discovery must start early in the case and be done promptly, as the hearing on the merits must be heard within one hundred eighty (180) days. A party who has been slow or neglectful in pursuing discovery shall not delay the hearing to finish such discovery.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-7. [RESERVED]

[Source: Reserved at 16 Ok Reg 829, eff 1-25-99 (emergency); Reserved at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-8. Subpoenas

Pursuant to 17 O.S. §330, all cases filed on the Petroleum Storage Tank docket may have subpoenas issued pursuant to the provisions of 12 O.S. § 2004.1. No motion to allow subpoenas is required.

(1) References in the statute to "clerk" refer to the Court Clerk of the Commission.

(2) References in the statute to "court" refer to the Commission.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-9. 180 days

Hearings on merits shall be within one hundred eighty (180) days from the date the application was filed. The Administrative Law Judge may extend this date, if requested by person(s) other than Commission employees or representatives, upon a showing by such person(s) of exigent or extraordinary circumstances.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

165:5-21-10. Advancement

A case may be advanced and heard directly by the Commissioners upon a showing that there is a matter of general applicability at issue in the case and that an early resolution of the dispute by the Commissioners will help resolve other conflicts, thereby avoiding costly litigation of other cases. The Commissioners may take and resolve the entire case or they may resolve only the issue of general applicability and return the rest of the case to the Administrative Law Judge for an evidentiary hearing on the other issues in the case.

[Source: Added at 16 Ok Reg 829, eff 1-25-99 (emergency); Added at 16 Ok Reg 2807, eff 7-15-99]

SUBCHAPTER 23. INFORMAL RESOLUTION OF NATURAL GAS GATHERING DISPUTES

165:5-23-1. Scope

The Commission encourages the resolution and early settlement of all disputes about natural gas gathering services in the most effective manner possible. Commission employees are charged with the responsibility to promote resolution and settlements of such disputes, consistent with the public interest. This Subchapter establishes a voluntary, non-binding informal procedure to be available either before or after the filing of a Formal Complaint to encourage the resolution of disputes regarding gas gathering. In this voluntary procedure, Participants are not required to be represented by an attorney. The provisions of OAC 165:5-1-2(b) are not applicable to this Subchapter.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-2. Definitions

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

"Complainant" means an aggrieved party, pursuant to 52 O.S. §§ 24.4 and 24.5, who seeks to have a dispute regarding natural gas gathering services resolved by the Commission. Any informal dispute resolution procedure initiated by said Complainant shall be a neutral process as it affects the Participants, and shall only occur as a result of the agreement of the Participants.

"Conservation Division" means the Oil and Gas Conservation Division.

"Formal Complaint" means a complaint filed under 52 O.S. §§ 24.4 and 24.5 and OAC 165:5-7-41.1.

"Mediator" means an individual, mutually agreeable to the Participants, selected from a list of mediators maintained by the Commission who are certified under the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq. The list of certified mediators shall include, but not be limited to, members of the Oil and Gas Conservation Division staff. Any mediator selected by the Participants shall remain neutral and shall not advocate the position of any Participant in an informal dispute resolution procedure.

"Informal dispute resolution procedure" means a non-judicial, voluntary, non-binding and informally conducted mediation procedure for resolution of disputes regarding gas gathering. Such mediations will be conducted under the provisions of the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq.

"Participant(s)" means the Complainant or Respondent, or both, in the informal dispute resolution procedure.

"Respondent" means the gatherer whose conduct is the subject of a Notice of Intent to Mediate.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:5-23-3. Form and service of a Notice of Intent to Mediate; reply by Respondent

(a) Prior to or after the filing of a Formal Complaint under 52 O.S. §§ 24.4 and 24.5, a Complainant seeking redress under this Subchapter may commence the informal dispute resolution procedure by filing a Notice of Intent to Mediate. The Notice of Intent to Mediate shall be made in the form prescribed by the Commission and shall contain the following information:

- (1) The Complainant's name;
- (2) The Complainant's company name;
- (3) The Complainant's address;
- (4) The Complainant's company phone number, e-mail address, and facsimile number;
- (5) The date and time of the complaint including the name and address, and the telephone number and fax number, if known, of the Respondent with whom the Complainant has a dispute;
- (6) A description of the dispute;
- (7) The time period of the problem described in the dispute;
- (8) The current status of the negotiations between the parties;
- (9) Description of the actions taken by the Complainant to resolve the problem;
- (10) The relief sought by the Complainant;
- (11) The legal description, county name and name of the well(s) involved in the dispute; and

- (12) The names of representatives of the Respondent with whom the Complainant has talked regarding the dispute.
- (b) No filing fee shall be charged by the Judicial and Legislative Services to the Complainant for filing the Notice of Intent to Mediate, however, it shall charge a \$5.00 fee to each Participant to an informal dispute resolution procedure.
- (c) If the Notice of Intent to Mediate is filed after the filing of a Formal Complaint, the Notice of Intent to Mediate shall contain a statement of the Complainant's desire to commence the informal dispute resolution procedure, the information contained in OAC 165:5-23-3 (a)(8) and (a)(9), and shall reference the claims pled and relief sought in the Formal Complaint.
- (d) Attached to the Notice of Intent to Mediate may be any documentary evidence the Complainant wishes to submit.
- (e) The Complainant shall send by registered mail, facsimile, or deliver a copy of the Notice of Intent to Mediate and all attached documents to the Respondent at the same time that the Notice of Intent to Mediate and any attached documents are filed with the Commission.
- (f) Within ten (10) days of receiving the Notice of Intent to Mediate, the Respondent shall file in writing either a notice that it does not agree to participate in the informal dispute resolution procedure or a reply that it agrees to participate in the informal dispute resolution procedure, in which event Respondent shall respond to the Notice of Intent to Mediate and Respondent may attach to its reply any documentary evidence which it wishes to submit. The Respondent shall file its notice or reply and any attached documentary evidence with the Commission's Court Clerk and shall send by registered mail, facsimile, or deliver a copy of the notice or reply, and all attached documents, to the Complainant at the same time the notice or reply is filed with the Court Clerk.
- (g) Either the Complainant or the Respondent may withdraw its agreement to participate in the informal dispute resolution procedure at any time.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00; Amended at 35 Ok Reg 946, eff 10-1-18]

165:5-23-4. Administration of the informal dispute resolution procedure

- (a) Upon the filing of a Notice of Intent to Mediate, the dispute shall be assigned an informal dispute case number by the Commission's Court Clerk, which shall maintain files pertaining to the matter. The parties to the dispute will select a mutually agreeable mediator from the list of certified mediators maintained by the Commission. The Notice of Intent to Mediate shall be forwarded to the selected mediator, and the dispute will be submitted to the informal dispute resolution procedure unless the Complainant or Respondent notifies the Commission's Court Clerk that one, or both, of said parties does not wish to participate.
- (b) Upon the parties agreeing to mediate, the Mediator shall arrange for a mediation conference between the Respondent and the Complainant within fifteen (15) days of the filing of the Notice of Intent to Mediate. At the mediation conference, the parties shall:
- (1) Inform the Mediator that the dispute has been resolved and the Notice of Intent to Mediate is withdrawn; or
 - (2) Inform the Mediator that the Complainant and/or Respondent no longer wish to participate in the informal dispute resolution procedure; or
 - (3) If the Participants have agreed to the informal dispute resolution procedure, the Mediator shall proceed with the mediation conference between the Participants. At such conference, or any subsequent conference

agreed to by the Participants, the purpose of the Mediator is to assist in the resolution of the dispute by facilitating the development of facts, determination of Participants' positions, and resolution of issues underlying the dispute.

(c) Any informal dispute resolution procedure instituted under this Subchapter shall be completed within sixty (60) days of the filing of the Notice of Intent to Mediate, unless extended by the mutual request of the Respondent and Complainant.

(d) The Commission shall not act upon any anonymous Notice of Intent to Mediate under this Subchapter.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-5. Confidentiality of communications in the informal dispute resolution procedure

(a) All Notices of Intent to Mediate, Replies and all attached documentary evidence filed with the Commission's Court Clerk, as well as all communications, notes, records, and statements, whether oral or written, made, given or furnished by any Participant or Mediator in the course of an informal dispute resolution procedure are privileged and confidential, and are not discoverable or admissible as evidence in any administrative or judicial proceeding unless such communications, notes, records or statements are otherwise discoverable or admissible independent of the informal dispute resolution procedure.

(b) No Participant or Mediator shall be required to testify about any aspect of the informal dispute resolution proceeding relating to or arising out of the informal dispute resolution procedure or be required to disclose any information considered to be privileged and confidential under subsection (a) of this Section.

(c) A Mediator shall not communicate with a Commission administrative law judge or any Commissioner concerning any material or substantive aspect of an informal dispute made confidential by this Section.

(d) No administrative law judge shall be assigned to a formal hearing or other formal investigation of a complaint if that person has directly or indirectly obtained information relating to or concerning such complaint which is confidential under this Subchapter.

(e) Administrative law judge(s) assigned as Mediator(s) under this Subchapter shall not serve as an administrative law judge in any Formal Complaint based upon or arising out of the same dispute or facts described in the Notice of Intent to Mediate which was forwarded to the assigned Mediator. Any Conservation Division staff member(s) assigned as Mediator(s) under this Subchapter shall not serve as a technical advisor on any Formal Complaint based upon or arising out of the same dispute or facts described in the Notice of Intent to Mediate which was forwarded to the assigned Mediator. However, service as a Mediator shall not be deemed a conflict in other matters assigned to the Conservation Division docket.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00]

165:5-23-6. Helpline

Prior to filing a Formal Complaint, parties complaining about natural gas gathering services may register such complaints with the Conservation Division using the Commission Gas Gathering Helpline. Conservation Division staff shall answer calls to the Helpline from 8:00 a.m. to 4:30 p.m. on all regular Commission business days. The Helpline shall record the information sought in OAC 165:5-23-3(a) of this Subchapter, shall instruct the caller that a Notice of Intent to Mediate containing the same information must be filed to commence the informal dispute

resolution procedure and that the Notice of Intent to Mediate and any attachments must be served by registered mail, facsimile or personal delivery on the Respondent, and shall inform the caller that there is no filing fee charged for a Notice of Intent to Mediate, but a \$5.00 fee per participant will be charged for any informal dispute resolution procedure that is commenced. Any Complainant calling the Helpline will be referred to appropriate Conservation Division staff for further information. The Helpline shall neither record nor act upon any anonymous complaints under this subsection.

[Source: Added at 17 Ok Reg 596, eff 12-16-99 (emergency); Added at 17 Ok Reg 1853, eff 7-1-00; Amended at 30 Ok Reg 1033, eff 7-1-13]

SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

165:5-25-1. Purpose and general overview of motor carrier taxpayer/registrant protest procedure

- (a) The purpose of this Subchapter is to give the International Fuel Tax ("IFTA") taxpayer ("taxpayer") or International Registration Plan ("IRP") registrant ("registrant"), or the taxpayer's/registrant's representative an opportunity to resolve "IFTA" or "IRP" disagreements with the Commission.
- (b) Taxpayers/Registrants who wish to challenge a liability assessed or other adverse actions by the Transportation Division, or to seek a refund of taxes or fees, shall file a written protest with the Transportation Division within thirty (30) days from the date of notification of the adverse action. Notification is deemed to be the date of the notice of the adverse action. A protest by the taxpayer/registrant should include the reason(s) for the protest.
- (c) The Transportation Division shall respond to the protest within thirty (30) days of receipt of the protest. The response shall advise the taxpayer/registrant the status of the review of the protest and advise of any additional documentation needed.
- (d) The taxpayer/registrant may contest the Transportation Division's final decision within thirty (30) days from the date of the mailing of the notice. The taxpayer/registrant must file an application with the Commission's Court Clerk's office in accordance with OAC 165:5-25-2 to contest the final decision.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06]

165:5-25-2. Filing confidential applications for hearing

- (a) Taxpayer or registrant applications for hearing shall be filed with the Commission's Court Clerk's Office. Applications shall be in writing, marked "CONFIDENTIAL" pursuant to OAC 165:5-1-5(g), signed by the taxpayer or registrant or an authorized representative thereof, and shall set out therein:
 - (1) The name, mailing address, physical address, telephone number, and e-mail address of the taxpayer or registrant;
 - (2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;
 - (3) A clear and concise statement of each item in dispute;
 - (4) The argument and any legal authority upon which each item in dispute is made; provided, that the taxpayer or registrant shall not be bound or restricted in such hearing, except on exceptions, to the arguments and legal authorities contained and cited in said applications or presented in the

initial hearing;

- (5) A statement of the relief sought by the taxpayer or registrant;
- (6) A verification by the taxpayer or registrant or his duly authorized agent that the statements and facts contained therein are true; and
- (7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

(b) Pursuant to 47 O.S. § 1170 and 51 O.S. § 24A.29, the Commission hereby determines that all reports and files of the Commission concerning the administration of the IFTA/IRP are confidential. All information classified as confidential shall remain confidential unless otherwise provided by law.

(c) The taxpayer or registrant may authorize the disclosure of information to any person pursuant to a written waiver of confidentiality.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 37 Ok Reg 1082, eff 10-1-20]

165:5-25-3. Representation and participation in administrative proceedings

(a) Representation. In an administrative proceeding the taxpayer/registrant may represent himself/herself at any stage of the proceeding or may be represented by:

- (1) A corporation;
- (2) An attorney;
- (3) An accountant, but only in a tax protest matter; or,
- (4) A representative who has been pre-approved by the Commission to represent the taxpayer/registrant.

(b) Proper showing may be required. If a taxpayer/registrant wants to be represented by someone other than himself, an attorney, or an accountant, the Administrative Law Judge may require that such other person, before being recognized as a representative of the taxpayer/registrant, make a proper showing of necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge may certify the representative.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06]

165:5-25-4. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the taxpayer/registrant to show in what respect the action or proposed action of the Commission is incorrect. If, upon hearing, the taxpayer/registrant fails to make a prima facie case, the Administrative Law Judge may recommend that the Commission deny the application solely upon the grounds of failure to prove sufficient facts which would entitle the taxpayer/registrant to the requested relief.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06]

165:5-25-5. Effective date of the Subchapter

The provisions of this Subchapter shall govern all proceedings and cases commenced after this Subchapter becomes effective, and all subsequent proceedings in cases then pending, except to the extent that in the opinion of the Commission or the Administrative Law Judge, the application of this Subchapter in a pending case would not be feasible or would create an injustice.

[Source: Added at 23 Ok Reg 506, eff 12-19-05 (emergency); Added at 23 Ok Reg 2225, eff 7-1-06]

**SUBCHAPTER 27. PROCEDURES FOR PIPELINE SAFETY
DEPARTMENT ENFORCEMENT ACTIONS**

PART 1. GENERAL

165:5-27-1. Purpose

The purpose of this Subchapter is to provide procedural rules to govern proceedings before the Commission to enforce the provisions of the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq. regarding excavation or demolition on or near or directly over the location of, and notice of damage to, oil and natural gas physical facilities which are described by the currently effective definition of "pipeline" in 49 C.F.R. § 192.3 and "pipeline" and "pipeline system" in 49 C.F.R. § 195.2, pursuant to 63 O.S. § 142.13. The following rules apply to all enforcement actions subject to this Subchapter:

- (1) OAC 165:5-1-3 (Definitions)
- (2) OAC 165:5-1-4 (Office location; office hours; records)
- (3) OAC 165:5-1-4.1 (Open records requests)
- (4) OAC 165:5-1-5 (Filing of documents)
- (5) OAC 165:5-1-6 (Time computations and extensions; effective date)
- (6) OAC 165:5-1-8 (Place of hearing)
- (7) OAC 165:5-1-9 (Telephonic testimony)
- (8) OAC 165:5-1-11 through OAC 165:5-1-14.2 (Electronic Filing of Documents)
- (9) OAC 165:5-5-1 (Dockets; identifying initials)
- (10) OAC 165:5-9-2 (Subsequent pleadings)
- (11) OAC 165:5-9-3 (Emergency applications)
- (12) OAC 165:5-9-4 (Intervention and parties of record)
- (13) OAC 165:5-9-5 (Joinder and consolidation of parties and proceedings)
- (14) OAC 165:5-9-6 (Continuances)
- (15) OAC 165:5-11-2 (Prehearing conference)
- (16) OAC 165:5-13-1 (Sessions and hearings)
- (17) OAC 165:5-13-2 (Setting of causes)
- (18) OAC 165:5-13-3 (Hearings)
- (19) OAC 165:5-13-4 (Report of Administrative Law Judge)
- (20) OAC 165:5-13-5 (Exceptions to Report of Administrative Law Judge)
- (21) OAC 165:5-15-1 (General form and procedure [orders])
- (22) OAC 165:5-15-7 (Emergency orders)
- (23) OAC 165:5-17-1 ([Post order relief] Within 10 days; motion)
- (24) OAC 165:5-17-2 (After 10 days; application)
- (25) OAC 165:5-17-4 (Nunc Pro Tunc)
- (26) OAC 165:5-17-5 (Appeals)
- (27) OAC 165:5-19-2 (Waiver or reduction of fines and penalties upon small business)

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-2. Scope

(a) This Subchapter shall be known as the Oklahoma Corporation Commission Rules of Practice for Pipeline Safety Department enforcement actions and may be cited as OAC 165:5-27-1 et seq.

(b) This Subchapter shall govern all proceedings concerning Pipeline Safety Department enforcement actions arising under the Act and the implementing rules of the Commission.

(c) This Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

(d) Nothing in this Subchapter shall be construed to modify or limit any private right of action arising under the Oklahoma Underground Facilities Damage Prevention Act and enforceable in the district courts of this State.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-3. Definitions

In addition to terms defined in 63 O.S. § 142.2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq.

"Pipeline" means pipeline as defined in 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2.

"Pipeline system" means "pipeline system" as defined in 49 C.F.R. § 195.2.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-4. Statutory citation

Citations to the Act, 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2 in this Subchapter refer to the most recent codifications of the Act and such sections of the Code of Federal Regulations.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

PART 3. ENFORCEMENT

165:5-27-10. Enforcement actions

(a) **Commencement.** A cause filed under this Subchapter by the Pipeline Safety Department to enforce the Act as provided in 63 O.S. § 142.13 and for contempt for disobedience to or violation of an order or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.

(2) Each law, order, rule, regulation of which violation is charged.

(3) A description of the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the Director of the Transportation Division and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by personal service or by mailing the citation by certified mail to the respondent's last known address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:

(1) Signed for by any person at the address listed.

(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

(j) Nothing in this Subchapter shall prevent the Commission's Pipeline Safety Department from attempting pre-contempt remediation of alleged violations through the Notice of Probable Violation procedure found in Subchapter 13 of OAC 165:20.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-11. Penalties

(a) If the Commission concludes that the Respondent has committed a violation of the Act, it may enter an order requiring the Respondent to take action to correct the violation, to submit to damage prevention training, imposing penalties not to exceed maximums provided by law, or to fashion other remedies as the interests of

justice may require.

(b) Penalties imposed under subsection (a) shall not exceed maximum amounts provided by 17 O.S. § 6.1.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-12. Discovery

Discovery for Pipeline Safety Department enforcement actions shall be conducted pursuant to the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224-3237. No motion to permit discovery is required. Parties or their attorneys may issue notices for deposition or requests for production or interrogatories as provided in the Oklahoma Discovery Code.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-13. Subpoenas

In all Pipeline Safety Department enforcement actions, subpoenas may be issued and served in the manner provided in district courts according to 12 O.S. § 2004.1. No motion to allow subpoenas is required.

(1) References in the statute to "clerk" refer to the Court Clerk of the Commission.

(2) References in the statute to "court" refer to the Commission.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

165:5-27-14. Aggrieved persons

Any person aggrieved by a violation of the Act may submit to the Manager of the Pipeline Safety Department of the Commission written information on a form available on the Commission's website relating to an alleged violation or violations and requesting an investigation by the Pipeline Safety Department.

[Source: Added at 32 Ok Reg 752, eff 8-27-15]

SUBCHAPTER 29. CONSUMER SERVICES COMPLAINTS

165:5-29-1. Consumer services complaints against regulated utility providers

(a) **Mediation.** Prior to filing a complaint pursuant to this section, the consumer and the utility are encouraged to follow the mediation provisions in OAC 165:35-21-40, OAC 165:45-11-20, and OAC 165:65-11-17. The consumer and utility are encouraged to continue mediation following the filing of a complaint.

(b) **Commencement.** A cause filed on the Consumer Services Docket shall be commenced by the filing of a complaint.

(c) **Applicant.** A complaint may be filed by either the Director of the Consumer Services Division against a regulated utility provider or customer against the customer's regulated utility provider.

(d) **Respondent.** The Respondent to a complaint is limited to a regulated utility provider, which includes public utilities and telecommunications carriers as defined by 17 O.S. §§ 41, 139.102 and 151.

(e) **Complaint.** The complaint shall state:

(1) The applicant or attorney's actual or electronic signature, typed or handwritten name, mailing address, telephone number, facsimile number (if applicable), and electronic mail address;

(2) The name of the person, firm, trust, corporation, or association against whom the complaint is made;

- (3) In general terms, the issues, acts, or omissions constituting the nature of the complaint;
- (4) Each alleged violation of a tariff, state statute, Commission rule, or Commission order shall be stated separately; and
- (5) The relief requested by the applicant.

(f) **Notice of hearing.** When a complaint is filed pursuant to this section, a notice of hearing scheduling the prehearing conference shall be prepared by the applicant pursuant to OAC 165:5-7-1(l). Appendix "J" to this Chapter contains a sample notice of hearing.

(g) **Service of complaint.** The applicant shall serve the respondent by sending, by certified mail, the complaint and the notice of hearing to the respondent's last known address as listed in the Commission records, and, if applicable, to the respondent's registered agent as listed with the Oklahoma Secretary of State.

(h) **Return of service.** The applicant shall prepare the return of service and file it with the Court Clerk. The return shall be verified by the person making the service, and shall show the manner, date, and time when the complaint was received by the Respondent. Service of the complaint and notice of hearing on the respondent by certified mail shall be considered effective on the date of receipt, or if refused, on the date of refusal of the complaint by the respondent. If the certified mailing is returned as undeliverable, the Commission or Administrative Law Judge shall determine sufficiency of service and may recommend additional service requirements. The Commission or Administrative Law Judge may use the service of process requirements in 12 O.S. § 2004 as guidance to ensure effective service.

(i) **Subsequent service.** The applicant and respondent shall provide changes of contact information to all parties of record and will accept service related to the complaint at the provided address.

(j) **Hearing procedures.** The complaint shall be set for prehearing conference before an Administrative Law Judge within thirty (30) calendar days after the complaint is filed. At the prehearing conference, the Administrative Law Judge shall determine whether service and jurisdiction are proper, and whether the issues, acts, or omissions constituting the nature of the complaint have been resolved. If the Administrative Law Judge determines that jurisdiction is not proper, the Administrative Law Judge shall recommend dismissal of the complaint.

(1) The Administrative Law Judge may continue the prehearing conference to a date certain to allow for resolution of the complaint by the parties, or to allow for proper service.

(2) If the Administrative Law Judge finds that the matter cannot be resolved without a hearing, then a hearing on the merits shall be set within the next sixty (60) calendar days.

(3) The Administrative Law Judge may recommend that the parties complete specific actions to complete the record, which may include but not be limited to requiring the applicant to submit additional information, require the respondent file a response to the complaint, and an allowance for discovery.

(4) If the respondent fails to appear at the time set for prehearing conference, as specified in the notice of hearing, or subsequent hearings as directed by the Administrative Law Judge, the Administrative Law Judge may schedule the complaint for a hearing on the merits or immediately proceed to hear the complaint if already scheduled for a hearing on the merits.

- (5) If the applicant fails to appear at the prehearing conference or subsequent hearings, the Administrative Law Judge may recommend that the complaint be dismissed without prejudice.
- (6) The Administrative Law Judge shall hear the merits of the complaint, and at the conclusion thereof, shall issue a report of the Administrative Law Judge that may impose such resolution as the facts and circumstances warrant, or dismiss the complaint.
- (7) Exceptions to the report of the Administrative Law Judge may be filed and heard pursuant to OAC 165:5-13-5.

[Source: Added at 37 Ok Reg 1082, eff 10-1-20]

SUBCHAPTER 31. PROCEDURES FOR THE MOTOR CARRIER CITATION DOCKET

165:5-31-1. General provisions

- (a) The rules of this Subchapter shall govern the administration of the Motor Carrier Citation ("MCC") docket. In every MCC hearing conducted under the authority of this Subchapter, all other relevant rules within OAC 165:5 shall remain in effect unless the rule conflicts with a provision herein.
- (b) The rules of this Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

[Source: Added at 38 Ok Reg 1726, eff 10-1-21]

165:5-31-3. Requesting a hearing

- (a) An administrative hearing on the regularly scheduled MCC docket will be provided after a hearing is requested pursuant to the rules of this Subchapter. The instructions for requesting a hearing will be provided upon the issuance of a citation.
- (b) Hearing requests shall be submitted to the Transportation Division by electronic mail or by using an electronic form authorized by the Transportation Division. A pro se person requesting the hearing may mail a paper copy of the form to the Transportation Division.
- (c) Unless otherwise ordered by the Commission, for any case in which the motor carrier fails to submit a valid hearing request, the allegations contained in the citation will be presumed to be true, and the citation will constitute the prima facie evidence of the related violation of state statute, Commission order, or rule.
- (d) All hearing requests must be received by the Transportation Division within ten (10) calendar days after the citation is issued.
- (e) The hearing request form shall include the following information:
 - (1) The name of the person requesting the hearing;
 - (2) The citation number;
 - (3) The party's contact information, including the mailing address, telephone number, and email address (if any) that is to be used to contact the party for the hearing;
 - (4) The name, mailing and electronic mail address, and telephone number of the party's attorney, if any;
 - (5) The name(s) of any witness(es) appearing on behalf of the party requesting the hearing, along with a brief statement of the testimony to be offered by the witness and the telephone number and electronic mail

address that is to be used to contact that witness; and

(6) A written statement describing the basis for contesting the citation.

(f) The party requesting a hearing is responsible for ensuring the Transportation Division receives the required information when submitting the form requesting a hearing. Any supplemental material must be submitted no later than three (3) business days prior to the scheduled hearing date. The Transportation Division will work with the person requesting the hearing to ensure that each requirement for requesting a hearing was completed.

(g) Prior to the hearing date, the Transportation Division will present each incomplete hearing request form to the Administrative Law Judge for a preliminary review. If the Administrative Law Judge determines that the hearing request form is incomplete, the request may be rejected and a hearing will not be granted, subject to the regular right of post order relief pursuant to OAC 165:5-17-1.

[Source: Added at 38 Ok Reg 1726, eff 10-1-21]

165:5-31-5. Hearing procedures

(a) The primary method of conducting MCC hearings shall be by telephone and/or videoconference. Testimony may be offered only by telephone or videoconference, unless the Commission or an Administrative Law Judge determines that the presence of the witnesses in the courtroom is necessary for the effective and efficient presentation of evidence or argument.

(b) MCC hearings shall be conducted in accordance with OAC 165:5-1-9(d)-(l); however, the witness affidavit identified in OAC 165:5-1-9(m) shall not be required.

(c) During the hearing, the Administrative Law Judge shall call both the Transportation Division's attorney and the party or the party's attorney, if any, at the telephone number provided by the party. If the party requesting the hearing, or the party's attorney, fails to answer or participate in the hearing after two (2) attempts by the Administrative Law Judge to contact the party by telephone, the Administrative Law Judge may continue the hearing to a date certain, conduct the hearing without the party present, or find the party "guilty" by default.

(d) The Administrative Law Judge shall call the witnesses, if any, at the telephone number provided by the party requesting the hearing. If the witness fails to answer or participate in the hearing after two (2) attempts by the Administrative Law Judge to contact the witness by telephone, the Administrative Law Judge may exclude the witness and continue with the hearing.

(e) A hearing may be continued at the discretion of the Administrative Law Judge pursuant to OAC 165:5-9-6, without a Commission order. Emergencies may be considered by the Administrative Law Judge on a case-by-case basis. If the Commission is closed, continuances shall be resolved in accordance with OAC 165:5-9-6(e).

(f) At the conclusion of the hearing, the Administrative Law Judge will issue a recommendation in accordance with OAC 165:5-13-4(f). Exceptions to the recommendation may be taken in accordance with OAC 165:5-13-5(a)(3).

[Source: Added at 38 Ok Reg 1726, eff 10-1-21]

APPENDIX A. GENERAL NOTICE OF HEARING

[Figure 1](#)

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Amended at 11 Ok Reg 4623, eff 9-4-94 (emergency); Revoked and reenacted at 12 Ok Reg 2005, eff 7-1-95; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX B. NOTICE OF APPLICATION FOR EXTENSION OF TIME
FOR CLOSURE OF NONCOMMERCIAL PIT**

[Figure 1](#)

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX C. NOTICE OF HEARING FOR EXTENSION OF TIME FOR
CLOSURE OF NONCOMMERCIAL PIT**

[Figure 1](#)

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT
CLOSURE**

[Figure 1](#)

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 31 Ok Reg 959, eff 9-12-14; Revoked and reenacted at 35 Ok Reg 946, eff 10-1-18; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

APPENDIX E. NOTICE OF HEARING FOR WAIVER OF PIT CLOSURE

[Figure 1](#)

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX F. NOTICE OF APPLICATION FOR AUTHORITY
AUTHORIZING COMMERCIAL PIT/SOIL FARMING/RECYCLING
FACILITY**

[Figure 1](#)

[Figure 2](#)

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 30 Ok Reg 1033, eff 7-1-13; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX G. NOTICE OF HEARING FOR AUTHORITY AUTHORIZING
COMMERCIAL PIT/SOIL FARMING/RECYCLING FACILITY**

[Figure 1](#)

[Source: Amended at 9 Ok Reg 2323, eff 6-25-92; Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX H. NOTICE OF APPLICATION FOR DETERMINATION OF
ALLOWABLES**

[Figure 1](#)

[Source: Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

**APPENDIX I. NOTICE OF HEARING FOR DETERMINATION OF
ALLOWABLES**

[Figure 1](#)

[Source: Amended at 10 Ok Reg 2591, eff 6-25-93; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

APPENDIX J. CONSUMER SERVICES DOCKET NOTICE OF HEARING

[Figure 1](#)

[Source: Added at 11 Ok Reg 4623, eff 9-4-94 (emergency); Added at 12 Ok Reg 2005, eff 7-1-95; Revoked and reenacted at 17 Ok Reg 2299, eff 7-1-00; Revoked and reenacted at 34 Ok Reg 905, eff 9-11-17; Revoked and reenacted at 37 Ok Reg 1082, eff 10-1-20]

APPENDIX K. WITNESS IDENTIFICATION FORM

[Figure 1](#)

[Source: Added at 37 Ok Reg 1082, eff 10-1-20]

CHAPTER 10. OIL & GAS CONSERVATION

[Authority: 17 O.S., §§ 52 through 53.3, 180.10, and 500 through 525; 27A O.S., §§ 1-1-101 through 1-3-101; 29 O. S., §§ 7-401 and 7-401a; 40 O.S., § 141.2; 52 O.S., §§ 1 through 46.4, 51 through 67, 86.1 through 153, 231 through 257, 271 through 279, 287.1 through 287.15, 291 through 320.2, 471 through 477, 524 through 528, 551 through 558, and 570.1 through 614; 68 O.S., § 1357; and 82 O.S., § 1085.30]

[Source: Codified 12-31-91]

SUBCHAPTER 1. ADMINISTRATION

PART 1. GENERAL PROVISIONS

165:10-1-1. Purpose

The rules of this Chapter were promulgated in furtherance of the public policy and statutory laws of the State of Oklahoma to prevent the waste of oil and gas, to assure the greatest ultimate recovery from the State's reservoirs, to protect the correlative rights of all interest owners, and to prevent pollution.

165:10-1-2. Definitions

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

"Agent" means any person authorized by another person to act for him.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of exposure" means an area within a circle constructed with the point of escape of poisonous gas (hydrogen sulfide) as its center and the radius of exposure as its radius.

"Associated gas" means any gas produced from a Commission ordered combination oil and gas reservoir in which allowed rates of production are based upon volumetric withdrawals.

"BS&W" means basic sediment and water which is that portion of fluids and/or solids that settle in the bottom of storage tanks and/or treating vessels and is unsaleable to the first purchaser in its present form. BS&W usually consists of water, paraffin, sand, scale, rust, and other sediments.

"Barrel" means 42 (U.S.) gallons at 60 F at atmospheric pressure.

"Basic sediment pit" means a pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank.

"Blowout" means the uncontrolled escape of oil or gas, or both, from any formation.

"Blowout preventer" means a heavy casinghead control fitted with special gates and/or rams which can be closed around the drill pipe or which completely closes the top of the casing.

"Blowout preventer stack" means the assembly of well control equipment including preventers, spools, valves, and nipples connected to the top of the casinghead.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Carrier", or **"transporter"**, or **"taker"** means any person moving or transporting oil or gas away from a lease or from any common source of supply.

"Casing pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Choke manifold" means an assembly of valves, chokes, gauges, and lines used to control the rate of flow from the well when the blowout preventers are closed.

"Class II fluids" means substances which are brought to the surface during oil and gas drilling, completion, production and plugging, enhanced recovery, or natural gas storage operations.

"Closure" means the practice of dewatering, trenching, filling, leveling, terracing, and/or vegetating a pit site after its useful life is reached in order to restore or reclaim the site to near its original condition.

"Commercial disposal well" means a well where the operator receives and disposes of Class II fluids from multiple well owners/operators and receives compensation for these services and where the operator's primary business objective is to provide these services.

"Commercial pit" is a disposal facility which is authorized by Commission order and used for the disposal, storage, and handling substances or soils contaminated by deleterious substances produced, obtained, or used in connection with drilling and/or production operations. This does not include a disposal well pit.

"Commercial recycling facility" means a facility that is authorized by Commission order to recycle materials defined as deleterious substances in OAC 165:10-1-2. Such substances must undergo at least one treatment process and must be recycled into a marketable product for resale and/or have some beneficial use. This definition does not include the reuse of drilling mud that was previously utilized in drilling or plugging operations.

"Commercial soil farming" means the practice of soil farming or land applying drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling of a well or wells at an off-site location. Multiple applications to the same land are likely.

"Commission" means the Corporation Commission of the State of Oklahoma.

"Common source of supply" or **"pool"** means "that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid by a common accumulation of oil and/or gas; provided that, if any such area is underlaid, or appears from geological or other scientific data or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by strata of earth and not connected with each other, then such area shall, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply." [52. O.S.A. §86.1(c)].

"Completion/fracture/workover pit" means a pit used for temporary storage of spent completion fluids, frac fluids, workover fluids, drilling fluids, silt, debris, water, brine, oil scum, paraffin, or other deleterious substances which have been cleaned out of the wellbore of a well being completed, fractured, recompleted, or worked over.

"Condensate" means a liquid hydrocarbon which:

- (A) Was produced as a liquid at the surface,
- (B) Existed as gas in the reservoir, and

(C) Has an API gravity greater than or equal to fifty degrees, unless otherwise proven.

"Conductor casing" means a casing string which is often set and cemented at a shallow depth to support and protect the top of the borehole from erosion while circulating and drilling the surface casing hole.

"Conservation Division" means the Division of the Commission charged with the administration and enforcement of the rules of this Chapter.

"Contingency plan" is a written document which provides for an organized plan of action for alerting and protecting the public within an area of exposure following the accidental release of a potentially hazardous volume of poisonous gas such as hydrogen sulfide.

"Contractor" means any person who contracts with another person for the performance of prescribed work.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at an absolute pressure of 14.65 pounds per square inch and at a temperature of 60°F. Conversion of volumes to conform to standard conditions shall be made in accordance with Ideal Gas Laws corrected for deviation from Boyle's Law when the pressure at point of measurement is in excess of 200 pounds per square inch gauge.

"Date of completion" means:

(A) For an oil well, the date that the well first produces oil into the lease tanks through permanent wellhead equipment.

(B) For a gas well, the date of completion of a gas well is the date that gas is capable of being delivered to a pipeline purchaser.

(C) For a well, which does not produce either oil or gas, is the date on which attempts to obtain production from the well cease.

"Day" means a period of 24 consecutive hours. For reporting purposes, it shall be from 7:00 a.m. to 7:00 a.m. the following day.

"Deleterious substances" means any chemical, salt water, oil field brine, waste oil, waste emulsified oil, basic sediment or mud produced or used in the drilling, development, production, transportation, refining, and processing of oil, gas and/or brine mining.

"Design mud weight" means the planned drilling mud weight to be used. This mud weight is used in the design of the casing strings.

"Design wellhead pressure" means the maximum anticipated wellhead pressure which is expected to be experienced on the inside of the casing string and on wellhead equipment. This pressure is used to design the casing string and to select wellhead equipment with sufficient working pressure rating.

"Development" means any work which actively looks toward bringing in production, such as erecting rigs, building tankage, drilling wells, etc.

"Directional drilling" means intentional changing of the direction of the well from the vertical.

"Director of Conservation" means the person in official charge of the Conservation Division.

"Discharge" means the release or setting free by any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of substances.

"Distressed well" means a well authorized by Commission order to produce at an unrestricted rate in the interest of public safety due to technical difficulties which temporarily cannot be controlled.

"Diverter" means a device attached to the wellhead to close the vertical access and direct any flow into a line away from the rig. Diverters differ from

blowout preventers in that flow is not stopped but rather the flow path is redirected away from the rig.

"Duly authorized representative" means, for the purpose of underground injection well applications, that person or position having a responsibility for the underground injection well.

"Emergency pit" means a pit used for the storage of excessive or unanticipated amounts of fluids during an immediate emergency situation in the drilling or operation of a well, such as a well blowout or a pipeline rupture. This does not include a spill prevention structure required by local, state, or federal regulations.

"Enhanced recovery operation" means the introduction of fluid or energy into a common source of supply for the purpose of increasing the recovery of oil therefrom according to a plan which has been approved by the Commission after notice and hearing.

"Enhanced recovery well" means a well producing in an enhanced recovery operation in accordance with Commission order.

"Exchangeable Sodium Percentage (ESP)" is the relative amount of the sodium ion present on the soil surface, expressed as a percentage of the total Cation Exchange Capacity (CEC). Since the determination of CEC is time consuming and expensive, a practical and satisfactory correlation between the Sodium Adsorption Ratio (SAR) and ESP was established. The SAR is defined elsewhere in this Section. ESP can be estimated by the following empirical formula: $ESP = 100 \frac{(-0.0126 + 0.01475 \times SAR)}{1 + (-0.0126 + 0.01475 \times SAR)}$.

"Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" or in the definition of "treatable water", but which has been exempted according to the procedures in 165:5-7-28 and 165:10-5-14.

"Excess water" means water that occurs when storm water, meltwater, water derived from incoming product or other surface water sources accumulates on a facility and combines, blends or mixes with a deleterious substance.

"Facility" means, for the purposes of 165:10-21-15, any building(s), parts of a building, equipment, property, or vehicles that are actively engaged in the reuse, recycling, or ultimate destruction of deleterious substances pursuant to 68 O.S. Supp. 1986, §2357.14-§2357.20.

"Field" means the general area underlaid by one or more common sources of supply.

"Flare pit" means a pit which contains flare equipment and which is used for temporary storage of liquid hydrocarbons which are sent to the flare but are not burned due to equipment malfunction. Flare pits may be used in conjunction with tank batteries or wells.

"Flowing well" means any well from which oil or gas is produced naturally and without artificial lifting equipment.

"Fresh water strata" means a strata from which fresh water may be produced in economical quantities.

"Gas" means any petroleum hydrocarbon existing in the gaseous phase.

(A) Casinghead gas means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil.

(B) Dry gas or dry natural gas means any gas produced in which there are no appreciable hydrocarbon liquids recoverable by separation at the wellhead.

(C) Condensate gas means any gas which is produced with condensate as defined as "condensate".

"Gas allowable" or **"allowable gas"** means the amount of natural gas authorized to be produced from any well by order of the Commission or as provided by statute.

"Gas lift" means any method of lifting liquid to the surface by injecting gas into the well bore from which production is obtained.

"Gas repressuring" means the injection of gas into a common source of supply to restore or increase the gas energy of a reservoir.

"GOR (Gas/Oil Ratio)" means the ratio of the gas produced in standard cubic feet to one barrel of oil produced during any stated period. Condensate and load oil excepted under 165:10-13-6 shall not be considered as oil for purposes of determining GOR.

"Hardship well" means a well authorized by Commission order to produce at a specified rate because reasonable cause exists to expect that production below said rate would damage the well and cause waste.

"Hydraulic fracturing operations" means operations on a well wherein fluid is applied for the express purpose of initiating or propagating fractures in a target geologic formation.

"Hydrogen sulfide gas (H₂S)" means a toxic poisonous gas with a chemical composition of H₂S which is sometimes found mixed with and produced with fluids from oil and gas wells.

"Hydrologically sensitive area" means a principal bedrock aquifer, the recharge or potential recharge area of a principal bedrock aquifer, or an unconsolidated alluvium or terrace deposit, according to the Oklahoma Geological Survey "Maps Showing Principal Groundwater Resources and Recharge Areas in Oklahoma" or other maps approved by the Commission.

"Hydrostatic head" or **"hydrostatic pressure"** means the pressure which exists at any point in the wellbore due to the weight of the column of fluid or gas above that point.

"Illegal gas" means gas which has been produced within the State from any well or wells in violation of any rule, regulation, or order of the Commission, as distinguished from gas produced within the State not in violation of any such rule, regulation, or order which is "legal gas".

"Illegal oil" means oil which has been produced within the State from any well or wells in violation of any rule, regulation or order of the Commission, as distinguished from oil produced within the State not in violation of any such rule, regulation, or order which is "legal oil".

"Intermediate casing" means the casing string or strings run after setting the surface casing and prior to setting the production string or liner.

"Kick" means the intrusion of formation liquids or gas that results in an increase in circulation pit volume. Without corrective measures, this condition can result in a blowout.

"Land application" is the application of deleterious substances and/or soils contaminated by deleterious substances to the land for the purpose of disposal or land treatment; also known as soil farming.

"Lease allowable" means the total of the allowables of the individual wells on the lease.

"Liner" means a length of casing used downhole as an extension to a previously installed casing string to case the hole for further drilling operations and/or for producing operations.

"Meter" means an instrument for measuring and indicating or recording the volumes of gases or liquids.

"Mud" means any mixture of water and clay or other material as the term is commonly used in the industry.

"Multi-well system" means two or more wells that have intersecting wellbores or laterals.

"Multiple zone completion" means the completion of any well so as to permit the production from more than one common source of supply, with such common sources of supply completely segregated.

"Noncommercial pit" means an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of deleterious substances or soils contaminated by deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not include a disposal well pit.

"Normal pressure" means a formation pore pressure, proportional to depth, which is roughly equal to the hydrostatic pressure gradient of a column of salt water (.465 psi/ft).

"Off-site reserve pit" means a pit located off-site which is used for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Oil" or **"crude oil"**, means, for purposes of these regulations, any petroleum hydrocarbon, except condensate, produced from a well in liquid form by ordinary production methods.

"Oil allowable" or **"allowable oil"** means the amount of oil authorized to be produced from any well by order of the Commission.

"Operator" means the person who is duly authorized and in charge of the development of a lease or the operation of a producing property.

"Overage" means the oil or gas delivered to a carrier, transporter, or taker in excess of the allowable set by the Commission for any given period.

"Owner" means the person or persons who have the right to drill into and to produce from any common source of supply, and to appropriate the production either for himself, or for himself and others.

"Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, and shall include the plural.

"Plug" means the closing off, in a manner prescribed by the Commission, of all oil, gas, and waterbearing formations in any producing or nonproducing wellbore before such well is abandoned.

"Pollution" means the contamination of fresh water or soil, either surface or subsurface, by salt water, mineral brines, waste oil, oil, gas, and/or other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining, transporting, or processing of oil or gas within the State of Oklahoma.

"Pool" See "common source of supply".

"Potential" means the properly determined capacity of a well to produce oil or gas, or both, under conditions prescribed by the Commission.

"Primary well" means a wellbore that, as part of a multi-well system, serves as the conduit through which oil and gas is produced to the surface.

"Producer" See "Operator" or "Owner".

"Production casing" means the casing string set above or through the producing zone of a well which serves the purpose of confining and/or producing the well production fluids.

"Productivity index" means the daily production of oil in barrels per unit pressure differential between the static reservoir pressure and the stabilized flowing pressure during flow at a stated rate.

"Proration period" means:

(A) The proration period for any well, other than an unallocated gas well, shall be one calendar month which shall begin at 7 a.m. on the first day of such month and end at 7 a.m. on the first day of the next succeeding month unless otherwise specified by order of the Commission.

(B) The proration period for any unallocated gas well shall be one calendar year which shall begin at 7:00 a.m. the first day of such year and end at 7:00 a.m. on the first day of the next succeeding year unless otherwise specified by order of the Commission.

"Public area" means a dwelling place, a business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can reasonably be expected to be populated by humans.

"Public street" or **"road"** means any federal, state, county, or municipal street or road owned or maintained for public access or use.

"Public water supply well(s)" or **"public water well(s)"** means wells in a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, and which wells are identified in a database maintained by the Oklahoma Department of Environmental Quality.

"Purchaser" or **"transporter"** means any person who acting alone or jointly with any person or persons, via his own, affiliated or designated carrier, transporter, or taker, shall directly or indirectly purchase, take, or transport by any means whatsoever or otherwise remove from any lease, oil or gas, and/or other hydrocarbons produced from any common source of supply in this State, excepting royalty portions from leases owned by that person.

"Radius of exposure" means that radius constructed with the point of escape of poisonous (hydrogen sulfide) gas as its starting point and its length calculated by use of the Pasquill-Gifford equations.

"Reclaimed water" means wastewater from municipal wastewater treatment and/or public water supply treatment plants that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.

"Reclaimer" or **"reclamation plant"** includes any person licensed by the Oklahoma Tax Commission pursuant to 68 O.S. §1015.1 who reclaims or salvages or in any way removes or extracts oil from waste products associated with the production, storage, or transportation of oil including, but not limited to BS&W, tank bottoms, pit and waste oil, and/or waste oil residue.

"Recomplete" or **"recompletion"** means any operation to:

(A) Convert an existing well from an injection well or disposal well, to a producing well, or

(B) Add or change common sources of supply in an existing well.

"Recycling" is the reuse, processing, reclaiming, treating, neutralizing, or refining of materials and by-products into a product of beneficial use which, if discarded, would be deleterious substances.

"Recycling/reuse pit" means a pit which is used for the storage and recycling or reuse of deleterious substances, is located off-site, and is operated by the generator of the waste.

"Re-enter" or **"re-entry"** is the act of entering a plugged well for the purpose of utilizing said well for the production of oil or gas, for the disposal of fluids therein, for a service well, or for the salvaging of tubing or casing therefrom.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:10 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Remediation pit" means a pit which is used for the handling, storage, or disposal of deleterious substances and/or soils contaminated by deleterious substances which are relocated to the pit for the purpose of remediating a site which is known to be or suspected to be causing pollution.

"Reserve pit" or **"circulation pit"** means a pit located either on-site or off-site which is used in conjunction with a drilling rig for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Reservoir" See "common source of supply".

"Reservoir pressure" means the static or stabilized pressure in pounds per square inch existing at the face of the formation of an oil or gas well.

"Reuse" is the introduction (or reintroduction) into an industrial, manufacturing, or disposal process of a material which would otherwise be classified as a deleterious substance. A material will be considered "used or reused" if it is either:

(A) Employed as an ingredient (including use as an intermediate) in an industrial, manufacturing, or disposal process to make or recover a product.

(B) Employed in a particular function or application as an effective substitute for a commercial product or non-deleterious substance.

"Rotating head" means a rotating, pressure sealing device used in drilling operations utilizing air, gas, foam, or any other drilling fluid whose hydrostatic pressure is less than the formation pressure.

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

"Separator" means any apparatus for separating oil, gas, and water as they are produced from a well at the surface.

"Service well" means a well that, as part of a multi-well system, is used for drilling laterals, stimulation, or maintenance, or functions in any capacity other than as a conduit to the surface for the production of oil and gas.

"Slick spot" means a small area of soil having a puddled, crusted, or smooth surface and an excess of exchangeable sodium. The soil is generally silty or clayey, is slippery when wet, and is low in productivity.

"Slit trench" means a pit or bermed area at the drilling site used for the temporary storage of drilling fluids and/or cuttings to provide access for equipment to remove the contents off site.

"Sodium Adsorption Ratio (SAR)" means the index which indicates the relative abundance of sodium ions in solution as compared to the combined concentration of calcium and magnesium ions. It is calculated as follows: $SAR = (Na \text{ ppm}/23.0) / \text{sq. root of } [\{ (Ca \text{ ppm}/20.02) + (Mg \text{ ppm}/12.16) \} / 2]$ where Na=Sodium, Ca=Calcium, and Mg=Magnesium.

"Soil farming" means the application of oilfield drilling or produced wastes to the soil for the purpose of disposing of the waste without being a detriment to water or land; also known as land application.

"Spill containment pit" mean a permanent pit which is used for the emergency storage of oil and/or saltwater spilled as a result of any equipment malfunction.

"Subnormal pressure" means the formation pore pressure, proportional to depth, which is less than a hydrostatic pressure gradient of .465 psi/ft.

"Sulfide stress cracking" means the cracking phenomenon which is the result of corrosive action of hydrogen sulfide on susceptible metals under stress.

"Surface casing" means the first casing string designed and run to protect the treatable water formations and/or control fluid or gas flow from the well.

"Tank bottoms" means the liquids and/or solids in that portion of a storage facility below the sales line or connection that are unsaleable to the crude oil first purchaser in its present form. Tank bottoms may consist of a combination of several elements including, but not limited to, oil, BS&W, and treating fluids.

"Treatable water" means, for purposes of setting surface casing and other casing strings, subsurface water in its natural state, useful or potentially useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal, and recreational purposes, and which will support aquatic life, and contains less than 10,000 mg/liter total dissolved solids or less than 5,000 ppm chlorides. Treatable water includes, but is not limited to, fresh water.

"Trenching" means the practice of constructing trenches in or adjacent to a pit for the purpose of relocating all or a portion of the solids so as to facilitate closure.

"Truck wash pit" means a pit used for the temporary storage of fluids generated from the washing or cleaning of a motor vehicle, trailer or container used to transport or store deleterious substances.

"Ultimate destruction" means the treatment of a deleterious substance such that both its weight and volume remaining for disposal have been substantially reduced, and there is no demonstrated process or technology commercially available to further reduce its weight and volume and remove or reduce its harmful properties, if any. For the purposes of demonstrating a substantial reduction in weight and volume, any aqueous portion separated from the balance of a waste that meets drinking water standards or is evaporated into the ambient air shall count toward the weight and volume reduction.

"Underage" means the volume of allowable oil or gas not actually delivered to a carrier, transporter, or taker during any given proration period.

"Underground Source of Drinking Water (USDW)" means an aquifer or its portion which:

- (A) Supplies any public water system; or
- (B) Contains a sufficient quantity of ground water to supply a public water system; and
 - (i) Currently supplies drinking water for human consumption; or
 - (ii) Contains fewer than 10,000 mg/l total dissolved solids; and
- (C) Is not an exempted aquifer.

"Unit operations" means a unit consisting of a portion of a lease, a lease, or more than one lease or portions thereof which covers contiguous lands containing one or more common sources of supply which has been approved by Commission order as a unit for the purpose of unitized management, after notice and hearing.

"Vacuum" means pressure below the prevailing pressure of the atmosphere.

"Waste" means:

(A) As applied to the production of oil, in addition to its ordinary meaning, "shall include economic waste, underground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands." [52 O.S.A., 86.2]

(B) As applied to gas, in addition to its ordinary meaning, shall include economic waste; "the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply; the inefficient or wasteful utilization of gas in the operation of gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing, or releasing, directly or indirectly, into the open air, of gas from well productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply." [52 O.S.A. §86.3]

(C) The use of gas for the manufacture of carbon black or similar products predominately carbon, except as specifically authorized by the Commission, shall constitute waste.

(D) The flaring of tail gas at gasoline, pressure maintenance, or recycling plants where a market is available.

"Waste oil" shall include, but not be limited to, crude oil or other hydrocarbons used or produced in the process of drilling for, developing, producing, or processing oil or gas from wells, oil retained on cuttings as a result of the use of oil-based drilling muds, or any residue from any oil storage facility on a producing lease or on a commercial disposal operation or pit. The term "waste oil" shall not include any refined hydrocarbons to which lead has been added.

"Waste oil residue" means that portion of waste oil remaining after treatment and after the saleable liquids and water have been extracted. Waste oil residue is a type of waste oil.

"Well log" or **"well record"** means a systematic, detailed and correct record of formations encountered in the drilling of a well.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 16 Ok Reg 842, eff 1-5-99 (emergency); Amended at 16 Ok Reg 2190, eff 7-1-99; Amended at 17 Ok Reg 1860, eff 7-1-00; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-

165:10-1-3. Scope of rules

All rules of general application in this Chapter promulgated to prevent waste, assure the greatest ultimate recovery from the reservoirs of this state, protect the correlative rights of all interests, and to prevent pollution shall be effective throughout the State of Oklahoma and be in force in all pools except as amended, modified, altered, or enlarged in specific individual pools by orders now in effect or hereafter issued by the Commission.

165:10-1-4. Citation effective date

(a) These rules shall be cited as OAC Title 165 Chapter 10 (OAC 165:10).

(b) The effective date of the rules of this Chapter is as set out below:

- (1) Order No. 937 - Effective 06/16/15
- (2) Order No. 1299 - Effective 08/20/17
- (3) Order No. 1986 - Effective 01/05/22
- (4) Order No. 6251 - Effective 04/12/33
- (5) Order No. 6252 - Effective 04/15/33
- (6) Order No. 6393 - Effective 07/19/33
- (7) Order No. 6394 - Effective 07/20/33
- (8) Order No. 7263 - Effective 04/10/34
- (9) Order No. 8229 - Effective 10/31/33
- (10) Order No. 17528 - Effective 01/24/45
- (11) Order No. 19334 - Effective 10/24/46
- (12) Order No. 29232 - Effective 10/06/54
- (13) Order No. 30712 - Effective 09/09/55
- (14) Order No. 44297 - Effective 04/01/61
- (15) Order No. 47397 - Effective 12/01/61
- (16) Order No. 53568 - Effective 12/08/63
- (17) Order No. 53749 - Effective 01/03/64
- (18) Order No. 62481 - Effective 05/11/66
- (19) Order No. 62631 - Effective 06/01/66
- (20) Order No. 63817 - Effective 10/04/66
- (21) Order No. 64203 - Effective 11/10/66
- (22) Order No. 64207 - Effective 12/01/66
- (23) Order No. 65747 - Effective 05/05/67
- (24) Order No. 66006 - Effective 06/08/67
- (25) Order No. 66778 - Effective 09/05/67
- (26) Order No. 67113 - Effective 10/09/67
- (27) Order No. 67379 - Effective 11/06/67
- (28) Order No. 69103 - Effective 06/01/68
- (29) Order No. 69104 - Effective 06/01/68
- (30) Order No. 69340 - Effective 07/01/68
- (31) Order No. 70704 - Effective 01/03/69
- (32) Order No. 75248 - Effective 07/01/69
- (33) Order No. 77627 - Effective 01/01/70
- (34) Order No. 78830 - Effective 01/01/70
- (35) Order No. 78831 - Effective 01/01/70
- (36) Order No. 79460 - Effective 04/01/70
- (37) Order No. 79461 - Effective 04/01/70
- (38) Order No. 80401 - Effective 06/01/70

- (39) Order No. 80402 - Effective 06/01/70
- (40) Order No. 81221 - Effective 08/01/70
- (41) Order No. 81222 - Effective 08/01/70
- (42) Order No. 83168 - Effective 01-01-71
- (43) Order No. 84223 - Effective 04-01-71
- (44) Order No. 84224 - Effective 04-01-71
- (45) Order No. 84318 - Effective 03-29-71
- (46) Order No. 85138 - Effective 06-01-71
- (47) Order No. 85139 - Effective 06-01-71
- (48) Order No. 87730 - Effective 01-01-72
- (49) Order No. 87829 - Effective 01-01-72
- (50) Order No. 93381 - Effective 10-05-72
- (51) Order No. 93382 - Effective 10-05-72
- (52) Order No. 94418 - Effective 01-01-73
- (53) Order No. 96671 - Effective 04-01-73
- (54) Order No. 87829 - Effective 01-01-72
- (55) Order No. 94418 - Effective 01-01-73
- (56) Order No. 102096 - Effective 01-01-74
- (57) Order No. 109595 - Effective 01-01-75
- (58) Order No. 117899 - Effective 03-01-76
- (59) Order No. 128534 - Effective 03-01-77
- (60) Order No. 128781 - Effective 03-01-77
- (61) Order No. 138348 - Effective 03-01-78
- (62) Order No. 151077 - Effective 03-23-79
- (63) Order No. 161968 - Effective 01-03-80
- (64) Order No. 164345 - Effective 03-17-80
- (65) Order No. 164346 - Effective 02-14-80
- (66) Order No. 164347 - Effective 02-14-80
- (67) Order No. 165935 - Effective 04-01-80
- (68) Order No. 185407 - Effective 03-09-81
- (69) Order No. 185890 - Effective 03-16-81
- (70) Order No. 211505 - Effective 03-30-82
- (71) Order No. 228675 - Effective 01-01-83
- (72) Order No. 230515 - Effective 01-01-83
- (73) Order No. 230781 - Effective 01-01-83
- (74) Order No. 246797 - Effective 01-01-84
- (75) Order No. 250273 - Effective 01-01-84
- (76) Order No. 250466 - Effective 01-01-84
- (77) Order No. 260734 - Effective 07-01-84
- (78) Order No. 290210 - Effective 01-09-86
- (79) Order No. 292212 - Effective 02-10-86
- (80) Order No. 299185 - Effective 06-12-86
- (81) Order No. 302126 - Effective 10-08-86
- (82) Order No. 303650 - Effective 10-02-86
- (83) Order No. 304257 - Effective 10-16-86
- (84) Order No. 305211 - Effective 11-07-86
- (85) Order No. 311872 - Effective 05-06-87
- (86) Order No. 312391 - Effective 05-14-87
- (87) Order No. 310755 - Effective 06-01-87
- (88) Order No. 313445 - Effective 06-12-87
- (89) Order No. 313446 - Effective 07-09-87

- (90) Order No. 313660 - Effective 06-17-87
- (91) Order No. 313932 - Effective 06-25-87
- (92) Order No. 314001 - Effective 06-27-87
- (93) Order No. 313446 - Effective 07-09-87
- (94) Order No. 315275 - Effective 08-19-87
- (95) Order No. 320171 - Effective 12-21-87
- (96) Order No. 320741 - Effective 01-08-88
- (97) Order No. 320742 - Effective 01-08-88
- (98) Order No. 321123 - Effective 01-21-88
- (99) Order No. 323847 - Effective 05-01-88
- (100) Order No. 325144 - Effective 05-02-88
- (101) Order No. 326275 - Effective 06-27-88
- (102) Order No. 326343 - Effective 06-01-88
- (103) Order No. 326344 - Effective 06-01-88
- (104) Order No. 327514 - Effective 07-01-88
- (105) Order No. 327515 - Effective 07-01-88
- (106) Order No. 329661 - Effective 08-26-88
- (107) Order No. 329662 - Effective 08-26-88
- (108) Order No. 329663 - Effective 08-26-88
- (109) Order No. 334130 - Effective 01-04-89
- (110) Order No. 337475 - Effective 03-31-89
- (111) Order No. 337476 - Effective 03-31-89
- (112) Order No. 339860 - Effective 05-07-89
- (113) Order No. 341102 - Effective 08-25-89
- (114) Order No. 341103 - Effective 08-14-89
- (115) Order No. 346071 - Effective 03-29-90
- (116) Order No. 346107 - Effective 03-30-90
- (117) Order No. 355458 - Effective 03-20-91
- (118) Order No. 355461 - Effective 03-20-91
- (119) Order No. 355463 - Effective 03-20-91
- (120) Order No. 355471 - Effective 03-21-91
- (121) Order No. 364345 - Effective 06-25-92
- (122) Order No. 364382 - Effective 06-25-92
- (123) Order No. 368110 - Effective 08-28-92
- (124) Order No. 372796 - Effective 06-25-93
- (125) Order No. 381632 - Effective 07-11-94
- (126) Order No. 381755 - Effective 07-11-94
- (127) Order No. 387223 - Effective 10-20-94
- (128) RM No. 950000023 - Effective 07-01-96
- (129) RM No. 950000024 - Effective 07-01-96
- (130) RM No. 950000025 - Effective 07-11-96
- (131) RM No. 960000008 - Effective 07-01-96
- (132) RM No. 960000009 - Effective 07-01-96
- (133) RM No. 960000018 - Effective 10-15-96
- (134) RM No. 970000002 - Effective 07-01-97
- (135) RM No. 970000011 - Effective 07-01-98
- (136) RM No. 970000025 - Effective 07-11-98
- (137) RM No. 980000013 - Effective 07-15-98
- (138) RM No. 980000016 Emergency, - Effective 03-30-98
- (139) RM No. 980000017 Emergency, - Effective 03-30-98
- (140) RM No. 980000020 Emergency, - Effective 01-05-99

- (141) RM No. 980000033 - Effective 07-01-99
- (142) RM No. 980000034 - Effective 07-01-99
- (143) RM No. 980000035 - Effective 07-01-99
- (144) RM No. 990000010 - Emergency, - Effective 12-28-99
- (145) RM No. 200000002 - Effective 07-01-00
- (146) RM No. 200000009 - Emergency, - Effective 11-02-00
- (147) RM No. 200000009 - Permanent, - Effective 05-11-01
- (148) RM No. 200100005 - Effective 07-01-01
- (149) RM No. 200100006 - Effective 07-01-01
- (150) RM No. 200100009 - Emergency, - Effective 01-14-02
- (151) RM No. 200200017 - Effective 07-01-02
- (152) RM No. 200300001 - Effective 07-01-03
- (153) RM No. 200400006 - Effective 07-01-04
- (154) RM No. 200600012 - Effective 07-01-06
- (155) RM No. 200600013 - Emergency, - Effective 10-04-06
- (156) RM No. 200700004 - Effective 07-01-07
- (157) RM No. 200800003 - Effective 07-11-08
- (158) RM No. 200900001 - Effective 07-11-09
- (159) RM No. 201000003 - Effective 07-11-10
- (160) RM No. 201100004 - Emergency, - Effective 05-19-11
- (161) RM No. 201000007 - Effective 07-11-11
- (162) RM No. 201200005 - Effective 07-01-12
- (163) RM No. 201300001 - Effective 07-01-13
- (164) RM No. 201400002 - Effective 09-12-14
- (165) RM No. 201500001 - Effective 08-27-15
- (166) RM No. 201600001 - Effective 08-25-16
- (167) RM No. 201600019 - Effective 09-11-17
- (168) RM No. 201800002 - Effective 09-14-18
- (169) RM No. 201900002 - Effective 08-01-19

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 19 Ok Reg 1947, eff 7-1-02; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-1-5. Conservation Division [RESERVED]

165:10-1-6. Duties and authority of the Conservation Division

(a) It shall be the duty of the Conservation Division to administer and enforce the statutes of this State and the rules, regulations, and orders of the Commission relating to the conservation of oil and gas and the prevention of pollution in connection with the exploration, drilling, producing, transporting, purchasing, processing, and storage of oil and gas. A schedule of fines listed in this Chapter is in Appendix E.

(b) The Conservation Division shall have the right at all times to go upon and inspect any oil and gas properties, pipelines, tank farms, refineries, and other processing plants and pump stations for the purpose of making any investigations or tests to ascertain whether the rules, regulations, and orders of the Commission are being complied with, and shall report to the Commission any violation thereof.

(c) The Conservation Division may require the testing or retesting of any oil, gas, injection, or disposal well upon 48-hour notice. Until the test is completed or

excused, no allowable will be assigned the well and the purchaser or taker of oil or gas from such well shall not run oil or gas until authorized by the Conservation Division.

(d) The Director of the Conservation Division may administratively reclassify a well according to the gas-oil ratio as specified in 165:10-13-2 if the retesting of a well pursuant to this Section indicates a change in the original gas-oil ratio. This administrative reclassification shall only be used for allowable or priority purposes pursuant to 165:10-17-12. The operator shall be notified in writing by the Conservation Division within 15 days of the effective date of any change in classification.

(e) If the operator of the well which has been reclassified objects to said reclassification, he may file a written objection with the Conservation Division within 15 days of receiving notice of the reclassification. At the same time that the objection is filed, the operator shall file an application and notice setting cause for hearing with the Court Clerk Commission. The notice shall be published one time at least 15 days prior to the hearing in a newspaper of general circulation published in Oklahoma County and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(f) The Conservation Division shall have access to all well records, wherever located. All companies, operators, drilling contractors, drillers, service companies, or other persons shall permit any authorized employee of the Commission to come upon any lease or property operated or controlled by them, and to inspect the records of wells; provided, that information so obtained shall be confidential. Any person who attempts, by means of any threat or violence, to deter or prevent any authorized employee of the Commission from performing any duty hereunder shall be prosecuted to the fullest extent of the law.

(g) Upon request of the Conservation Division, service companies or other persons shall furnish and file reports and records showing gun perforating, hydraulic fracturing, cementing, shooting, chemical treatment, and all other service operations on any well.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-1-7. Prescribed forms

(a) Required Conservation Division forms may be submitted to the Commission on forms supplied by the Commission or on xerographic copies of Commission forms or by operator computer generated forms. Operator computer generated forms will be printed from Commission designed files made available to operators via the electronic Bulletin Board Service (BBS), Internet (World Wide Web) or magnetic disk. Operator computer generated forms must contain the exact language and wording of Commission forms. Any alteration of Commission forms language and wording may subject the signature party and/or operator to perjury charges.

(b) The following Conservation Division forms are prescribed for filing purposes:

(1) **Form 1000 - Notice of Intention to Drill application:** Operator shall file Form 1000 before any oil, gas, injection, disposal, service well or stratigraphic test hole is drilled, recompleted, re-entered or deepened. Such notice shall include the name(s) and address(es) of the surface owner(s) of the land upon which the well is to be located. The Commission shall process the application and mail a copy of the permit to drill or re-enter to the surface owner(s). Upon approval, the operator will have eighteen months to commence the permitted operations. A six month extension may

be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if written request for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted. A copy of the approved permit shall be posted at the well site. [Reference 165:10-3-1 and 165:10-1-25 and OAC 165:10-7-31]

(2) **Form 1000B - Application to Drill Deep Anode Groundbeds:** Form 1000B is required to be filed for wells drilled for deep anode groundbeds as required by OAC 165:10-7-14. The purpose of Commission Form 1000B is to ensure groundwater is being protected in construction of the deep anode groundbed. [Reference 165:10-7-14]

(3) **Form 1000S - Application for seismic operations:** A permit for seismic operations must be obtained. The applicant must post a \$50,000 bond with the Surety Department in the Oil and Gas Conservation Division. The application must also be accompanied with a pre-plat of the project area. [Reference 165:10-7-31]

(4) **Form 1001 - Notification of Intention to Plug:** Operator shall file notice on Form 1001 five days prior to plugging operations and shall notify the appropriate Conservation Division District Office before work is started. If the well is an exhausted producer, list OTC assigned county and lease number. If the Intent to Plug is cancelled, the operator shall notify the Commission by letter. [Reference 165:10-11-4 and 165:10-11-6]

(5) **Form 1001A - Notification of Spudding of New Well:** Operator shall file a Form 1001A with the Conservation Division within 14 days of spudding a new well or reentering a previously plugged well. [Reference 165:10-3-2]

(6) **Form 1002A - Well completion report:** Operator shall furnish a complete well record on Form 1002A within 60 days after completion of operations to drill, recomplete, re-enter, or convert to injection or disposal well. Effective for both dry hole and/or producer. If well is an oil or gas producer, list OTC assigned county and lease number. Gas-oil ratio must be shown when Form 1002A is filed. List on a 24-hour basis both oil and gas. [Reference 165:10-3-25]

(A) **Oil well:** GOR less than 15,000:1

(B) **Gas well:** GOR 15,000:1 or more

(7) **Form 1002B - Confidential Filing of Electric Logs:** Operator shall file Form 1002B within 60 days from the earlier of the date of completion of the well or the date of the running of the last formation evaluation type wire line log to hold logs confidential for one year period. Optional extension for six months may be requested by operator in writing to the Technical Services Department of the Conservation Division. [Reference 165:10-3-26]

(8) **Form 1002C - Cementing Report to accompany Well Completion Report:** Operator shall file Form 1002C with the Well Completion Report (Form 1002A) describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs. The form shall be completed and signed by employees of both the operator and the cementing company. [Reference 165:10-3-4(i)]

(9) **Form 1003 - Plugging Record:** Operator will file Form 1003 within 30 days after plugging operations are completed. The Form 1003 is to be mailed or e-mailed to the appropriate Conservation Division District Office.

Form 1003 shall be completed and signed by employees of both the operator and the cementer. If a depleted producer, list OTC assigned county and lease number. [Reference 165:10-11-6 and 165:10-11-7]

(10) Form 1003A - Notice of Temporary Exemption from Well

Plugging: Form 1003A shall be filed with the appropriate Conservation Division District Office. [Reference 165:10-11-3 and 165:10-11-9]

(11) Form 1004 - Monthly Report of Unallocated Natural Gas Wells

Production: Each operator of the required meter under 165:10-17-5 shall file a monthly well report on Form 1004 with the Commission of all natural gas volumes transferred through the meter for the preceding month, by the last day of the month following such transfer. List formation name plus OTC assigned county and lease number. If more than one meter, the operator of each shall file this form. [Reference 165:10-1-47]

(12) Form 1004B - Notice of Gas Purchase Curtailments: In any month wherein a first purchaser or first taker has a market demand/supply imbalance and must curtail purchases or takes in compliance with 165:10-17-12, Form 1004B shall be filed by said first purchaser or first taker with the Conservation Division. [Reference 165:10-17-12]

(13) Form 1005 - Monthly Report of Purchasers (Gas: subject to field rules): [Reference 165:10-1-47 and 165:10-15-1]

(A) **GAS:** Each operator of the required meter or meters under 165:10-17-5 shall complete computer-generated Form 1005, and return a copy to the Conservation Division indicating the gas amounts transferred through the meter for the preceding month on allocated and special allocated gas wells.

(B) **OIL:** Each first purchaser, or first taker of oil from wells and projects which are capable of producing in excess of their maximum assigned allowables, must complete computer-generated Form 1005 and return a copy to the Conservation Division indicating the amount of oil taken from each well or unit for the preceding month.

(14) Form 1006 - Surety bond for oil, gas, injection, or disposal wells:

Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a surety bond (\$25,000.00) or other present alternate surety, Form 1006A or 1006C. Operator must file the original copy only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. [Reference 165:10-1-10 and 165:10-1-12]

(15) Form 1006A - Financial Statement for oil, gas, injection or disposal wells:

Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a verifiable financial statement (minimum net worth \$50,000.00 within the State of Oklahoma) or other present alternate surety, Form 1006 or 1006C. Operator must file an original copy on Form 1006A, which must be updated annually from the last filing date. [Reference 165:10-1-10 and 165:10-1-11]

(16) Form 1006B - Operator Agreement to plug oil, gas, and service wells within the State of Oklahoma:

Operator shall agree to plug well(s) in compliance with the Commission rules. This agreement must accompany the operator's elective choice of surety (Form 1006, 1006A, or 1006C). The operator is required to file a Form 1006B with the Conservation Division once every twelve (12) months. [Reference 165:10-1-10, 165:10-1-11,

165:10-1-12, 165:10-1-13, and 165:10-1-14]

(17) **Form 1006BR - Recycling, Reclaiming Operator's Agreement to Close the Reclaiming Facility:** Prior to operating a recycling or reclaiming facility the operator shall file an agreement to close the facility in compliance with OCC rules. This agreement must accompany the application for certification (Form 1020A). [Reference 165:10-8-5]

(18) **Form 1006BR-A - Operator agreement to close hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file agreements with the Commission concerning closure of such facilities. [Reference 165:10-8-5]

(19) **Form 1006BR-B - Surety for closure of hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file surety with the Commission for closure and reclamation of such facilities. [Reference 165:10-8-5]

(20) **Form 1006BT-A - Operator's agreement to close, reclaim and remediate truck wash pit:** Operators of truck wash pits are required to file agreements with the Commission regarding closure of such pits. [Reference 165:10-7-33]

(21) **Form 1006BT-B - Surety for closure of truck wash pits:** Operators of truck wash pits are required to file surety with the Commission for closure, reclamation and remediation of such pits. [Reference 165:10-7-33]

(22) **Form 1006C - Irrevocable commercial letter of credit:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division an irrevocable commercial letter of credit (\$25,000.00) or other present alternate surety, Form 1006A or 1006. Operator must file the original copy with the bank seal affixed. A letter of credit must be valid for at least a one year period. [Reference 165:10-1-10 and 165:10-1-13]

(23) **Form 1006D - Affidavit of well plugging costs:** An operator may submit an affidavit on Form 1006D to the Conservation Division concerning the operator's statewide plugging liability. The Commission may approve Category B surety in an amount less than \$25,000.00 for an operator whose statewide plugging liability is less than \$25,000.00. The Form 1006D must be properly executed by a duly licensed pipe pulling and well plugging company and such Form must be acceptable to the Conservation Division. [Reference 165:10-1-10, 165:10-1-12, 165:10-1-13 and 165:10-1-14]

(24) **Form 1006S - Operator's agreement to plug seismic shot holes within the State of Oklahoma:** Prior to commencing seismic operations the operator shall file an agreement to plug shot holes in accordance with Commission rules. This agreement must accompany the financial surety guarantee. [Reference 165:10-7-31]

(25) **Form 1006SB - Surety bond for seismic shot hole plugging within the State of Oklahoma:** Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field must secure a bond in the amount of \$50,000.00. Seismic companies must file the original Form 1006SB only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. Form 1000S shall be filed with the bond. [Reference 165:10-11-6 and 165:10-7-31]

(26) **Form 1010 - Application for Cancelled Underage:** Operator shall file, within 30 days for oil, and six months for special allocated and allocated gas from the date of cancellation, to reinstate cancelled underage; stating reason for this request and notifying all offset operators. List OTC assigned county and lease number. [Reference 165:10-13-10 and 165:10-17-9]

(27) **Form 1011 - Multi-Zone lease runs report:** If there are two or more common sources of supply that are produced through a well or wells on the same lease or drilling and spacing unit and that are not commingled, production from each common source of supply shall be separately produced, measured and/or accounted for to the Commission. If one or more of the zones produced are classified as oil for allowable purposes, the operator is required to submit to the Conservation Division a multi-zone report on Form 1011 showing the production from each oil-bearing common source of supply on or before the last day of the succeeding proration period. [Reference 165:10-13-7]

(28) **Form 1012 - Fluid Injection Report:** Operators shall file Form 1012 with the Conservation Division by January 31 of each year covering the previous calendar year (January 1 through December 31) on all enhanced recovery projects, pressure maintenance projects, noncommercial disposal wells, LPG storage wells, authorized waterfloods and gas repressuring projects for each UIC well. The completed form will list well identification including API number, the Commission order or permit number, injection volume and pressure, etc., as required on the form. No UIC well is to be operated for injection or disposal unless the Form 1012 is filed by the above date. [Reference 165:10-5-7].

(29) **Form 1012C - Commercial disposal well fluid disposal report:** Operators of commercial disposal wells shall file Form 1012C with the Conservation Division by January 31 and July 31 of each year for the previous six-month period. The completed form will list well identification including API number, the Commission order or permit number, disposal volume and pressure, etc. as required on the form. No commercial disposal well is to be operated unless the Form 1012C is filed by the above dates. [Reference 165:10-5-7].

(30) **Form 1012D - Daily volume and pressure report for disposal wells within areas of interest:** Operators of wells authorized for disposal within areas of interest designated by the Oil and Gas Conservation Division shall submit Form 1012D containing daily volumes and pressures to the Manager of the Pollution Abatement Department at a minimum on a weekly basis or as designated by such Manager. [Reference 165:10-5-7]

(31) **Form 1013 - Application for adjusting an allowable for an Excessive Water Exemption or Reservoir Dewatering Oil Spacing unit:** An operator in an unallocated oil pool may be permitted to produce at a full capacity allowable rate, provided that the water- oil ratio at the well is greater than or equal to 3:1 as an excessive water exemption. To qualify for the reservoir dewatering oil spacing unit allowable shown on Appendix J, the operator must provide data to show that the water - oil ratio is greater than 1:1. The operator shall submit a production test on Form 1013 to the Conservation Division. [Reference 165:10-15-1, 165:10-15-16, 165:10-15-17 and 165:10-15-18].

(32) Form 1014 - Application for Permit to Use Earthen Pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with commercial disposal well surface facility: The operator of a proposed off-site reserve pit, recycling/reuse pit, spill containment pit, remediation pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with a commercial disposal well surface facility must submit Form 1014 to the appropriate Conservation Division District Office for approval before constructing or using the pit. [Reference 165:10-7-16, 165:10-7-20 and 165:10-9-3]

(33) Form 1014A - Commercial facility report: A report that operators of hydrocarbon recycling/reclaiming facilities, commercial pits, commercial soil farming sites and commercial recycling facilities are required to submit to the Manager of Pollution Abatement. [Reference 165:10-8-8, 165:10-9-1, 165:10-9-2 and 165:10-9-4]

(34) Form 1014C - Chain of custody record/analysis request: Form 1014C is available for use by Commission personnel when samples are collected for submission to and analysis by a laboratory certified by the Oklahoma Water Resources Board or operated by the State of Oklahoma.

(35) Form 1014CA - Compliance agreement for land application: Any person responsible for supervision of land application must submit a compliance agreement to the Commission. [Reference 165:10-7-19 and 165:10-7-26]

(36) Form 1014CR - Application for commercial recycling facility construction: After a Commission order is obtained, Form 1014CR must be submitted for approval to the Manager of Pollution Abatement prior to the construction of the commercial recycling facility authorized by the order. [Reference OAC 165:10-9-4]

(37) Form 1014CS - Application for Commercial Soil Farming: For a commercial soil farming site that has an order to operate, the operator shall submit a Form 1014CS to the Pollution Abatement Department for approval prior to commencing soil farming. [Reference 165:10-9-2]

(38) Form 1014D - Application for Surface Discharge or for reclaiming and/or recycling of produced water: Each application for surface discharge of produced water or for reclaiming and/or recycling of produced water must be submitted to the appropriate Conservation Division District Office on Form 1014D in quadruplicate. Applications will be processed within five business days. [Reference 165:10-7-17 or 165:10-7-32]

(39) Form 1014F - Application for permit to use noncommercial pit with capacity in excess of 50,000 barrels to contain deleterious substances: The operator of a proposed noncommercial pit with a capacity in excess of 50,000 barrels must submit the Form 1014F to and obtain the approval of the Manager of the Pollution Abatement Department or obtain the issuance of a Commission order before constructing or using the pit. [Reference 165:10-7-16]

(40) Form 1014HD - Notice for Disposal of Hydrostatic Test Water: Companies wishing to discharge water as required by OAC 165:10-7-17, used to test a pipeline, tank, etc. must submit a Form 1014HD to the appropriate Conservation Division District Office and the Pollution Abatement Department for prior approval. [Reference 165:10-7-17]

(41) **Form 1014L - Surface Owner Permission for Land Application:** Each application for land application must include an original Form 1014L, whereby the applicable surface owner gives permission for the applicant to land apply certain deleterious substances to a specific property. [Reference 165:10-7-19 and 165:10-7-26]

(42) **Form 1014LA - Designation of land application agent:** A notarized affidavit designating any agent of an operator for land application must be submitted to the Commission. [Reference 165:10-7-17, 165:10-7-19 and 165:10-7-26]

(43) **Form 1014LC - Letter of credit for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(44) **Form 1014N - Application for Commercial Pit Construction:** After a Commission order is obtained, Form 1014N must be submitted for approval by the Manager of Pollution Abatement prior to the construction of each commercial pit authorized by the order. [Reference 165:10-9-1]

(45) **Form 1014P - Annual report for surface discharge:** An annual report is required to be submitted to the Commission by April 1 of each year on Form 1014P concerning surface discharges of produced water. Current (within three month) analyses of the produced water and soil from the discharge plot must be attached to the annual report. [Reference 165:10-7-17]

(46) **Form 1014R - Post land application report:** A post land application report shall be submitted by the operator or the operator's agent to the Manager of Pollution Abatement within ninety (90) days of the completion of land application. [Reference 165:10-7-19 and 165:10-7-26]

(47) **Form 1014RW - Application for permit to use reclaimed water in oil and gas operations:** Each application for a permit to use reclaimed water in oil and gas operations must be submitted to the Manager of Field Operations on Form 1014RW. [Reference OAC 165:10-7-34]

(48) **Form 1014S - Application for Land Application:** Each application for land application of materials must be submitted to the Pollution Abatement Department on Form 1014S. The applicant must be the operator of the well or other operator responsible for generating the waste to be land applied, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure, and the Oklahoma Energy Resources Board or its contractor may apply in cases where there is no responsible party. The Form 1014S shall be processed within five business days of submission of all required or requested information. [Reference 165:10-7-19 and 165:10-7-26]

(49) **Form 1014SB - Surety bond for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(50) **Form 1014T - Application for permit to use truck wash pit:** The operator of a proposed truck wash pit must submit Form 1014T to the Manager of Pollution Abatement for the Conservation Division and obtain a permit before constructing or using the pit. [Reference 165:10-7-33]

(51) **Form 1014W - Application for waste oil or drill cuttings use by County Commissioners:** Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any Board of County Commissioners on Form 1014W. The Form 1014W is

required to be submitted by electronic mail to the appropriate District Manager. [Reference 165:10-7-22 and 165:10-7-28]

(52) Form 1014X - Application for waste oil or drill cuttings use by operators: Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any operator on Form 1014X. The Form 1014X is required to be submitted by electronic mail or mailed to the appropriate District Manager. [Reference 165:10-7-27 and 165:10-7-29]

(53) Form 1015 - Application for Administrative Approval to Dispose of or Inject Class II fluids into Well(s) or to amend existing orders authorizing injection for injection, disposal or LPG storage well(s): Applicant shall file an original of the application and one complete set of attachments with the Commission on Form 1015. When requesting approval to dispose of or inject Class II fluids into wells, applicant will also furnish copies of the application on Form 1015 as specified, and, where noted, required attachments to Form 1015. Applicant will submit an affidavit of delivery or mailing to the Commission not later than five business days after the application is filed. Applicant shall file with the Commission proof of publication regarding the notice of application in an Oklahoma County newspaper and a county newspaper in which the well is located. [Reference 165:10-5-2, 165:10-5-5, and 165:5-7-30]

(54) Form 1015SI - Application for Permit for Simultaneous Injection Well: Operator shall file original with the Underground Injection Control Department on Form 1015SI. A copy of the form will also be supplied to the operator of any producing lease within one-half (1/2) mile of the proposed injection well. [Reference 165:10-5-15]

(55) Form 1015T - Application for Injection of Reserve Pit Fluids: Each application for the on-site injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed with the Underground Injection Control Department by the well operator on Form 1015T. The original of the application and one complete set of attachments shall be furnished to the Underground Injection Control Department. A copy of the application will also be supplied to the land owner and the operator of any producing lease within one-half (1/2) mile of the proposed well. [Reference 165:10-5-13]

(56) Form 1016 - Back Pressure Test for Natural Gas Wells: Operators and/or purchasers, on the Form 1016, will report all single-point and four-point potential tests as required by pool rule orders or general rules. List OTC assigned county and lease numbers and special allocated pool numbers, first date of sales, and complete flow data. [Reference 165:10-17-6 and 165:10-17-7]

(57) Form 1017 - Guymon-Hugoton Field Gas Well Deliverability Tests: Operators and/or purchasers of gas in this field shall take deliverability tests between January 1 and August 31 of each year, and on the test sheet Form 1017 file the results with the Commission. List OTC assigned lease number for each well. [Reference Orders No. 17867 and 87291 and 165:10-17-9]

(58) Form 1019 - Guymon-Hugoton Field Acreage Statement for Gas Wells: A fact statement as to acreage attributable to each well shall be filed with the Commission on Form 1019 within 30 days of the well completion with a plat or map showing location of the well. List OTC assigned county and lease number. [Reference Order No. 17867 and 165:10-17-9]

- (59) **Form 1020A - Application for Certification for the Recycling, Reuse of Deleterious Substances:** Applicant shall file an original Form 1020A with necessary attachments with the Pollution Abatement Department. Form 1020A is filed prior to construction of facility or change of operator. [Reference 165:10-8-1 through 165:10-8-11]
- (60) **Form 1021 - Application for Priority Hardship Classification:** The applicant shall file Form 1021 and the necessary attachments with the Technical Services Department for review prior to any hearing for priority one hardship classification. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]
- (61) **Form 1021A - Application for limited deviation from the priority gas rules:** The applicant shall file Form 1021A and the necessary attachments with the Technical Services Department for review prior to any hearing for deviation from the priority gas rules. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]
- (62) **Form 1022 - Application to flare or vent gas:** Operator shall file one copy of Form 1022 with the Technical Services Department of the Conservation Division listing OTC assigned county lease number. [Reference 165:10-3-15]
- (63) **Form 1022A - Application to operate vacuum pump:** Operator shall file one copy of Form 1022A with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-3-31]
- (64) **Form 1023 - Application for multiple completion, multichoke assembly or commingle completion:** Operator will file the original of Form 1023 with the required attachments. List OTC assigned county and lease number. [Reference 165:10-3-35; 165:10-3-39; 165:10-3-37]
- (65) **Form 1024 - Packer setting affidavit:** Operator will submit Form 1024 as required. [Reference 165:10-3-35 and pertinent field rules]
- (66) **Form 1025 - Packer leakage test:** Operator will submit Form 1025 as required. [Reference 165:10-3-35 and pertinent field rules]
- (67) **Form 1027 - Bottom hole pressure test:** Operator, on the pink sheet of Form 1027, shall take BHP tests in the manner and during periods prescribed by special field rules. List OTC assigned county and lease numbers. [Reference Special Field Rules and 165:10-13-3]
- (68) **Form 1028 - Application for discovery oil allowable:** Operator shall file Form 1028 with the required exhibits and tests within 30 days of completion of each new well in a discovery oil pool. [Reference 165:10-15-7]
- (69) **Form 1029A - Production or potential test - oil only:** Operator of each newly completed discovery oil well shall file a potential test Form 1029A not later than 30 days after completion of the well. All tests, if requested, shall be witnessed by another operator. [Reference 165:10-15-7].
- (70) **Form 1030 - Application for allowable adjustment:** Each operator or other interested parties desiring to adjust the allowable for a well or wells shall file Form 1030 for administrative review and approval. The allowable may be increased, decreased, or transferred as the evidence may indicate for the most efficient rate of production from the well or wells. [Reference 165:10-13-5, 165:10-13-8, 165:10-15-18 and 165:5-7-12]

(71) **Form 1034 - Nominations and purchasers report:** [Reference 165:10-1-36, 165:10-1-37 and 165:10-1-46] **Oil:** Purchasers will furnish nomination data, actual runs from leases, stocks, and other information on Form 1034 to the Conservation Division not later than noon Friday of the week preceding each scheduled market demand hearing. On months in which no market demand hearing is held, Form 1034 shall be filed by the 20th of the month listing crude oil runs for the previous month on line 5 only. Any change in nominations from the previous hearing shall be so indicated on this monthly report.

(72) **Form 1034-G - Gas nominations:** Operators of natural gas wells in special allocated gas pools where well allowable calculations according to special allocated field rules are in effect shall file their pool nominations on Form 1034-G no later than one week prior to the market demand hearing. [Reference 165:10-1-36, 165:10-1-37, 165:10-1-49 and 165:10-17-9].

(73) **Form 1040 - Monthly allocation schedule (gas):** Monthly gas schedule Form 1040 will be forwarded to operators by the Conservation Division indicating the status of special allocated gas wells and their current allowables. Operators will inform the Conservation Division of errors, if any, found in Form 1040 as promptly as possible. Additionally, purchasers will receive the monthly schedule and shall return the production from each well as requested. [Reference 165:10-1-47]

(74) **Form 1055 - Application for Pipe Pulling and Well Plugging License:** No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission. [Reference 165:10-11-1]

(75) **Form 1070 - Inventory of authorized existing enhanced recovery wells:** Operators shall file reporting Form 1070 before injecting into any enhanced recovery well. [Reference 165:10-5-3]

(76) **Form 1071 - Inventory of authorized existing disposal wells:** Operators shall file the reporting Form 1071 before disposing into any disposal well. [Reference 165:10-5-3]

(77) **Form 1072 - Notice of termination of injection:** Within 30 days of the termination of injection Form 1072 must be filed. [Reference 165:10-5-7]

(78) **Form 1073 - Notice of transfer of oil or gas well operatorship:** The new operator shall file Form 1073 to notify the Conservation Division of any change of operation of any oil or gas well within 30 days of transfer of the well. [Reference 165:10-1-15]

(79) **Form 1073I - Notice of transfer of underground injection well operatorship:** The new operator shall file Form 1073I to notify the Underground Injection Control Department of any change of operation of any injection, disposal, or hydrocarbon storage well within 30 days of transfer of the well. [Reference 165:10-5-10]

(80) **Form 1073IMW - Notice of transfer of multiple underground injection well operatorship:** For transfers involving more than 10 underground injection wells, a transferor and transferee may file a single Form 1073IMW with the Conservation Division indicating the transfer of multiple wells. If the Form 1073IMW is used, such Form must be filed with the Conservation Division regarding any change of operations of such wells within 30 days of transfer of the wells. [Reference 165:10-5-10]

(81) **Form 1073MW - Notice of transfer of multiple oil or gas well operatorship:** For transfers involving more than 10 oil or gas wells, a transferor and transferee may file a single Form 1073MW with the Conservation Division indicating the transfer of multiple wells. If the Form 1073MW is used, such Form must be filed with the Conservation Division regarding any change of operations of such wells within 30 days of transfer of the wells. [Reference 165:10-1-15]

(82) **Form 1075 - Mechanical integrity pressure test:** A pressure or monitoring test must be performed on new and existing injection wells and disposal wells. Information must be submitted on Form 1075 and witnessed by a Field Inspector. Forms shall be submitted to the Conservation Division's Underground Injection Control Department. [Reference 165:10-5-6]

(83) **Form 1081 - Mineral owners escrow account:** Operator shall file, in quadruplicate, Form 1081 annually on anniversary date of first pooling order issued after effective date of Senate Bill 299 (7-1-84) and shall include all applicable orders issued during the twelve-month reporting period. [Reference 165:10-25-1 through 165:10-25-10]

(84) **Form 1085 - Complaint report:** Form 1085 is used by Commission personnel to report violations of General Rules of the Commission and to report progress on ongoing remedial actions. Copies are sent to all parties concerned with investigation. Form 1085 combines and replaces old Forms 1034 and 1062. [Reference 165:10-7-7]

(85) **Form 1139 - Application for gross production tax exemption:** Operators shall file one copy of Form 1139 with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-21-75 through 165:10-21-80]

(86) **Form 1535 - Application for classification of reservoir dewatering project for exemption of sales tax on electricity used for such operations and application for state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease:** Operators shall file one original of Form 1535 with the required attachments with the Technical Services Department of the Conservation Division. To obtain the exemption of sales tax on the sale of electricity and associated delivery and transmission used for reservoir dewatering operations, or for a state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease, the operator shall contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194. [Reference 165:10-21-90 through 165:10-21-92 and 165:10-21-95 through 165:10-21-97]

(87) **Form 2000BF - AAI Oversight Qualification:** The Applicant shall file one (1) Form 2000BF with the Brownfield Program of the Conservation Division listing the qualifications as per AAI of each Environmental Professional who will work on the site. [Reference 165:10-10-1 through 165:10-10-14]

(88) **Form 2001BF - Brownfield Applicant Eligibility:** The applicant shall file one (1) Form 2001BF with the Brownfield Program of the Conservation Division. This Form is filed to demonstrate applicant's eligibility to be in the Brownfield program. [Reference 165:10-10-1 through 165:10-10-14]

(89) **Form 2002BF - Consent to Entry:** The applicant shall file one (1) Form 2002BF with the Brownfield Program of the Conservation Division. This Form is the landowner's permission for applicant and their contractors to enter the property for assessment and cleanup work. Copies will be sent to all parties concerned with the assessment and/or cleanup. [Reference 165:10-10-1 through 165:10-10-14]

(90) **Form 2003BF - Application for Brownfield Site Eligibility and Assessment:** The applicant shall file one (1) Form 2003BF with the Brownfield Program of the Conservation Division for all sites applicant is entering into the program. This Form provides necessary information on the site. This Form can be used by public, quasi-public, and non-profit entities to request a free Targeted Brownfield Assessment of a site that has been approved as eligible for the Brownfield program. [Reference 165:10-10-1 through 165:10-10-14]

(91) **Form 2005BF - Brownfield Certificate of No Action Necessary:** The Form 2005BF will be issued by the Commission to the Brownfield Applicant, after the Brownfield staff has made a no action necessary decision. The applicant must file the Certificate of No Action Necessary in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

(92) **Form 2006BF - Brownfield Certificate of Completion:** The Form 2006BF will be issued by the Commission to the Brownfield Applicant, after the Brownfield staff has made a final inspection of the site and review of the project following a remedial action. The applicant must file the Certificate of Completion and any land use restrictions in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

(93) **Form 3000NGS - Application for Investigation and/or Abatement of Seeping Natural Gas:** An owner of property which has seeping natural gas shall file an application with the Commission regarding the Commission's investigation and/or abatement of the seeping natural gas. [Reference 165:10-12-9]

(94) **Form 4000WIP - Well impact report:** If an operator has evidence that its well(s) have been impacted by hydraulic fracturing operations, the operator may report the occurrence by electronic mail to the appropriate Conservation Division District Office within 24 hours of discovery. The operator must use Form 4000WIP to report the occurrence. [Reference 165:10-3-10]

(95) **Form 5000NTL - Notice of temporary lines which may be used to transport produced water:** Operators are required to notify the Conservation Division, the appropriate County Commissioners and the surface owners of the land that is subject to the rights-of-way sought to be utilized by the operator, at least 48 hours prior to placing in public road rights-of-way temporary lines that may at any time be used to transport produced water for well drilling, completion, or remedial workover operations. Operators must use Form 5000NTL to provide the notice. [Reference 165:10-3-10.1]

(96) Form 6000NHF - Notice to Conservation Division of hydraulic fracturing operations: Operators are required to notify the Conservation Division using Form 6000NHF at least 48 hours prior to commencement of hydraulic fracturing operations on a well. [Reference 165:10-3-10]

(97) Form 6000NOO - Notice to operators of producing wells of hydraulic fracturing operations: Operators are required to notify operators of producing wells within one mile of the completion interval of the subject well at least 5 business days prior to commencement of hydraulic fracturing operations on such well. The notice to be provided such operators shall contain the information in Form 6000NOO. [Reference 165:10-3-10]

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 13 Ok Reg 2373, eff 7-1-96; Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 15 Ok Reg 2989, eff 7-15-98; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 19 Ok Reg 1947, eff 7-1-02; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

PART 3. SURETY

165:10-1-10. Operator's agreement; Category A and Category B surety

(a) "Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this State, shall furnish in writing, on forms approved by the Corporation Commission, his agreement to drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules of the Commission and by law." [52 O.S. § 318.1] Any operator violating this Section may be fined up to \$500.00. To establish evidence of financial ability, the Commission shall require:

- (1) Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The statement shall prove a net worth of not less than \$50,000.00 in U.S. dollars; or
- (2) Category B surety shall include an irrevocable commercial letter of credit, cash, a cashier's check, a certificate of deposit, bank joint custody receipt, other approved negotiable instrument, or a blanket surety bond. Except as provided in (3) of this subsection, the amount of such Category B surety shall be in the amount of \$25,000.00 in U.S. dollars but may be set higher at the discretion of the Director of the Conservation Division. The Commission is authorized to establish Category B surety in an amount greater than \$25,000.00 in U.S. dollars based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and compliance with any rules promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments, or removal of trash and equipment. Any such Category B surety shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.

(3) The Commission may grant Category B surety in an amount less than \$25,000.00 in U.S. dollars to an operator whose statewide well plugging liability is less than \$25,000.00 in U.S. dollars. Said Category B surety shall be in an amount that is sufficient to cover the total estimated cost of properly plugging and abandoning each and every well, the operations for which, an operator is responsible. Statewide well plugging liability shall be documented by an affidavit filed on Form 1006D and shall be properly executed by a duly licensed pipe pulling and well plugging company and shall be approved by the Conservation Division. Said affidavit shall state, among other things, an estimated cost of plugging, closure, and removal operations for each well in accordance with 165:10-11-3 through 165:10-11-8 inclusively and shall be accompanied by a Form 1000 (Intent to Drill) if the estimate involves a proposed well or by a Form 1002A (Completion Report) if the estimate involves a well that is a producing, injection, or disposal well. The estimated cost shall not include any salvage value as to recoverable casing, tubing, or well head equipment. The total statewide well plugging liability of an operator utilizing this Category B surety shall be kept current and shall be increased as additional wells are added to the responsibility of the operator and may be decreased as included wells are plugged and abandoned, but in no event shall exceed \$25,000.00 in U.S. dollars unless otherwise ordered by the Commission.

(b) Operators of record as of June 7, 1989, who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

(1) New operators, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of June 7, 1989, shall be required to post Category B surety. Operators who have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three years may post Category A surety.

(2) Operators using Category A surety who are assessed a fine of \$2,000.00 or more and who do not pay the fine within the specified time shall be required to post a Category B surety within 30 days of notification by the Commission.

(c) If a bond is required, the bond shall be executed by a corporate surety authorized to do business in this State and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

(d) Irrespective of (a), (b), and (c) of this Section, for good cause shown concerning pollution or improper plugging of wells by an operator posting either Category A or Category B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Conservation Division after notice and hearing, may require the filing of additional Category B surety in an amount greater than \$25,000.00 in U.S. dollars but not to exceed \$100,000.00 in U.S. dollars. If the Commission has evidence that any person applying to the Commission for authority to operate may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the person should be authorized to operate.

(e) The agreement (Form 1006B-Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) provided for in (a) of this Section

shall provide that if the Commission determines, after notice and hearing, that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or remove or cause to be removed trash and equipment in compliance with the rules of this Chapter, then the person shall forfeit from his bond, letter of credit, or negotiable instrument or shall pay to this State, through the Commission for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment, or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement (Form 1006B) or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Conservation Fund. The Commission shall also recover any costs arising from litigation to enforce this provision if the Commission prevails. Provided, before a person is required to forfeit or pay any monies to the State pursuant to this Section, the Commission shall notify the person at his last-known address of the determination of neglect, failure, or refusal to plug or replug any well, or close any surface impoundment, or remove trash and equipment, and said person shall have ten days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection. If the operator is a corporation, association, partnership, limited liability company or any entity other than an individual, the operator shall file as part of its Form 1006B a complete list, in tabular form, of the names, addresses, telephone numbers, email addresses, driver license numbers, and percentages of ownership of all officers, directors, partners or principals of the operator and the insiders and affiliates of the operator. The operator shall also file as part of its Form 1006B the current names and addresses of all service agents of the operator and the operator's insiders and affiliates. The operator is required to file a Form 1006B with the Conservation Division every twelve (12) months.

(f) No person shall drill or operate any well, or receive an allowable, without complying with the provisions of this Section.

(g) The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this Section and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission. No taker, transporter, or purchaser of oil or gas shall take, transport, or purchase oil or gas from the wells of any such drillers or operators after receiving a copy of the shut-in order or notice by certified mail of the issuance of such an order.

(h) If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this section, prior to the transfer.

(i) The following words, when used in this Section, shall have the following meaning:

(1) "Affiliate" means an entity which owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator.

(2) "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in

which the operator is a general partner; spouse of an officer, director, or person in control of the operator; spouse of a general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 13 Ok Reg 2373, eff 7-1-96; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 433, eff 12-27-10 (emergency); Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-1-11. Financial statement as surety

- (a) A plugging agreement shall be accompanied by surety. The surety requirement may be met by furnishing the operator's current financial statement (Form 1006A) to the Conservation Division, which shall be a full statement of the operator's assets and liabilities and shall reflect the operator's total net worth of not less than \$50,000.00 in U.S. dollars located in this State.
- (b) The value of producing oil and gas leaseholds for which the financial statement stands as surety will be deducted from total net worth unless the financial statement is accompanied by the written appraisal of a recognized independent appraiser of oil and gas properties showing the fair market value of the leasehold interest owned by the operator.
- (c) The Director of Conservation may require proof in the form of an appraisal or other proof of the fair market value of any asset listed in the financial statement, and the Director of Conservation may also require proof that the financial statement truly shows the net fair market value of all assets over and above all debts and encumbrances.
- (d) A current financial statement shall be filed every twelve (12) months on Form 1006A.
- (e) Only one operator's name shall appear on each Form 1006A.
- (f) Along with the Form 1006A, an operator is required to file a Form 1006B (Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) with the Conservation Division.
- (g) The Commission shall reject the operator's Form 1006A if the operator fails to file the documentation required by this Section with the Conservation Division.

[Source: Amended at 13 Ok Reg 2373, eff 7-1-96]

165:10-1-12. Corporate surety bond

- (a) An operator may file a blanket surety bond in the principal amount of \$25,000.00 in U.S. dollars on Form 1006 as surety. In the alternative, the operator may file a surety bond of a lesser amount but that is sufficient to cover the total estimated cost of properly plugging and abandoning each and every well, the operations for which, the operator is responsible. Said estimated cost shall be documented on Form 1006D (Affidavit of Well Plugging Cost) for each and every well. Said alternative surety bond shall be increased upward, but not to exceed \$25,000.00 in U.S. dollars, as additional wells are added to the operator's responsibilities, unless otherwise ordered by the Commission.
- (b) For purposes of (a) of this Section, an operator may file a surety bond issued by a corporation authorized to issue such bonds in the State of Oklahoma.
- (c) The Conservation Division shall not accept a bond unless the surety agrees to give the Conservation Division six months written notice before cancellation of a bond prior to expiration of the bond and evidence furnished of acceptable alternate surety if required.

- (d) Only one operator's name shall appear on each Form 1006.
- (e) Along with the Form 1006, an operator is required to file a Form 1006B (Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) with the Conservation Division.
- (f) The Commission shall reject the operator's Form 1006 if the operator fails to file the documentation required by this Section with the Conservation Division.

[Source: Amended at 13 Ok Reg 2373, eff 7-1-96]

165:10-1-13. Irrevocable commercial letter of credit

- (a) At his option, an operator may file an irrevocable commercial letter of credit of a bank in the sum of \$25,000.00 in U.S. dollars on Form 1006C as surety. In the alternative, the operator may file an irrevocable commercial letter of credit of a lesser amount but that is sufficient to cover the total estimated cost of properly plugging and abandoning each and every well, the operations for which, the operator is responsible. Said estimated cost shall be documented on Form 1006D (Affidavit of Well Plugging Cost) for each and every well. Said alternative irrevocable commercial letter of credit shall be increased upward, but not to exceed \$25,000.00 in U.S. dollars, as additional wells are added to the operator's responsibilities, unless otherwise ordered by the Commission.
- (b) The letter of credit shall be for a term of not less than one year.
- (c) The bank issuing the letter of credit shall endorse thereon that the letter of credit shall remain in effect until canceled or revoked by the bank or principal/operator upon six months notice in writing to the Conservation Division and evidence furnished of acceptable alternate surety if required.
- (d) Only one operator's name shall appear on each Form 1006C.
- (e) Along with the Form 1006C, an operator is required to file a Form 1006B (Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) with the Conservation Division.
- (f) The Commission shall reject the operator's Form 1006C if the operator fails to file the documentation required by this Section with the Conservation Division.

[Source: Amended at 13 Ok Reg 2373, eff 7-1-96]

165:10-1-14. Cashier's check, certificate of deposit, or other negotiable instrument

- (a) An operator may deposit cash, a cashier's check, a certificate of deposit, bank joint custody receipt, or other negotiable instrument in the amount of \$25,000.00 in U.S. dollars as surety. In the alternative, the operator may deposit cash, a cashier's check, a certificate of deposit, bank joint custody receipt, or other negotiable instrument of a lesser amount but that is sufficient to cover the total estimated cost of properly plugging and abandoning each and every well, the operations for which, the operator is responsible. Said estimated cost shall be documented on Form 1006D (Affidavit of Well Plugging Cost) for each and every well. Said alternate amount shall be increased upward, but not to exceed \$25,000.00 in U.S. dollars, as additional wells are added to the operator's responsibilities, unless otherwise ordered by the Commission. However, any instrument must constitute an unconditional promise to pay and be in the form negotiable by the Commission.
- (b) A certificate of deposit shall be for a term of no less than three hundred sixty-five (365) days.
- (c) Financial institutions issuing certificates of deposit pursuant to this Section shall do so in the following manner: "**Oklahoma Corporation Commission or Oklahoma Corporation Commission and (Name of the Operator).**" Financial

institutions issuing the certificates of deposit shall retain the original documents and copies of the certificates of deposit shall be furnished to the Commission.

(d) Along with the negotiable instruments described in (a) of this Section, an operator is required to file a Form 1006B (Operator's Agreement to Plug Oil, Gas and Service Wells Within the State of Oklahoma) with the Conservation Division.

(e) The Commission shall reject the negotiable instruments described in (a) of this Section if the operator fails to file the documentation required by this Section with the Conservation Division.

[Source: Amended at 13 Ok Reg 2373, eff 7-1-96]

165:10-1-15. Transfer of operatorship of wells

(a) Before the operations of a well can be transferred to a new operator, the following must be submitted:

(1) The new operator, or transferee, must comply with 165:10-1-10 before a change in operator is approved.

(2) Change of operator Form 1073 or Form 1073MW must be signed by both the transferor and transferee, with both stipulating that the facts presented are true and correct as to the area covered and the wells being transferred. The new operator shall file Form 1073 or Form 1073MW to notify the Conservation Division of any change of operation of any oil or gas well within thirty (30) days of transfer of the well. Unless otherwise stated, the new operator assumes all responsibility for the wells specified within the boundaries of the outlined area. For transfers involving more than ten (10) wells, a transferor and transferee may file a single Form 1073MW with the Conservation Division indicating the transfer of multiple wells, provided that such multiple well transfer shall be accompanied by a well list containing the following information regarding each well being transferred:

(A) API number of the well;

(B) Well name and number;

(C) Legal location of the well, described by section, township and range.

(3) The well list may be provided in spreadsheet form, if possible, and may be filed in digital format specified by the Conservation Division. In lieu of the spreadsheet, the transferor and transferee, at their option, may file one Form 1073MW indicating the transfer of multiple wells with an OCC Form 1002A Completion Report attached for each well transferred. Upon review by the Conservation Division, it may require additional information from the transferor and/or the transferee to assist in identifying the specific well(s) being transferred. The additional information may include, but not be limited to, the quarter, quarter, quarter section calls, footages from the south and west quarter section lines, and the drilling and completion dates.

(4) The Conservation Division shall notify both the transferor and transferee in writing within thirty (30) days of the Conservation Division's approval or disapproval of the transfer of operatorship for the subject well(s).

(5) Compliance with 165:5-7-11 when and if operatorship was designated by orders of the Commission in pooling, increased density, and location exception applications.

(b) Before the operatorship of a well can be transferred to a new operator when the current or former operator is unavailable for signature, one of the following may be

submitted as proof of operatorship:

(1) A certified copy of a recorded lease or assignment transferring all rights, title, and interest to the wells described on Form 1073 or Form 1073MW to the new operator.

(2) A certified copy of a journal entry of judgment rendered by a district court of Oklahoma having jurisdiction over the wells described on Form 1073 or Form 1073MW vesting legal title to the new operator.

(3) A certified copy of a bankruptcy proceeding by the bankruptcy court having jurisdiction over the wells described on Form 1073 or Form 1073MW.

(c) If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not approve any Form 1073 or Form 1073MW transferring well(s) to said operator until the operator complies with the order. The transferor of the well(s) listed on the Form 1073 or Form 1073MW remains responsible for the well(s) until any transfer is approved by the Commission.

[Source: Amended at 13 Ok Reg 2373, eff 7-1-96; Amended at 17 Ok Reg 802, eff 12-28-99 (emergency); Amended at 17 Ok Reg 1860, eff 7-1-00; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-1-16. Change of address

Each operator of a well or other facility subject to a permit shall give written notice of his change of address. Such notice shall be sent to the Director of the Conservation Division. It shall be due within 30 days after changing address.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 13 Ok Reg 2373, eff 7-1-96]

PART 5. SPACING

165:10-1-20. Spacing [RESERVED]

165:10-1-21. General well spacing requirements

Any well drilled for oil or gas to an unspaced common source of supply the top of which is 2,500 feet or more in depth shall be located not less than 330 feet from any property line or lease line, and shall be located not less than 600 feet from any other producible or drilling oil or gas well when drilling to the same common source of supply; provided and except that in drilling to an unspaced common source of supply the top of which is less than 2,500 feet in depth, the well shall be located not less than 165 feet from any property line or lease line and not less than 300 feet from any other producible or drilling oil or gas well in the same common source of supply; provided, however, that the depth to the top of the common source of supply in the original or discovery well shall be recognized as the depth to the top of the common source of supply for the purpose of this Section; provided further, when an exception to this Section is granted, the Commission may adjust the allowable or take such other action as it deems necessary for the prevention of waste and protection of correlative rights.

[Source: Amended at 28 Ok Reg 1949, eff 7-11-11]

165:10-1-22. Drilling and spacing units

(a) The commission may establish drilling and spacing units in any common source of supply as provided by law, and the special orders creating drilling and spacing units shall supersede the provisions of 165:10-1-21. It shall be the responsibility of

any operator who proposes to drill a well to ascertain the existence and provisions of special spacing orders.

(b) The drilling of a well or wells into a common source of supply in an area covered by an application pending before the commission seeking the establishment of drilling and spacing units is prohibited except by special order of the commission. However, if an Intent to Drill (Form 1000) has been approved by the commission and operations commenced prior to the filing of a spacing application, the operator shall be permitted to drill and complete the well without a special order of the Commission.

(c) Standard drilling and spacing units shall be either approximately square or rectangular; if rectangular, the drilling and spacing unit shall consist of two approximately square tracts.

(d) Standard square drilling and spacing units shall be those containing approximately 10, 40, 160, or 640 acres; standard rectangular units shall contain approximately 20, 80, or 320 acres.

(e) The drilling and spacing units within any common source of supply of oil or gas shall be of approximately uniform size and shape. In a combination reservoir, the drilling and spacing units within the oil portion of the reservoir shall be of approximately uniform size and shape, and the drilling and spacing units within the gas portion of the reservoir shall be of approximately uniform size and shape; provided, however, the drilling and spacing units within the gas portion of a combination reservoir along the gas-oil contact line or transition zone may be of nonuniform size and shape.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92]

165:10-1-23. Extension of pool rules

(a) Any application to establish pool rules for a common source of supply shall include the entire common source of supply.

(b) To extend pool rules to a drilling and spacing unit, an application shall be filed and notice provided in the same manner as required to establish pool rules. In the event that more than one set of pool rules are in effect within a field, the Commission shall extend the appropriate pool rules consistent with available geological and engineering reservoir information.

165:10-1-24. Permitted well locations within standard drilling and spacing units

(a) The permitted well location within any standard square drilling and spacing unit shall be the center of the unit. The permitted well locations within standard rectangular drilling and spacing units shall be the centers of alternate square tracts constituting the units (alternate halves of the units); provided, however, a well will be deemed drilled at the permitted location if drilled within the following tolerance areas:

(1) Not less than 165 feet from the boundary of any standard 10-acre drilling and spacing unit or the proper square 10-acre tract within any standard 20-acre drilling and spacing unit.

(2) Not less than 330 feet from the boundary of any standard 40-acre drilling and spacing unit or the proper square 40-acre tract within any standard 80-acre drilling and spacing unit.

(3) Not less than 660-feet from the boundary of any standard 160-acre drilling and spacing unit or the proper square 160-acre tract within any standard 320-acre drilling and spacing unit.

(4) Not less than 1320 feet from the boundary of any standard 640-acre drilling and spacing unit.

(b) The proper square tract of a rectangular drilling and spacing unit established prior to January 1, 1971, for which a slot drilling pattern was prescribed, shall be the northeast quarter and the southwest quarter of the governmental section, quarter section, or quarter quarter section containing two abutting rectangular drilling and spacing units; provided, slot patterns may be established or re-established upon application, notice, and hearing where consistent with available geological and engineering information when necessary to prevent waste or protect correlative rights.

(c) The permitted well location tolerance areas set out in (a) of this Section shall apply to each standard drilling and spacing unit heretofore or hereafter established, notwithstanding the provisions of any special order of the Commission prescribing a different permitted well location tolerance area; provided, however, this Section shall not affect any adjusted allowable or penalty applied to any well by special order of the Commission prior to the effective date of this Section, nor shall any well heretofore drilled within a then permitted tolerance area be deemed outside the permitted tolerance area by reason of this Section.

(d) Wells drilled offpattern without first obtaining an exception after notice and hearing by the Commission are hereby prohibited from producing either oil or gas.

(e) Whenever permission is granted to drill a well at a location other than specified in this Chapter, the allowable or production therefrom, or both, may be adjusted for the protection of the correlative rights of all persons entitled to share in the common source of supply.

(f) Unless the order granting a well location exception provides otherwise, the permission to drill the well at the excepted location shall expire twelve (12) months after the date of the order, unless a well was commenced at the excepted location on or before the expiration date. The order granting the well location exception will thereafter expire when the well is plugged, abandoned, or converted.

(g) An application for an emergency order granting a well location exception may be granted if the applicant has obtained the written consent of the operator of each adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same formation, toward which the well location is proposed to be moved. Provided, however, if the applicant is the operator of the well in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same formation, toward which the well location is proposed to be moved, the applicant shall obtain the written consent of each working interest owner in such well.

(1) Letters evidencing the written consent of off-set operators and working interest parties as described in this subsection shall be introduced and received into evidence at the time of the emergency hearing and reviewed. Copies of said letters shall be filed with the Court Clerk of the Commission.

(2) If the written consent described in this subsection cannot be obtained, the applicant may send written notice to said non-consenting party giving that party at least five business days notice of the emergency hearing. If said non-consenting party fails to appear, then the emergency application shall be considered and may be granted without the non-consenting party's written consent. The applicant shall file an affidavit of mailing with the Court Clerk to prove the mailing of the five day notice.

(h) If a spacing application is currently pending and the applicant or any party who owns the right to drill needs to commence a well prior to issuance of the spacing

order, the applicant or party shall obtain an emergency order to commence such well and an emergency location exception order if:

- (1) The proposed well is offpattern according to the existing spacing for any formation involved, or
- (2) The well is offpattern according to 165:10-1-21 governing well patterns for unspaced areas.

(i) Whenever an order permits an offpattern well with a percentage penalty, the order permitting said well may provide, at the request of a party entitled to notice in the cause, for said party to have the right, at his sole cost and risk, to attend and monitor the initial potential testing and all subsequent annual testing of the proposed offpattern well to ensure proper testing. If the order permits witnessing of tests as prescribed above, then the order shall further provide that at least five days prior to the initial potential testing and each subsequent annual testing of the proposed well, the operator of the well shall notify, in writing, all parties entitled to notice in the cause who requested to attend and monitor these tests of the date and time upon which said testing shall commence.

[Source: Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 32 Ok Reg 768, eff 8-27-15]

165:10-1-25. Replacement well

(a) Approval by the Conservation Division of a Notice of Intent to Drill (Form 1000) for a second well to be drilled in a common source of supply in a single drilling and spacing unit as a replacement well may be permitted when:

- (1) The replacement well is to be drilled at a location permitted for the common source of supply by either an order or rule of the Commission; and
- (2) The operator of the replacement well is either the operator or a working interest owner in the original unit well; and
- (3) The Notice of Intent to Drill for the replacement well is accompanied by an affidavit from the operator, stating that on completion of the second well as a commercial producer, the common source of supply in the first well shall be plugged off immediately. The affidavit shall be attached to Notice of Intent to Drill.

(b) A replacement well shall not receive an allowable to produce oil or gas from the same common source of supply as the first well until:

- (1) Said common source of supply in the original well in the drilling and spacing unit is plugged off; or
- (2) The Commission issues an order authorizing the replacement well as an increased density well for said common source of supply; or
- (3) The Commission issues an order reforming the drilling and spacing units in said common source of supply thereby placing the original well and the replacement well in different drilling and spacing units for the common source of supply.

165:10-1-26. Permitted producing well location within an enhanced recovery project

Any well drilled for or used for the production of oil or gas within any enhanced recovery project shall be located not less than 165 feet from the lease or project line, whichever is the outside boundary.

165:10-1-27. Increased density well

Upon application after notice and hearing, the Commission may issue an order permitting one or more additional wells within a drilling and spacing unit, if

each additional well will prevent or assist in preventing the various types of waste prohibited by statute or if each additional well will protect or assist in protecting the correlative rights of interest owners in said common source of supply.

165:10-1-28. Geological correlation chart

The chart initially prepared by Phillips Petroleum and maintained by the Oklahoma City Geologic Society entitled "Geologic Section of Oklahoma and Northern Arkansas", along with ensuing revisions, shall be used as a guideline for stratigraphic nomenclature in all oil and gas conservation applications which are submitted to the Commission.

PART 7. MARKET DEMAND

165:10-1-35. Market demand [RESERVED]

165:10-1-36. Regulation, classification, and naming of pools

(a) When the Commission finds, upon notice and hearing, that oil or gas production from any source of supply exceeds the current market demand there for or finds that the operation of the reservoir should be regulated in order to prevent waste, increase ultimate recovery, or protect correlative rights, the Commission shall thereupon promulgate appropriate pool rules to accomplish such objectives. Where any of the above findings are made by the Commission, the total production from the pool may be restricted and equitable allocation made to the various wells located therein, or the operation of the reservoir may be otherwise regulated and controlled to insure proper and adequate conservation.

(b) Any pool may be classified or reclassified by the Commission, upon hearing, as an oil pool, gas pool, combination pool, or condensate pool. All pool rules so promulgated shall be based on operating and technical data and shall be consistent with the characteristics attributable to each classification.

(c) All oil and gas pools in the State shall be named by the Commission.

165:10-1-37. Determination of market demand

(a) The Commission shall instruct the Director of Conservation to determine the reasonable market demand for oil, gas, and other hydrocarbon products produced in Oklahoma for consumption in and outside the State for the ensuing proration period(s) that can be produced from each common source of supply on a statewide basis without avoidable waste and with equitable participation in production and markets by all operators and other interested parties.

(b) Waste, in addition to its statutory and ordinary meaning, shall include but not be restricted to economic waste, underground waste, surface waste, and waste incident to the production of oil and gas in excess of the transportation or marketing facilities or reasonable market demand.

(c) Reasonable market demand shall include, but not be restricted to, the demand for oil, gas, and other hydrocarbons for reasonable current requirements for current consumption and use within and outside the State, with such adjustment as may be necessary upward or downward to maintain adequate aboveground stocks of crude oil and its products and underground stocks of natural gas, so as to provide a continuous supply of petroleum products to the consumer and essential strategic supplies for national defense.

(d) In determining the reasonable market demand, the Commission may consider:

- (1) Any statement communicated to the Commission by any purchaser or taker of oil and gas, stating the amount of oil or gas produced from common sources of supply that such purchaser or taker contemplates or intends to purchase during the period of time involved; or in lieu thereof, the capacity of the purchaser's transportation or marketing facilities which will be, during the time involved, available for transporting and/or marketing the oil or gas that may be produced from common sources of supply.
 - (2) Official records, reports, and statistical information compiled and kept by the Conservation Division that can be utilized in determining reasonable market demand.
 - (3) Reports, facts, and materials by the Bureau of Mines or any other recognized authority that impartially reflects reasonable market demand.
 - (4) Sworn or unsworn statements of interested parties and any other evidence which the Commission may deem relevant to the determination of reasonable market demand.
- (e) For purposes of periodic market demand hearings, the Manager of Production and Proration for the Conservation Division shall prepare exhibits summarizing the nominations from the various interested parties specified in (d) in this Section. Said exhibits shall be available for public inspection not less than five days before the hearing. At the time of hearing, if no one announces any objection to the introduction of said exhibits, then the exhibits shall be admitted into evidence without need for sponsoring testimony.
- (f) After the Commission has determined the amount of oil or gas to be produced from all oil and/or gas pools during the following proration period, the amount so determined will be allocated ratably and without discrimination among the various pools within the State.

PART 9. PURCHASERS AND TRANSPORTERS

165:10-1-45. Purchasers and transporters [RESERVED]

165:10-1-46. Reports of purchasers and/or transporters

Purchasers and/or transporters of oil, waste oil, or waste oil residue, including truckers, shall file reports with the Commission as follows:

- (1) On or before the last day of the succeeding month, transporters shall file a report showing monthly takings by barrels from leases in all pools in the State, other than wells or leases as specified in (2), (3), (4), and (5) of this Section; a copy of the Gross Production Tax Report made to the Oklahoma Tax Commission will satisfy this requirement.
- (2) A report on computer generated Form 1005 showing monthly takings by barrels from leases or wells with capacities greater than the maximum allowable determined by the appropriate rule governing the classification of the oil pool or order of the Commission. The report shall be filed on or before the last day of the succeeding month.
- (3) Upon request, storage and nomination information shall be filed on Form 1034.
- (4) All truck transporters hauling crude oil shall file a report showing the amount of all crude oil taken by them during the preceding proration period, and showing the source and the disposition of the crude oil, waste oil, or waste oil residue. The report shall be filed on or before the last day

of the succeeding month.

(5) All truck transporters hauling crude shall provide their drivers with copies of standard run tickets which must be in the possession of the drivers at all times and which run tickets shall show the source and the disposition of crude oil, including but not limited to waste oil or waste oil residue.

165:10-1-47. Gas volume reports to Conservation Division

(a) On or before the last day of the succeeding month, the person responsible for operating the required meter under 165:10-17-5 for each well classified as an unallocated gas well for allowable purposes shall report to the Conservation Division on Form 1004 the amount of gas in MCF which passed through the meter on a monthly basis.

(b) If a well classified as a gas well for allowable purposes is subject to special pool rules other than the Guymon-Hugoton or South Guymon Fields, the Conservation Division shall mail Form 1005 (Monthly Allocated Schedule) to the operator of record for each such well(s) on or before the 15th day of each month. The operator of record shall, in turn, complete said form by listing the gas volume sold on a monthly basis in MCF by well and return a copy to the Conservation Division on or before the last day of the month succeeding the sales.

(c) If a well classified as a gas well for allowable purposes is subject to the special pool rules for the Guymon-Hugoton or South Guymon Fields, the Conservation Division shall mail Form 1005 (Monthly Allocated Schedule) to the operator of record for each such well(s) on or before the tenth day of each month. The operator of record shall, in turn, complete said form by listing the gas volume sold, including gas bought by the landowner, on a monthly basis in MCF by well and return a copy to the Conservation Division on or before the 15th day of the month succeeding the sales.

(d) If there is a split connection at the well site, then the operator of record measuring gas volumes shall be responsible for reporting the total volume sold for each well.

(e) If a well classified as a gas well for allowable purposes is subject to special pool rules (including the Guymon-Hugoton Field), the Conservation Division shall mail Form 1040 to each operator on or before the tenth day of the second succeeding month following the custody transfer indicating the reported volume of gas taken from each well.

(f) If a well classified as a gas well for allowable purposes is subject to multiple gas purchase contracts or interest owners taking their gas in kind, the producing owner shall report and account to the well operator all volumes sold and the identity of all purchasers on or before the last day of the following month after sale of such gas. The operator(s) of the required meter(s) under 165:10-17-5 shall report and account to the well operator all volumes of gas measured by such meter(s) on or before the last day of the following month after measurement. Failure to comply with this subsection will result in such gas production being ordered shut-in.

(g) Failure of an operator to timely file sales volumes on Form 1005 shall result in a zero allowable being assigned to the operator's wells for the month in which the sales volumes would have been used in calculating the field allowable. Allocation factors for a pool shall not be recalculated as a result of the filing of a late Form 1005.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95]

165:10-1-48. Common purchaser and carrier rules

- (a) 52 O.S., 1961, Sections 54, 55, 56, and 240 are hereby adopted as common purchaser and common carrier rules as fully as if set out verbatim herein.
- (b) No person shall purchase, take, or transport any oil or gas in excess of the allowable fixed by the Commission, or, when notified by the Conservation Division, such oil or gas being produced in violation of any rule, regulation, or order of the Commission; provided, this Section shall not require splitting a tank.

165:10-1-49. Filing of nominations

All operators of natural gas wells in special allocated gas pools where well allowable calculations according to special allocated field rules are in effect shall file their pool nominations on Form 1034-G not later than one week prior to the date of the market demand hearing.

(1) Nominations shall be restricted to the volume not to exceed the wellhead absolute open flow (WHAOF) times calendar days for each well in a pool. For wells in pools where the WHAOF is not utilized, the equivalent well deliverability or calculated rate of flow applicable to that particular pool may be used in lieu of the WHAOF. For wells exempt from testing, nominations shall be restricted to a volume not to exceed the well's minimum, double minimum, or special allowable time calendar days.

(2) Operators shall attach to Form 1034-G a listing of each of their special allocated wells by pool, OTC Lease Number, API Number, well name and number, and location as recorded on Form 1040, plus the applicable WHAOF, deliverability, or rate of flow value as determined by the appropriate well test for that time period. Wells exempt from testing shall be indicated as test-exempt on the list.

(3) Failure of an operator to properly file nominations on Form 1034-G shall result in a zero allowable being assigned to the operator's wells for the month in which the nominations would have been used in calculating the field allowable. Allocation factors for a pool shall not be recalculated as a result of the filing of a late Form 1034-G.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 26 Ok Reg 2498, eff 7-11-09]

SUBCHAPTER 3. DRILLING, DEVELOPING, AND PRODUCING

PART 1. DRILLING

165:10-3-1. Required approval of notice of intent to drill, deepen, re-enter, or recomplete; Permit to Drill

(a) Permit to Drill.

(1) Except as provided in (1) of this Section, on emergency authorization to commence, the operator shall obtain for the well a Permit to Drill approved by the Conservation Division before:

(A) Spudding a well for the exploration for and production of oil or gas.

(B) Spudding a well for use as an injection, disposal, or service well.

(C) Re-entry into a plugged well.

(D) Recompletion of a well.

(E) Deepening an existing well.

(2) A Permit to Drill shall be valid only for each common source of supply listed on the permit.

(3) Any operator who drills, deepens, reenters or recompletes a well without a permit to drill may be fined up to \$1,000.00.

(4) An operator requesting a Permit to Drill for a well shall submit a plat utilizing Commission records showing the location and total depth of each abandoned, plugged, producing or drilling well, and dryhole within one quarter (1/4) mile of the completion interval of the proposed well.

(b) Amended or additional Form 1000 requirements.

(1) **When required.** If the Conservation Division has issued a Permit to Drill for a well, the operator of the well shall submit an amended Form 1000 for the well and obtain an amended Permit to Drill before:

(A) Completing the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.

(B) Recompleting the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.

(C) Installing less surface casing than the amount approved on the unexpired Permit to Drill for the well.

(D) Deviating from an alternative casing and cementing procedure which the Conservation Division approved on the unexpired Permit to Drill for the well.

(E) Completing a well in a common source of supply at a subsurface location which does not correspond with the surface location on the most recently issued Permit to Drill for the well.

(2) **Effect of amended or additional Permit to Drill on prior Permit to Drill.** Each approved, amended, or additional Permit to Drill for a well cancels any previously issued Permit to Drill for the well.

(c) **Expired or revoked Permit to Drill.** If a Permit to Drill for a well expires or is revoked, the operator shall be subject to the requirements of (a) of this Section.

(d) **Casing and cementing requirements.** Each Permit to Drill shall list the minimum amount of surface casing to be used or an approved alternative casing and cementing program under 165:10-3-4.

(e) **Spud report and well spacing requirements.** In addition to complying with the requirement of obtaining a Permit to Drill, the operator shall comply with the following:

(1) The spud report requirement of 165:10-3-2.

(2) Any well spacing requirements applicable by order or rule of the Commission. Well spacing requirements do not apply to injection or disposal wells.

(f) Disposal of drilling fluids.

(1) The operator shall indicate on Form 1000 the proposed method(s) for disposal of drilling fluids. These methods shall include, but not be limited to:

(A) Evaporation/dewatering and leveling of the reserve pit.

(B) Soil farming.

(C) Recycling.

(D) Commercial off-site earthen pit disposal.

(E) Annular injection.

(F) Hauling to a facility or location other than a commercial earthen pit.

(2) If the method in (1)(F) in this subsection is used, the operator shall provide the location to which the drilling fluids are to be hauled.

(3) Issuance of the Permit to Drill shall not be construed as constituting approval of the disposal method(s) indicated. An operator who desires to dispose of drilling fluids through either evaporation/dewatering and leveling of the reserve pit, soil farming, commercial earthen pit disposal, or annular injection must comply with 165:10-7-16, 165:10-7-19 or 165:10-9-2, 165:10-9-1, or 165:10-5-13 respectively.

(4) If the proposed method for drilling fluid disposal is changed, the operator shall notify the appropriate Conservation Division District Office, either by telephone, facsimile or electronic mail, within twenty-four (24) hours after the change. An amended Form 1000 for the well shall not be required for a change in disposal method.

(g) Notice to surface owners.

(1) The operator shall include on each Form 1000 submitted to the Conservation Division, the name and address of each surface owner of record for the wellsite.

(2) For each Permit to Drill other than a Permit to Drill for a recompletion, the Conservation Division shall mail by regular U.S. mail a copy of the Permit to Drill to each surface owner listed on the Form 1000.

(h) Disapproval for noncompliance with Commission order. If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not issue any Permit to Drill for the operator, until the operator complies with the order.

(i) Erroneous approval. Erroneous issuance of a Permit to Drill shall not excuse noncompliance with any order or rule of the Commission.

(j) Expiration.

(1) **Eighteen-month period.** Except as provided in (3) of this subsection for expiration after submission of a completion report, a permit to drill shall expire eighteen months from the date of issuance, unless drilling operations are commenced and thereafter continued with due diligence to completion.

(2) **Six-month extension.** A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if written request for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted.

(3) **If Form 1002A is filed.** If the operator of the well submits to the Conservation Division a Completion Report (Form 1002A) for the well, the Permit to Drill for the well shall expire on the date the Completion Report is approved by the Conservation Division.

(k) Posting of Permit to Drill at the wellsite. During any activity subject to this Section, the operator shall maintain at the wellsite an original or legible copy of the Permit to Drill for inspection by Commission personnel.

(l) Emergency authorization without approval of a Permit to Drill. In an emergency, the Manager of the Technical Services Department of the Conservation Division may temporarily authorize commencement of activities without a Permit to Drill for a period up to five business days.

(m) Limits of authority. A Permit to Drill does not grant the operator authority to produce, inject or dispose without the required permits or allowable assignment.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-2. Notification of spudding of new well

(a) Except as provided in (c) of this Section, the operator of a new well shall file with the Conservation Division a Notice of Spudding of New Well on Form 1001A within 14 days after spudding of the well. The operator shall also notify the appropriate Conservation Division District Office by electronic mail or by telephone at least 48 hours prior to spudding the well.

(b) For the purposes of (a) of this Section, spudding of a new well refers to:

(1) The first boring of the portion of the hole intended to penetrate the base of treatable water or a common source of supply, whichever is shallower, in the drilling of a well for the production of oil and gas or for use as an injection, disposal or service well.

(2) Reentry into a previously plugged well for purposes of producing oil and gas or for use as an injection, disposal or service well.

(c) Filing of a Notice of Spudding of a New Well on Form 1001A shall not apply to:

(1) Any workover operation to deepen, plug-back, or recomplete.

(2) An unplugged hole spudded before January 9, 1986.

(3) Recompletion attempts in an unplugged hole for which a Notice of Spudding of New Well has been filed.

[Source: Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-3. Well casing strings

(a) Owners, operators, and drilling contractors shall comply with 165:10-3-4 and 165:10-5-2.

(b) In the event a rupture, break, or opening occurs in any casing string, the owner or operator shall cease well drilling, completion, or production operations and take immediate action to repair it and shall report the occurrence either by telephone or by electronic mail to the appropriate Conservation Division District Office within twenty-four (24) hours of discovery. The owner or operator shall also notify the appropriate Conservation Division District Office of the occurrence by electronic mail or by telephone within forty-eight (48) hours and supply the following information:

(1) Name of party reporting, firm name, mailing address, telephone number and electronic mail address.

(2) Well name and legal description.

(3) Name of operator.

(4) Date of discovery of rupture, break or opening in the casing string.

(5) Description of circumstances associated with the discovery of a rupture, break or opening in the casing string.

(c) Any owner or operator who fails to timely report the discovery of a rupture, break, or opening in any casing string may be fined up to \$5,000.00, and the well shall be shut down until it is repaired or plugged.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports

(a) **Scope.**

(1) This Section governs the following:

(A) Surface casing and cementing requirements.

- (B) Alternate casing and cementing procedure used instead of adequate surface casing and cement.
- (C) Minimum cementing and testing requirements for intermediate and production casing.
- (D) Minimum valve and blowout preventer requirements.
- (E) Cementing reports.

(2) This Section shall apply to the following:

- (A) Wells drilled or reentered for the production of oil, gas or brine.
- (B) Wells drilled or reentered for disposal of oilfield wastes.
- (C) Wells drilled for injection.
- (D) Wells drilled in subsurface gas storage units created by order of the Commission.
- (E) Other oilfield related service wells.

(b) Effect on area rules.

(1) If any area rules promulgated by order of the Commission require less casing and cement than required by this Section, then this Section shall supersede the area rules.

(2) If an applicable area rule promulgated by order of the Commission has more stringent casing and cementing requirements than what are required by this Section, the Conservation Division shall enforce the area rules.

(c) Surface casing and cementing requirements for wells listed in (a)(2) of this Section:

(1) **Minimum surface casing requirements.** Unless an alternate casing program is authorized by the Conservation Division or by an order of the Commission, suitable and sufficient surface casing shall be run and cemented from bottom to top with a minimum setting depth which is the greater of:

- (A) Ninety feet below the surface, or
- (B) Fifty feet below the base of treatable water.

(2) **Penalty for noncompliance.** An operator setting less than the required amount of surface casing or failing to remediate uncirculated cement before resuming operations may be fined up to \$5,000.00.

(3) **Exceptions to (c)(1).** Operators having wells producing hydrocarbons which were in compliance with the surface casing requirements at the time of completion shall not be required to comply with (1) of this subsection.

(4) **Well to be used for annular injection under 165:10-5-13.** If the operator intends to dispose of drilling or stimulation fluids by annular injection, then the operator shall comply with 165:10-5-13 which requires a surface casing string to be set not less than 200 feet below the base of treatable water, unless a Commission order provides otherwise.

(5) **Depth limitation on setting surface casing.** The well operator shall run and cement the surface casing string required by this subsection before drilling the well more than 250 feet below the base of treatable water, unless otherwise approved on the Permit to Drill.

(6) **Penalties.** Operators failing to obtain permission to drill a well more than 250 feet below the treatable water, or to obtain permission for an alternate casing and cementing procedure may be fined up to \$2,500.00.

(7) Cementing procedures.

- (A) **Approved methods.** Except as provided in (B) of this paragraph for bradenhead cementing, cement shall be run by either the tubing and pump method, the pump and plug method, or the

displacement method.

(B) Bradenhead cementing prohibited. Bradenhead cementing is prohibited without written permission from the appropriate Conservation Division District Office.

(C) Restrictions on stage cementing.

(i) Running cement through small tubulars is permitted above 200 feet in depth without special permission.

(ii) Below 200 feet in depth, the operator shall obtain permission from the appropriate Conservation Division District Office before using small tubulars to run cement.

(D) Steel casing required. For purposes of the surface casing requirements of this Section, surface casing shall be oil field grade steel casing.

(E) Minimum cement setup time. The cement behind the surface casing shall set at least eight hours before further drilling. The cement behind the surface casing in wells drilled in an underground storage facility pursuant to OAC 165:10-3-5 shall set at least twenty-four hours before further drilling.

(F) Down-hole testing of surface casing and cement. Before drilling the shoe of the surface casing, the operator shall test the surface casing using the procedure prescribed by (g) of this Section.

(G) Failure to circulate cement or fall back of cement behind surface casing.

(i) If no conductor string is set and the cement did not circulate to the surface or falls back more than five feet, the operator shall determine the top of the cement using a method approved by the District Manager or Field Inspector Supervisor.

(ii) If the top of the cement is found less than 200 feet from the surface, the operator may circulate cement to surface using small tubulars.

(iii) If the top of the cement is greater than 200 feet from the surface, the operator shall perform a corrective cementing operation by circulating cement to the surface from the determined top of the cement. The District Manager or Field Inspector Supervisor may grant permission to circulate cement through small tubulars.

(H) Insufficient surface casing or mechanical failure. Within 24 hours after discovery of a problem with the surface casing or cement, the operator shall notify the appropriate Conservation Division District Office by telephone, facsimile or electronic mail of:

(i) Any mechanical failure of the surface casing or cement.

(ii) Discovery of a treatable water formation below the shoe of the surface casing.

(I) Penalty. An operator, failing to report a rupture, break, or opening in the surface casing, may be fined up to \$1,000.00 and the well shut down.

(J) Notice. The District Manager or Field Inspector shall be given at least 24 hours notice by telephone, facsimile or electronic mail prior to any cementing operation in order that they may have the

opportunity to witness.

(d) Alternate casing and cementing procedures.

(1) **Requirement of approval on the Permit to Drill.** Use of an alternative casing and cementing procedure instead of surface casing and cement required by (c) of this Section is prohibited without authorization on the Permit to Drill for the well.

(2) **Disapproval.** The Manager of Technical Department may not issue a permit for an alternate casing string and cementing procedure if one or more of the following conditions exist:

(A) The well will penetrate a known lost circulation zone.

(B) The treatable water bearing formation(s) will be endangered.

(C) The projected depth of the well is less than 100 feet from the top of any authorized secondary project or gas storage facility.

(3) **Applicability of other casing and cementing standards.** Alternate casing and cementing procedures under this subsection are subject to the provisions of (c)(7) of this Section.

(4) Alternate casing and cementing procedure.

(A) An operator having permission to run an alternate casing string may, for protection of the treatable water, drill the well to casing point and circulate cement to the surface, or circulate cement from a depth of 100 feet below the base of treatable water to the surface after following the procedures set out in (f) of this Section.

(B) Oil based drilling mud shall be prohibited.

(C) If a well is completed using an alternate casing and cementing procedure, a bond log covering the interval from 100 feet below the base of the treatable water to the surface shall be required. The District Manager may waive this requirement. A completion attempt, in cases where the protection of treatable water is questionable, is strictly prohibited.

(D) Unless extended by the District Manager, the operator shall have 72 hours after drilling and testing is completed to run production casing or plug the well. A minimum of 24 hours prior notice by telephone, facsimile or electronic mail must be given to the appropriate Conservation Division District Office prior to cementing operations so that a Field Inspector may have the opportunity to witness the cementing or plugging procedures. If the well is plugged and abandoned, procedures set out in (e) of this Section shall be followed.

(E) In the event that casing is run and cement does not circulate to the surface, or falls back, the operator shall determine the top of the cement using a method approved by the District Manager.

(5) Remedial actions.

(A) If the top of the cement is less than 200 feet from the surface, the operator may circulate cement from that point to the surface using small tubulars or by perforating the casing at that point and circulating cement to the surface.

(B) If the top of the cement is greater in depth than 200 feet, the operator shall perforate the casing at the top of the cement and circulate cement to the surface, or with the written permission of the District Manager or Field Inspector Supervisor, use small tubulars.

(C) In the event that a conductor string had been set and the top of the cement is at least ten feet above the base of the conductor casing no remedial action is needed.

(D) Unless waived by the appropriate Conservation Division District Office, all corrective cementing operations shall be approved and witnessed by the Field Inspector.

(E) In wells where corrective actions were needed for casing or cementing problems, a completion attempt shall not be made without approval by the District Manager.

(e) **Permanent well marker.** In the event that the well is a dry hole and no casing has been run, then during the plugging of the well the operator shall run and cement from bottom to top at least one joint of casing at the surface not less than 25 feet in length for use as a permanent well marker. The casing used as a well marker shall be oil field grade steel casing with an outside diameter of at least seven inches. The top of the marker shall be three feet below the surface and be capped with a steel plate inscribed or embedded with the well number and date of plugging on the steel plate. An operator failing to run and cement the well marker as required may be fined up to \$1,000.00 and shall, under the supervision of the Commission, replug the well.

(f) **Minimum cement for additional casing strings.** If additional casing other than surface casing is run, except for temporary purposes, it shall be run, set, and cemented with a calculated volume of cement sufficient to fill the annular space behind the casing string from the base of the casing string to a minimum height which is the greater of five percent of the depth to which the casing string is set, or a height of 200 feet. Any well approved for horizontal completion shall be cemented with a calculated volume of cement sufficient to fill the annular space behind the production casing string to isolate the producing formation. The Conservation Division may grant a variance to this requirement for a horizontal well upon request.

(g) **Pressure testing of casing strings.**

(1) Before drilling the cement plug in a casing string, the operator shall pressure test the installed casing for 30 minutes at a minimum pressure which is the lesser of the surface gauge pressure equal in pounds per square inch to 0.2 of the length of the casing in feet or 1500 psig.

(2) During the 30 minute test, if the surface pressure drops ten percent or more, the operator shall:

(A) Repair and retest the casing until the requirements of this subsection are met; or

(B) Plug the well according to the rules of this Chapter.

(h) **Minimum wellhead equipment for drilling wells.** All reasonable and prudent precautions shall be taken for keeping the well under control during drilling operations, including but not limited to the use of blowout preventers or other similar equipment with appropriate pressure fittings attached to properly cemented casing strings and the maintenance of mud-laden fluid of sufficient weight to provide proper well control. A blowout preventer or other equipment necessary to maintain control of the well shall be installed prior to drilling out of the surface casing. Blowout preventers and associated equipment shall be maintained in good working order. Blowout preventers shall be pressure tested at regular intervals, not to exceed twenty-one days, to ensure proper operation. A function test shall be conducted on a routine basis during drilling operations to ensure that annular preventers and rams will operate properly. Alternate testing procedures may be

approved by the District Manager. The rig personnel shall be trained in the use of blowout prevention equipment and well control procedures on the rig.

(i) Cementing reports.

(1) The operator of the well shall submit, attached to Form 1002A Completion Report, a Form 1002C Cementing Report describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs.

(2) If additional cementing operations occur after submission of the Cementing Report, the operator shall submit an amended Form 1002C for the well.

(j) Surface casing requirements for re-entry wells. For a re-entry as defined by 165:10-1-2, casing and cementing requirements at the time of re-entry shall apply.

(k) Surface casing requirement for recompletions. For a recompletion as defined by 165:10-1-2, casing and cementing requirements applicable to wells commenced on the latter of the spud date or re-entry date for the well shall apply.

(l) Casing and cementing requirements for wells converted for injection or disposal. If a well is converted for use as an injection or disposal well, it shall be subject to the casing and cementing requirements of this Section effective at the time of conversion of the well.

(m) Casing and cementing requirements for wells penetrating unitized common sources of supply. Each newly drilled or re-entered well which penetrates a common source of supply in which enhanced recovery operations are being conducted shall be properly cased and cemented from not less than 100 feet below to not less than 100 feet above each unitized common source of supply to prevent migration of formation fluids and contain formation pressure. In the event the well is to be plugged without being cased, the well shall be properly cemented over the aforementioned interval(s) during plugging procedures.

(n) Insufficient surface casing and cement. When it has been determined that a treatable water-bearing formation has not been properly cased and cemented, the operator shall take such measures designated by the Director of Conservation or ordered by the Commission to protect any treatable water-bearing formation.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-5. Underground storage

(a) Scope. This Section shall apply to all operations pertaining to the drilling, completion, recompletion, or remedial operations on wells located within the boundaries of an underground storage facility as defined in (b)(4) of this Section or wells whose completion intervals will, at any point, be located within 600 feet of the underground storage facility.

(b) Definitions.

(1) "Underground storage" shall mean storage of natural gas in a subsurface stratum or formation of the earth.

(2) "Natural gas" shall mean gas either while in its natural state or after the same has been processed by removal therefrom of component parts not essential to its use for lights and fuel.

(3) "Storage operator" shall mean any person, firm, or corporation which operates an underground storage facility.

(4) "Underground storage facility" shall mean any subsurface stratum or formation of the earth used for underground storage. Provided that, in the

case of a natural gas bearing subsurface stratum or formation, the commercially producible native gas shall have been substantially depleted and the gas therein shall not be used primarily for the secondary recovery of oil in paying quantities from the subsurface stratum or formation.

(5) "Well" means a vertical, directional or horizontal well drilled or bored or to be drilled or bored within the certified boundary of an underground storage facility, or whose completion interval will, at any point, be located within 600 feet of the underground storage facility.

(6) "Well operator" shall be the person, firm, or corporation that is the operator of a well.

(7) "Major remedial operations" shall mean any workover operations requiring a workover rig, wire line or pump truck services.

(8) "Good quality cement" means cement that would obtain a compressive strength to prevent oil, gas, or water migration within a twenty four (24) hour period.

(9) "Certified boundary" means the perimeter of the legal description of an underground storage facility established by certificate and order of the Commission.

(10) "Completion interval" means for open hole completion or recompletions, the interval from the point of entry to the terminus and, for cased and cemented completions or recompletions, the interval from the first perforations to the last perforations.

(c) **Notice to storage operator.** Upon receipt of Form 1000 from a well operator, the Conservation Division shall determine whether the proposed well falls within one (1) mile of the certified boundary of an underground storage facility. Following a positive determination, the Conservation Division shall instruct the well operator to provide notice of the application for a Permit to Drill the well to the storage operator and the Director of the Public Utility Division as part of the application for Permit to Drill process. The well operator is required to supply written confirmation to the Conservation Division that notice of the application for a Permit to Drill the well has been provided to the storage operator and the Director of the Public Utility Division.

(d) **Operational procedures.**

(1) All storage operators and well operators are required to maintain on file with the Commission's Surety Department current mailing addresses, email addresses, and 24 hour telephone numbers. In addition, storage operators are required to maintain on file with the Commission's Surety Department the Commission order number pertaining to the underground storage facility.

(2) Before spudding a well within the certified boundary of a gas underground storage facility, the well operator shall mail a copy of the Permit to Drill to the storage operator at the address listed at the Commission and also supply a copy of the Permit to Drill to the Director of the Public Utility Division. The storage operator will inform the well operator of the estimated depth, thickness, and pressure of the underground storage facility at that location. Failure of the storage operator to provide the data to the well operator shall not be a cause to delay drilling, but the well operator is required to notify the storage operator, by phone a minimum of 24 hours prior to commencing drilling operations at a 24 hour telephone number furnished to the Commission by the storage operator.

- (3) A well operator shall comply with the provisions of 165:10-3-4(c). Alternate casing programs shall not be permitted.
- (4) Drilling rigs shall be equipped with a blowout preventer. The preventer shall be installed and tested at least 500 psig above the anticipated underground storage facility pressure before drilling below the base of the surface casing.
- (5) The storage operator shall receive drilling reports daily from the well operator and the storage operator shall be provided 48 hours notice by the well operator at a 24 hour telephone number furnished to the Commission by the storage operator to afford the storage operator an opportunity to witness any tests or logging operations from the surface to 600 feet below the base of the underground storage facility. Any abnormal conditions occurring during the drilling operation, such as abnormal pressures and/or lost circulation, shall be reported immediately by the well operator to the storage operator at the 24 hour telephone number supplied by the storage operator to the Commission.
- (6) The well operator shall drill the well in such a manner as to prevent invasion of drilling fluids into, or the escape of natural gas from, the underground storage facility. The well operator shall be required to mud up at least 100 feet above the anticipated depth of the top of the underground storage facility.
- (7) If run, a copy of either an open hole porosity or resistivity well log run from the base of surface casing to total depth shall be promptly forwarded to the storage operator. The logs submitted to the storage operator may be terminated 600 feet below the base of the underground storage facility. At least 48 hours prior to commencing logging operations the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the open hole logging operation.
- (8) In the event that the well is noncommercial and is to be plugged and abandoned, the well operator shall place a cement plug using a good quality cement, covering from not less than 300 feet below the base to not less than 300 feet above the top of the underground storage facility. At least 48 hours prior to commencing the plugging operation, the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the plugging operation. The field inspector may invoke the provisions of 165:10-11-6(m), (n) and (o).
- (9) In the event that casing is run, the well operator will cause the underground storage facility interval to be covered with steel casing and be cemented from not less than 100 feet below the base to not less than 100 feet above the top of the underground storage facility using a good quality cement. At least 48 hours prior to commencing the casing operation, the well operator shall notify the appropriate Conservation Division District Office and the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission. The Commission field inspector for the area and storage operator shall have the option of witnessing the operation.
- (10) For the purpose of ensuring the integrity of the underground storage facility, the well operator shall be required to run a cement bond log through the underground storage facility formation before any completion

attempts are made. At least 48 hours prior to commencing the logging operation, the well operator shall notify the storage operator at the 24 hour telephone number furnished by the storage operator to the Commission, and the storage operator shall have the option of witnessing the logging operation and be furnished with a copy of the bond log from the top of cement to total depth or, at the option of the well operator, to 600 feet below the base of the underground storage facility. If the integrity of either the bond log or cement across the underground storage facility interval is questioned by the storage operator, the storage operator may, at its sole risk and expense, run additional logs. No completion, recompletion or major remedial operations shall be permitted until the fact has been established, by the well operator, storage operator and the Managers of the Technical Services and Field Operations Departments, that the integrity of the cement is sound and that the underground storage facility is isolated from the remainder of the bore hole. The remedial work, if needed to protect the storage reservoir, shall be at the risk and expense of the well operator.

(11) The storage operator, the Managers of the Technical Services and Field Operations Departments and the Director of the Public Utility Division shall be notified at least 48 hours prior to commencement of completion, recompletion, or major remedial operations so as to afford opportunities to witness such operations. The well site shall be made accessible at all times to the storage operator and all information pertaining to the completion shall be forwarded daily to the storage operator. If the completion, recompletion, or major remedial operations attempt is to be made in any formation within 600 feet of the underground storage facility, the proposed plan of completion shall be forwarded to the storage operator ten business days prior to commencement of operations. The storage operator shall have five business days after receipt of the proposed plan to forward any objection to the well operator. Completion operations, recompletion, or major remedial operations shall not be permitted until the matter is resolved.

(12) At any time that the storage operator shall reasonably believe that damage may be occurring to the underground storage facility or that natural gas may be escaping into any other formations or otherwise believe that a well may compromise the integrity of the underground storage facility, the storage operator may then request that the operator of the well conduct specific tests solely at the storage operator's risk and expense. If an agreement cannot be obtained between the parties concerned, the storage operator or well operator may bring the matter before the Corporation Commission for determination by application, notice, and hearing following the procedure set out in OAC 165:5-7.

(13) If tests establish that damage is occurring and/or that natural gas is escaping by the continued operation of the well, the well shall be shut down immediately and the remedial operation to rectify the condition shall be commenced within ten days, at the sole risk and expense of the well operator.

(14) All information furnished to the storage operator shall be kept confidential until released in writing by the well operator.

[Source: Amended at 36 Ok Reg 534, eff 8-1-19]

PART 3. COMPLETIONS

165:10-3-10. Well completion operations

(a) **Hydraulic fracturing and acidizing.** In the completion of an oil, gas, injection, disposal, or service well, where acidizing or fracture processes are used, no oil, gas, or deleterious substances shall be permitted to pollute any surface or subsurface fresh water. Unless an operator confers with and obtains the approval of the Conservation Division, the use of diesel fuel as the base fluid for hydraulic fracturing operations is prohibited. Approval of the Conservation Division shall be reflected in writing. Within 5 days of obtaining written authorization, the operator is required to send the authorization by facsimile, electronic mail or regular mail to the following:

- (1) The owner of the surface location where the proposed well is to be drilled; and
- (2) Each operator of a producing spacing unit or well within 1 mile of the perforated interval of the proposed well.

(b) **Notice of hydraulic fracturing operations.**

- (1) Notice shall be given by facsimile, electronic mail or regular mail at least 5 business days prior to the commencement of hydraulic fracturing operations on a horizontal well to operators of producing wells within 1 mile of the completion interval of the subject well. The notice to be provided to such operators shall contain the information in Form 6000NOO. If the hydraulic fracturing operations schedule changes after notice has been provided, resulting in a delay of operations of more than 5 days from the initial notice, new notice is required to be given.
- (2) Notice shall be sent to the Conservation Division electronically using Form 6000NHF as provided on the Commission's website at least 48 hours prior to commencement of hydraulic fracturing operations on a well. The time period for sending such notice to the Conservation Division may be waived by the Manager of the Induced Seismicity Department.
- (3) Separate stages of a planned multi-stage hydraulic fracturing operation shall not constitute separate hydraulic fracturing operations for notification purposes.
- (4) If an operator has evidence that hydraulic fracturing operations have impacted its well(s), the operator may report the occurrence by electronic mail to the appropriate Conservation Division District Office within 24 hours of discovery. The operator shall use Form 4000WIP to report the occurrence.

(c) **Chemical disclosure.** Within 60 days after the conclusion of hydraulic fracturing operations on an oil, gas, injection, disposal, or service well that is hydraulically fractured, the operator must submit information on the chemicals used in the hydraulic fracturing operation to the FracFocus Chemical Disclosure Registry.

- (1) The submission required by this subsection must include the following information:
 - (A) the name of the operator;
 - (B) the API number of the well;
 - (C) the longitude and latitude of the surface location of the well;
 - (D) the dates on which the hydraulic fracturing operation began and ended;
 - (E) the total volume of base fluid used in the hydraulic fracturing operation;

(F) the type of base fluid used;
(G) the trade name, supplier, and general purpose of each chemical additive or other substance intentionally added to the base fluid; and
(H) for each ingredient in any chemical additive or other substance intentionally added to the base fluid, the identity, Chemical Abstract Service (CAS) number, and maximum concentration. The maximum concentration for any ingredient must be presented as the percent by mass in the hydraulic fracturing fluid as a whole, and is not required to be presented as the percent by mass in any particular additive.

(2) For purposes of this subsection, the phrase "chemical additive or other substance intentionally added to the base fluid" refers to a substance knowingly and purposefully added to the base fluid and does not include trace amounts of impurities, incidental products of chemical reactions or processes, or constituents of natural materials.

(3) The operator is not responsible for inaccurate information provided to the operator by a vendor or service provider, but the operator is responsible for ensuring such information is corrected when any inaccuracy is discovered.

(4) If certain chemical information, such as the chemical identity, CAS number, and/or maximum concentration of an ingredient, is claimed in good faith to be entitled to protection as a trade secret under the Uniform Trade Secrets Act, 78 O.S. §§85-94, the submission to the FracFocus Chemical Disclosure Registry may note the proprietary nature of that chemical information instead of disclosing the protected information to the registry. The submission must include the name of the supplier, service company, operator, or other person asserting the claim that the chemical information is entitled to protection as a trade secret and provide the chemical family name or similar descriptor for the chemical if the chemical identity and CAS number are not disclosed. The Commission or the Director of the Oil and Gas Conservation Division may require the claimant to file with the Commission a written explanation in support of the claim.

(5) Nothing in this subsection restricts the Commission's ability to obtain chemical information under the provisions of OAC 165:10-1-6 or other applicable Commission rules.

(6) This subsection applies to:

(A) horizontal wells that are hydraulically fractured on or after January 1, 2013; and

(B) other wells that are hydraulically fractured on or after January 1, 2014.

(d) **Rule reference guide.** References to Commission rules regarding management of hydraulic fracturing operations are as follows:

(1) Duties and authority of the Conservation Division (OAC 165:10-1-6).

(2) Required approval of notice of intent to drill, deepen, re-enter or recomplete; Permit to Drill (OAC 165:10-3-1).

(3) Surface and production casing (OAC 165:10-3-3).

(4) Casing, cementing, wellhead equipment and cementing reports (OAC 165:10-3-4).

(5) Swabbing and bailing (OAC 165:10-3-11).

(6) Leakage prevention in tanks; protection of migratory birds (OAC 165:10-3-13).

- (7) Well site and surface facilities (OAC 165:10-3-17).
- (8) Completion reports (OAC 165:10-3-25).
- (9) Administration and enforcement of rules (OAC 165:10-7-2).
- (10) Cooperation with other agencies (OAC 165:10-7-3).
- (11) Water quality standards (OAC 165:10-7-4).
- (12) Prohibition of pollution (OAC 165:10-7-5).
- (13) Protection of public water supplies (OAC 165:10-7-6).
- (14) Informal complaints, citations, red tags and shut down of operations (OAC 165:10-7-7).
- (15) Use of noncommercial pits (OAC 165:10-7-16).
- (16) Surface discharge of fluids (OAC 165:10-7-17).
- (17) Discharge to surface waters (OAC 165:10-7-18).
- (18) One-time land application of water-based fluids from earthen pits and tanks (OAC 165:10-7-19).
- (19) Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater (OAC 165:10-7-20).
- (20) Waste management practices reference chart (OAC 165:10-7-24).
- (21) One-time land application of contaminated soils and petroleum hydrocarbon based drill cuttings (OAC 165:10-7-26).
- (22) Application of fresh water drill cuttings by County Commissioners (OAC 165:10-7-28).
- (23) Application of freshwater drill cuttings by oil and gas operators (OAC 165:10-7-29).
- (24) Application to reclaim and/or recycle produced water for surface activities related to drilling, completion, workover, and production operations from oil and gas wells (OAC 165:10-7-32).
- (25) Use of commercial pits (OAC 165:10-9-1).
- (26) Commercial soil farming (OAC 165:10-9-2).
- (27) Commercial recycling facilities (OAC 165:10-9-4).
- (28) Duty to plug and abandon (OAC 165:10-11-3).
- (29) Notification and witnessing of plugging (OAC 165:10-11-4).
- (30) Plugging and plugging back procedures (OAC 165:10-11-6).
- (31) Plugging record (OAC 165:10-11-7).
- (32) Review of environmental permit applications (OAC 165:5-1-15 through OAC 165:5-1-19)
- (33) Response to citizen environmental complaints (OAC 165:5-1-25 through OAC 165: 5-1-30).
- (34) Contempt (OAC 165:5-19-1 through OAC 165:5-19-2).

[Source: Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-10.1. Notice of temporary lines which may be used to transport produced water

(a) Operators are required to send notice to the Conservation Division electronically as provided on the Commission's website for Form 5000NTL, to the appropriate County Commissioners, and to the surface owners of the land that is subject to the rights-of-way sought to be utilized by the operator, at least 48 hours prior to placing in public road rights-of-way temporary lines that may at any time be used to transport produced water for well drilling, completion, or remedial workover operations.

(b) Form 5000NTL shall be used to provide the notice required in subsection (a).

[Source: Added at 36 Ok Reg 534, eff 8-1-19]

165:10-3-11. Swabbing and bailing

In swabbing, bailing, or purging a well, all deleterious substances removed from the borehole shall be placed in adequate pits or tanks, and no such substances shall be permitted to pollute any surface and subsurface fresh water.

165:10-3-12. Leakage prevention in producing oil and gas wells

All wellhead connections, surface equipment, and tank batteries shall be maintained at all times so as to prevent leakage of oil, gas, saltwater, or other deleterious substances.

165:10-3-13. Water pollution prevention in tanks; protection of migratory birds

(a) Tanks for drilling mud or deleterious substances used in the drilling, completion, or recompletion of wells shall be constructed and maintained so as to prevent pollution of surface and subsurface fresh water.

(b) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil, all open top tanks containing oil on the surface be protected from access to birds. [See Advisory Notice 165:10-7-3(c)]

165:10-3-14. Waste of oil or gas

Except as provided in 165:10-3-15, waste of oil, condensate, or gas as defined in 165:10-1-2, is hereby prohibited.

165:10-3-15. Venting and flaring

(a) **Conditioning a producing well without a permit.** An operator may blow down a producing well without a permit for a period not to exceed 72 hours if:

- (1) Blowing down the well is necessary for efficient operation of the well or unexpected circumstances are encountered;
- (2) Blowing down the well will not damage any producing formation in the well; and
- (3) The operator complies with the H₂S requirements of 165:10-3-16.

(b) **Gas volumes less than or equal to 50 mcf/d.** An operator may vent or flare up to 50 mcf/d without a permit if:

- (1) It is not economically feasible to market the gas;
- (2) A suitable stand, line, or stack is used to prevent a hazard to people, and such stand, line or stack has a properly installed and operating stack arrestor;
- (3) H₂S content of gas exceeds 100 ppm, then the gas must be flared; and
- (4) The operator shall notify the appropriate Conservation Division District Office or Field Inspector within 24 hours of initiating the flaring of gas with an H₂S content exceeding 100 ppm.

(c) **Permit to vent or flare gas volumes in excess of 50 mcf/d.**

- (1) The Conservation Division may administratively grant a permit to vent or flare on a daily basis gas volumes in excess of 50 mcf/d, if:
 - (A) The operator applies for the permit on Form 1022;

- (B) The application lists the location of the well and the maximum daily volume of gas to be vented or flared;
- (C) It is not economically feasible to market the gas; and
- (D) A suitable stack, stand, or line will be used to prevent a hazard to people or property, and such stand, line or stack has a properly installed and operating stack arrestor.

(2) The operator shall file an amended application in the event that the amount of gas to be vented or flared exceeds the permitted volume.

(d) Temporary permit exemption for gas vented or flared during initial flowback from a newly completed or recompleted well. Gas vented or flared during initial flowback from a newly completed or recompleted well shall be exempt from the permit requirements of subsection (c) for a period not to exceed 21 days, commencing with the first date gas flow is in excess of 50 mcf/d, if:

- (1) Combustible gas flow greater than 50 mcf/d is flared;
- (2) Gas with H₂S content in excess of 100 ppm is flared;
- (3) The operator gives at least 48 hours notice by electronic mail or facsimile to the appropriate Conservation Division District Office or Field Inspector regarding the time when the venting or flaring of gas pursuant to this subsection will begin;
- (4) It is not economically feasible to market the gas; and
- (5) A suitable stack, stand, or line will be used to prevent a hazard to people or property, and such stand, line or stack has a properly installed and operating stack arrestor.

(e) Gas flared after initial flowback from a newly completed or recompleted well. Subsequent to the 21 day initial flowback period addressed in subsection (d), gas flared during flowback from a newly completed or recompleted well shall be exempt from the permit requirements in subsection (c) for an additional period not to exceed 45 days if:

- (1) Gas volumes flared from the well are less than or equal to an average rate of 300 mcf/d over the 45 day period, and one or more of the following conditions applies:
 - (A) No appropriate takeaway structure exists;
 - (B) The well is an exploration well; or
 - (C) The quality of the gas to be flared is not pipeline acceptable.
- (2) Gas with H₂S content in excess of 100 ppm must be flared.
- (3) A suitable stack, stand, or line must be used to prevent a hazard to people or property, and such stand, line or stack has a properly installed and operating stack arrestor.
- (4) The well operator is required to maintain a daily log of gas volumes flared from the well during the 45 day period. The daily log must be preserved for 3 years subsequent to the conclusion of the 45 day period. The log shall be produced upon request by an authorized representative of the Commission.
- (5) If gas volumes greater than 300 mcf/d are to be flared during flowback from a newly completed or recompleted well subsequent to the initial 21 day period addressed in subsection (d), then the operator is required to obtain a permit as provided in subsection (c).

(f) Application for an order permitting venting or flaring.

- (1) If the Conservation Division denies a Form 1022 application for a well, the operator of a well may apply for an order permitting venting or flaring of gas.

- (2) The application and notice shall be in accordance with OAC 165:5-7.
- (3) Upon application, notice, and hearing, the Commission may grant or deny an application made pursuant to OAC 165:5-7.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-3-16. Operation in hydrogen sulfide areas

(a) **Applicability.** Each operator who conducts operations as described in this subsection shall be subject to this Section and shall provide sufficient safeguards to protect the general public from the occupational exposure limit of gas with a hydrogen sulfide content of 20 or more ppm and the immediate danger to life and health from a release of gas with a hydrogen sulfide content of 100 or more ppm:

(1) Operations including drilling, working over, producing, injecting, gathering, processing, transporting, and storage of hydrocarbon fluids that are part of, or directly related to, field production, transportation, and handling of hydrocarbon fluids that contain gas in the system which has hydrogen sulfide as a constituent of the gas to the extent as specified in (b) of this Section. The Commission may fine an operator up to \$5,000.00 for any violation of this Section.

(2) This Section shall not apply to:

(A) Operations involving processing oil, gas, or hydrocarbon fluids which are either an industrial modification or products from industrial modifications, such as refining, petrochemical plants, or chemical plants.

(B) Operations involving gathering, storing, and transporting stabilized liquid hydrocarbons.

(C) Operations where the concentration of hydrogen sulfide in the system is 20 ppm or less.

(b) General provisions.

(1) Each operator shall determine the hydrogen sulfide concentration in the gaseous mixture in the operation or system. Tests shall be made in accordance with industry standards or other methods approved by the Commission.

(2) For all operations subject to this Section, the radius of exposure shall be determined by the following Pasquill-Gifford equations or by other methods approved by the Commission such as air dispersion models accepted or approved by the U.S. Environmental Protection Agency:

(A) For determining the location of the 100 ppm radius of exposure:
 $x = [(1.589)(\text{mole fraction } H_2S)(Q)]$ to the power of (.6258).

(B) For determining the location of the 300 ppm radius of exposure:
 $x = [(0.6743) (\text{mole fraction } H_2S) (Q)]$ to the power of (.6258).

(C) For determining the location of the 500 ppm radius of exposure:
 $x = [(0.4546)(\text{mole fraction } H_2S)(Q)]$ to the power of (.6258);

Where: **x** = radius of exposure in feet; **Q**= maximum volume determined to be available for escape in cubic feet per day; **H₂S** = mole fraction of hydrogen sulfide in the gaseous mixture available for escape.

(3) The volume used as the escape rate in determining the radius of exposure shall be that specified below as is applicable:

(A) The maximum daily volume rate of gas containing hydrogen sulfide handled by that system for which the radius of exposure is calculated.

(B) For existing gas wells, the current adjusted open flow rate or the operator's estimate of the well's capacity to flow against zero back-pressure at the well head shall be used.

(C) For new wells drilled in developed areas, the escape rate shall be determined by using the current adjusted open-flow rate of offset wells or the field average current adjusted open-flow rate, whichever is larger.

(D) The escape rate used in determining the radius of exposure shall be corrected to standard conditions of 14.65 psia and 60° Fahrenheit.

(4) For drilling of a well in an area where insufficient data exists to calculate a radius of exposure but where hydrogen sulfide may be expected, then a 100 ppm radius of exposure equal to 3,000 feet shall be assumed. A lesser-assumed radius may be considered upon written request to the appropriate Conservation Division District Office setting out the justification for same.

(5) As used in this Section, a public area is defined as a dwelling place, business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can reasonably be expected to be populated by humans.

(6) As used in this Section, a public street or road is defined as any federal, state, county or municipal street or road owned or maintained for public access or use.

(7) As used in this Section, a rural residential subdivision is defined as an assemblage of 5 or more residential housing units per 10-acre tract.

(8) As used in this Section, a flare system is defined as a gas recovery process of well control for the flaring of gas through means of a closed system comprised of, but not limited to, a separator, compressor, flare lines, knock-out drum, sealed scrubber drum, back-pressure check valves, flare stack assembly and automatic ignitor.

(9) Facilities where the 100 ppm radius of exposure extends into a public area shall use materials for new construction, or modification of or repairs to existing facilities, subsequent to the effective date of this paragraph, selected and manufactured so as to be resistant to hydrogen sulfide stress cracking under operating conditions for which their use is intended.

(A) Other materials which are non-susceptible to hydrogen sulfide stress cracking, such as fiberglass and plastics, may be used in hydrogen sulfide service provided such materials have been manufactured and inspected in a manner which will satisfy applicable industry standards, specifications or recommended practices.

(B) Existing facilities which are in operation prior to the effective date of paragraph (b)(9), above, and where there has been no failure of existing equipment attributed to hydrogen sulfide stress cracking, shall satisfy the requirements of paragraph (b)(9) until such time as the facility experiences a failure.

(10) The handling and installation of materials and equipment used in hydrogen sulfide service are to be performed in such a manner so as to

prevent hydrogen sulfide stress cracking.

(c) **Storage tank provision.** Storage tanks which are utilized as a part of a production operation, and which are operated at or near atmospheric pressure and where the vapor accumulation has a hydrogen sulfide concentration that when measured one (1) foot above the open tank thief hatch exceeds 100 ppm, shall be subject to the following:

(1) It shall not be necessary to determine a radius of exposure for storage tanks as described in this Section.

(2) A warning sign shall be posted at the facility which shall meet the following requirements:

(A) A sign shall be located within 50 feet of the facility and be of sufficient size to be readable from the road or at the entrance to the facility.

(B) The warning sign shall state at a minimum that hydrogen sulfide has been found and could be present.

(C) Signs constructed to satisfy paragraph (c)(1) shall use the language "**Caution, Poisonous Gas May Be Present**" using black and yellow colors, or "**Danger Poison Gas (Hydrogen Sulfide)**" using red and white colors or equivalent language. Colors shall satisfy Table 1 of American National Standards Institute Standard Z390.1-2017. Signs installed to satisfy paragraph (c)(1) must be compatible with Federal Occupational Safety and Health regulations.

(3) A wind indicator is to be located at the highest point of the tank battery site so that it may be seen from the entrance to the site.

(4) Fencing as a security measure is required when storage tanks are located inside the populated limits of a townsite or city or a rural residential subdivision, where conditions cause the storage tanks to be exposed to the public. In other areas where storage tanks may be considered to be a danger the Commission may require additional security measures.

(5) **Vapor safety.** A flare system, vapor recovery system or H₂S stripping system shall be installed.

(d) **Drilling, completion, workover and production operations.** All operators whose operations are subject to this Section, and where the 100 ppm radius of exposure is in excess of 50 feet, shall be subject to the following:

(1) **Warning and marker provision.**

(A) For aboveground and fixed surface facilities, the operator shall post, where permitted by law, clearly visible warning signs on access roads or public streets, or roads which provide direct access to facilities located within the area of exposure.

(B) In populated areas such as townsites, cities or rural residential subdivisions where the use of signs is not considered to be appropriate, an alternative warning plan may be approved upon written request to the appropriate Conservation Division District Office.

(C) For buried lines subject to this Section, the operator shall comply with the following:

(i) A marker sign shall be installed at public road crossings on both sides of the road as close to the pipeline as possible.

(ii) Marker signs shall be installed along the line, when it is located within a public area or along a public road, at

intervals frequent enough in the judgment of the operator so as to provide warning to avoid the accidental rupturing of line by excavation.

(iii) The marker sign shall contain the name of the operator and a 24-hour phone number (including area code), and shall indicate by the use of the words "Warning", "Caution", or "Danger" and "Poison Gas" that a potential danger exists. Markers installed in compliance with the regulations of the Federal Department of Transportation shall satisfy the requirements of this provision. Marker signs installed prior to June 12, 1987 shall be acceptable provided they are in good condition and indicate the existence of a potential hazard.

(D) In satisfying the sign requirement of this subsection, the following will be acceptable:

(i) Sign of sufficient size to be readable from the road or at the entrance to the facility.

(ii) New signs constructed to satisfy this subsection shall refer to (c)(2) of this Section.

(2) Security provision.

(A) Unattended fixed surface facilities shall be protected from public access when located within one-fourth (1/4) mile of a public area. This protection shall be provided by fencing the facility and locking the gate, the plugging of valve openings and removing the handles, or by other similar means approved by the appropriate Conservation Division District Office. For the purpose of this paragraph, any surface pipeline shall not be considered as a fixed surface facility.

(B) For well sites, fencing as a security measure is required when a well is located inside populated limits of a townsite, city or rural residential subdivision, where conditions cause the well to be exposed to the public.

(C) In other areas the Commission considers to be a danger, the Commission may establish additional security requirements.

(D) The fencing provision will be considered satisfied where the fencing structure is a deterrent to public access.

(e) Control and equipment safety; contingency plan.

(1) **Applicability; radius of exposure.** All operations subject to (a) of this Section shall be subject to (2) and (3) of this subsection, if any of the following conditions apply:

(A) The 100 ppm radius of exposure is in excess of 50 feet and includes any part of a "public area" or a "public road".

(B) The 100 ppm radius of exposure is greater than 3,000 feet.

(2) **Control and equipment safety provision.** Operators subject to this subsection shall install safety devices and maintain them in an operable condition, and/or shall establish written safety procedures designed to prevent the undetected continuing escape of hydrogen sulfide. Safety devices shall be tested annually and a record kept of such tests. All pressure relief safety valves located within the facility shall discharge into a flare system.

(3) **Contingency plan provision.** A contingency plan provision shall be developed for each drilling, producing, well servicing, and plant operation that could reasonably result in accidental exposure of the public to a concentration of hydrogen sulfide in excess of 100 ppm. The operator should make appropriate contacts with any public agency listed in the contingency plan. The contingency plan shall provide an organized plan of action for alerting and protecting the public. The details of a contingency plan are determined largely by the time required for a potentially hazardous concentration of hydrogen sulfide to reach a public area and by the population density in the public area. A copy of the contingency plan should be maintained at the location which lends itself best to activation of the plan. A copy shall be submitted to the appropriate Conservation Division District Office.

(A) The plan shall include instructions and procedures for alerting the general public and public safety personnel of the existence of an emergency.

(B) The plan shall include procedures for requesting assistance and for follow-up action to remove the public from an area of exposure.

(C) The plan shall include a call list which shall include the following as they may be applicable:

(i) Local supervisory personnel.

(ii) County Sheriff.

(iii) Department of Public Safety.

(iv) City Police.

(v) Ambulance Service.

(vi) Hospital.

(vii) Fire Department

(viii) Contractors for supplemental equipment.

(ix) District Commission Office.

(x) Local Department of Environmental Quality Office.

(xi) Other public agencies.

(D) The plan shall include a plat detailing the area of exposure. The plat shall include the locations of private dwellings or residential areas, public facilities, such as schools, business locations, public roads, or other similar areas where the public might reasonably be expected within the area of exposure.

(E) The plan shall include provisions for advance briefing of occupied dwellings within the 100 ppm radius of exposure. The following provisions apply:

(i) The hazards and characteristics of hydrogen sulfide.

(ii) The necessity for an emergency action plan.

(iii) Possible sources of hydrogen sulfide within the area of exposure.

(iv) Instructions for reporting a gas leak.

(v) The method by which the public will be notified of an emergency.

(vi) Procedures and/or processes to be implemented in case of an emergency.

(F) In a high density population area, or where the population density fluctuates or is difficult to ascertain, a reaction type of plan, in lieu of advance briefing for public notification, will be

acceptable. The reaction plan option must be approved by the appropriate Conservation Division District Office.

(G) The plan shall include names and telephone numbers of residents within the area of exposure, except in cases where the reaction plan option has been approved by the appropriate Conservation Division District Office.

(H) The plan shall include a list of the names and telephone numbers of the responsible parties for each of the possibly occupied public areas, such as schools, churches, businesses, or other public areas or facilities within the area of exposure.

(f) **Training and requirement provision.** Each operator shall provide H₂S training in accordance with American National Standards Institute Standard Z390.1-2017 for all of its employees who will be onsite. This training should include:

- (1) Hazards and characteristics of hydrogen sulfide.
- (2) Effect on metal components of the system.
- (3) Operations of safety equipment and life support systems.
- (4) First aid in event of an employee exposure.
- (5) Use and operation of H₂S monitoring and personal detector equipment.
- (6) Emergency response procedures to include corrective actions, shut-down procedures, evacuation routes, and rescue methods.

(g) **Injection of fluids.** Injection of fluids containing hydrogen sulfide shall not be allowed under the conditions specified in this Section unless the operator has received prior approval from the Underground Injection Control Department.

(h) **Venting and flaring.**

- (1) Venting and flaring of gas shall be conducted in accordance with OAC 165:10-3-15. Vent/flare lines or stacks must have properly installed and operating stack arrestors.
- (2) Flaring equipment in public areas shall be designed and installed so as to resist hydrogen sulfide stress cracking. Existing equipment which is in operation prior to the effective date of this paragraph, and where there has been no failure attributable to hydrogen sulfide stress cracking, shall satisfy the requirements of this paragraph until such time as the equipment experiences a failure. Materials used in any new construction, or modification of or repair to existing equipment subsequent to the effective date of this paragraph shall be selected and manufactured so as to be resistant to hydrogen sulfide stress cracking under the conditions for which the use of such materials is intended.
- (3) Flare systems shall be designed so as to eliminate restrictions and low points creating differential pressure drops in lines which could cause overpressuring of tank hatches.
- (4) Flare systems with insufficient pilot fuel gas supply are required to have an alternate fuel gas supply or automated ignition source.
- (5) The flare tip shall be required to extend a safe distance from the tank as determined in accordance with API Standard 2017 or similar industry practice.

(i) **Other requirements.** In addition to any other requirements of this Section, drilling, production workover operations and processing plant sites where the 100 ppm radius of exposure is 50 feet or greater shall be subject to the following:

- (1) Protective breathing equipment shall be maintained in a safe operating condition at two or more locations at the site where the occupational exposure limit of gas with a hydrogen sulfide content of 10 ppm or more

has been exceeded.

(2) Wind direction indicators shall be installed at strategic locations at or near the site and shall be readily visible from all areas of the site and from the entrance to the site.

(3) Automatic hydrogen sulfide detection and alarm equipment, including the required detection equipment for each person on the site that will warn of the presence of hydrogen sulfide gas in concentrations of 10 ppm or more shall be utilized at the site.

(4) The appropriate Conservation Division District Office shall be notified of the intention to conduct a drill stem test of a formation containing hydrogen sulfide in concentrations of 10 ppm or more to meet the requirements of this Section.

(j) **Incident and accident notification.** Operators shall immediately notify the appropriate Conservation Division District Office or field inspector of any incident involving a release of hydrogen sulfide gas of 100 ppm or more and shall report all hydrogen sulfide related accidents resulting in death or hospitalization of personnel.

(k) **Exception provision.** Any application for exception to the provisions of this Section should specify the provisions to which exception is requested, and set out in written detail the basis on which the exception is to be requested. Written requests for exceptions are to be submitted to the appropriate Conservation Division District Office.

(l) **Referenced organizations and publications.** The following organizations and publications are referenced in this Section:

(1) ANSI - American National Standards Institute 1899 L Street, NW, 11th Floor, Washington, DC 20036; Table I, Standard Z390.1-2017.

(2) API - American Petroleum Institute 1220 L Street, NW, Washington, DC 20005; API Standard 2017.

(3) EPA - U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Technical Support Division, Mail Drop C404-03, U.S. EPA, Research Triangle Park, North Carolina 27711.

[Source: Amended at 13 Ok Reg 2395, eff 7-1-96; Amended at 15 Ok Reg 2989, eff 7-15-98; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-3-17. Well site and surface facilities

(a) **Scope.** This Section shall be applicable to all operators and owners of oil and gas wells, leases, secondary recovery units, converted or newly drilled disposal or injection wells, and re-entries or reworkings of the above; however, this Section does not cover pits used in connection with oil and gas operations (see 165:10-7-16).

(b) **Removal of fire hazards.** Any material that might constitute a fire hazard shall be removed a safe distance from the well location, tanks, and separator. All waste oil shall be burned or disposed of in a manner to avoid creating a fire hazard.

(c) **Removal of surface trash.**

(1) All surface trash, debris, and junk associated with the operations of the property shall be removed from the premises. Equipment and material that may be useable and related to the operations of the property are not considered trash, debris and junk. With written permission from the surface owner, the operator may, without applying for an exception to 165:10-3-17(b), bury all nonhazardous material at a minimum depth of three feet; cement bases are included.

(2) If the operator fails to remove trash, debris, and junk after written notice, the Commission may fine the operator up to \$1,000.

(d) **Required lease signs.** Within 30 days after the completion of any producing oil or gas well subsequent to the effective date of this Section, a sign shall be posted and maintained at the location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well and the operator's twenty-four hour emergency telephone number, name of the well, number of the well, legal description of the well and API number; provided, however, where more than one well is producing on a lease, the operator may post and maintain a sign at the principal lease entrance indicating no trespassing, no unauthorized personnel or similar language, the lease name, operator, the operator's twenty-four hour emergency telephone number, legal description, and number of wells, and on each well designate the number of the well and API number. Within 30 days after completion or recompletion of an injection well or a disposal well subsequent to the effective date of this Section, a sign shall be posted and maintained at the well location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well, the operator's twenty-four hour emergency telephone number, well name, well number, legal description of the well, API number and the Commission order number by which it was authorized. The legal description of each well completed on or after March 1, 1976, shall be posted at the well and shall describe the location of the well to the nearest quarter quarter quarter section and shall show the section, township, and range. On a 160-acre or larger drilling and spacing unit, a sign shall also be posted at the entrance to the well site. Upon the Commission's approval, after the effective date of this Section, of transfer to a new operator of a well completed or recompleted prior to the effective date of this Section, the operator must comply with all requirements in this Section. If an operator fails to post a sign as directed, the Commission may fine the operator \$50.00 per violation; provided that total fines per incident shall not exceed \$500.00 per lease.

(e) **Notice of fire or blowout.** In case of a fire or blowout, the well operator shall notify by telephone or electronic mail, as soon as possible, either the Conservation Division or the appropriate Conservation Division District Office.

(f) **OTC numbers on stock tanks for oil and condensate.**

(1) On all oil and gas producing leases, the first purchaser of crude oil or condensate shall print its name or affix the company logo and print or affix the OTC Gross Production Division Purchaser Reporting Number on the lease sign or at least one of the storage tanks from which marketable liquids are being delivered.

(2) On all oil and gas producing leases, the well operator shall print or affix the OTC Gross Production Division assigned Production Unit Number and the OTC Gross Production Division Operator Reporting Number on the lease sign or at least one of the tanks from which marketable liquids are being stored. In the case of an enhanced recovery or unitization operation where several OTC Gross Production Division assigned Production Unit Numbers exist for the wells in the unit, the word "unitized" shall be printed or affixed to the lease sign or one of the storage tanks from which marketable liquids are being delivered to the purchaser.

(3) The identification numbers required in this subsection shall always be clearly legible. All letters and numbers shall be a minimum of two inches in height. Any operator failing to post required information may be fined up to \$50.00 per violation; provided that total fines per incident shall not exceed

\$500.00 per well.

(g) OTC numbers on gas meter or meter house.

(1) On all gas producing leases, the operator of the well site gas meter required under 165:10-17-5 shall print or affix its name and OTC reporting number on the outside of the meter house or on the outside of the meter itself if no meter house exists.

(2) The operator of the lease shall print its OTC lease number and operator reporting number on the meter house or on outside of the meter if no meter house exists.

(3) The identification required in this subsection shall always be clearly legible.

(h) Valve and seals on stock tanks. The operator shall install tank valves such that metal identification seals can be properly utilized. These seals shall be used on all delivery tank valves to lessen unauthorized movement of marketable products.

(i) Man-ways on frac tanks. Each frac tank used at the wellsite shall have protective man-ways to prevent persons from accidentally falling into the frac tank.

(j) Guy line anchors. All guy line anchors left buried for use in future operations of the well shall be properly marked by a marker of bright color not less than four feet in height and not greater than one foot east of the guy line anchor.

(k) Well site cleared. Within 90 days after a well is plugged and abandoned, the well site shall be cleared of all equipment, trash, and debris. Any foreign surface material is to be removed and the location site restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the location site is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the well.

(l) Restored surface. Within 90 days after a lease has been abandoned, surface equipment such as stock tanks, heater, separators, and other related items shall be removed from the premises. The surface shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the surface is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the lease.

(m) Leasehold roads. All leasehold roads shall be kept in a passable condition and shall be made accessible at all times for representatives and field inspectors of the Commission. At the time of abandonment of the property, the area of the road shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the road area is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the property.

(n) Extension of time.

(1) An operator may request an extension of time required in (k), (l), and (m) of this Section for not more than six months by applying to the appropriate Conservation Division District Office and showing that there is no imminent danger to the environment and that one of the following conditions exists:

(A) That an agreement with the surface owners is not possible.

(B) That adverse weather conditions exist or existed.

(C) That the equipment needed to conform to (k), (l), and (m) of this Section was not or is not available.

(2) If approved by the District Manager, the extension shall be granted and the surface owner shall be notified by the operator. Any extension beyond six months shall require application, notice and hearing pursuant to OAC 165:5-7-41.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 16 Ok Reg 2190, eff 7-1-99; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 37 Ok Reg 1121, eff 10-1-20]

PART 5. OPERATIONS

165:10-3-25. Completion Reports

(a) **Initial Completion Report.** A Completion Report shall be filed with the Commission on Form 1002A within 60 days after completion of operations regardless of whether or not the well was completed as a dry hole, producer, injection, disposal, or service well. An operator who fails to file a complete and correct Form 1002A Completion Report within the allotted time limit may be fined up to \$250.00.

(b) **Amended Completion Report.** An amended Completion Report shall be filed with the Commission on Form 1002A within 60 days after completion of operations to reenter, re-complete and/or convert to injection or disposal well regardless of whether or not the well was completed as a dry hole, producer, injection, disposal, or service well.

(c) **No allowable without Completion Report.** The Conservation Division shall not assign an allowable to a well without an up-to-date Completion Report on file with the Conservation Division.

(d) A completion report for any well in a multi-well system shall reference the primary well. An amended completion report for the primary well in a multi-well system shall reference all other wells in the system.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 34 Ok Reg 921, eff 9-11-17]

165:10-3-26. Well logs

(a) **60 days to submit well log(s).** All well logs required by this Section shall be submitted to the Conservation Division within 60 days from the earlier of the date of completion of the well or the date that the last formation evaluation type well log was run. An operator who fails to properly submit formation evaluation type well logs, if run, may be fined up to \$250.00.

(b) **Formation evaluation type well logs.** This Section does not require an operator to run a formation evaluation type well log. However, if an operator does run formation evaluation type well logs, the operator shall only be required under this Section to submit a resistivity log and a porosity log, if available. Resistivity and porosity logs include but are not limited to spontaneous potential, induction, laterolog, density, gamma ray, neutron and sonic logs.

(c) **Other logs to be available upon request.** Any other well logs, if available, shall be submitted to the Technical Services Department upon Commission order or special request of the Conservation Division.

(d) **Requirements for submitting a copy of a log.** A copy of a log submitted under this Section shall be in digital image with the well's legal description noted on it. If there are separate runs for multiple casing strings, the operator shall submit the

separate runs.

(e) Obtaining confidential treatment of well log(s).

(1) Unless the operator requests confidential treatment of a well log(s), any well log(s) submitted to the Conservation Division shall be available for public inspection.

(2) To obtain confidential treatment of a well log, the operator of the well shall:

(A) Place the well log(s) in a sealed envelope with a completed Form 1002B attached to the envelope.

(B) Submit to the Technical Services Department of the Conservation Division the envelope with the log(s) and Form 1002B within 60 days from the earlier of:

(i) The completion date of the well, or

(ii) The date that the last formation evaluation log was run.

(3) A confidential well log under (2)(B) of this Section, shall remain confidential for one year from the date the last log was run on the well.

Upon written request, the Conservation Division may administratively extend the period of confidentiality for six months. Under no circumstances shall confidentiality be granted for a period in excess of 18 months from the date the last log was run on the well.

(f) No allowable before submission of well logs. The Conservation Division shall not assign an allowable to a well before the operator of the well submits to the Conservation Division any well log required to be submitted under (b) of this Section.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-3-27. Deviation from the vertical

(a) Well location for purposes of well spacing. For purposes of the well spacing requirements of 165:10-1-21 and 165:10-1-24, the location of a well in a common source of supply is the closest point to the unit boundary where the wellbore intersects the common source of supply.

(b) Presumed bottom hole location. For purposes of review of Form 1000 applications, the Conservation Division may presume that the location in a common source of supply of a well without a horizontal drainhole is the same as the surface location for the well unless:

(1) The operator submits a bottom hole survey, if the well has been drilled;
or

(2) The operator complies with (c)(1) of this Section.

(c) Permitted and prohibited locations.

(1) Offpattern surface location; permitted subsurface location.

(A) The Conservation Division may approve a Form 1000 for a well to be commenced without a location exception at an offpattern surface location for a common source of supply when:

(i) The Form 1000 lists a subsurface location which is a permitted location for the common source of supply.

(ii) Issuance of a Permit to Drill is conditioned on the operator running a bottom hole survey within 30 days after reaching total depth and on the operator submitting the survey to the Conservation Division within 45 days after the well reaches total depth.

(B) The well shall not receive an allowable for the common source of supply until a bottom hole survey shows that the well is at a permitted location or until the operator obtains a location exception order for the subsurface location.

(2) **Offpattern subsurface location.**

(A) The Conservation Division shall not approve a Form 1000 without a location exception order for an offpattern subsurface location.

(B) Issuance of a Permit to Drill under (1) of this subsection does not permit an operator to have, without a location exception order, an offpattern subsurface location for a common source of supply.

(d) **Required directional and bottom hole surveys.** For good cause, the Commission may order an operator to run directional and/or bottom-hole surveys for a common source of supply in a well:

(1) Upon application, notice, and hearing; or

(2) In any case involving the location of a well, upon motion of an affected party or upon the Commission's own motion.

[Source: Amended at 24 Ok Reg 1784, eff 7-1-07]

165:10-3-28. Horizontal drilling

(a) **Scope.** This Section affects a horizontal well with one or more laterals.

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

(1) **"Adjacent common source of supply"** shall mean a common source of supply which is immediately adjacent to and adjoining the targeted reservoir(s) in a multiunit horizontal well being drilled or a well being drilled in a horizontal well unitization pursuant to 52 O.S. § 87.6 et seq. and which is inadvertently encountered in the drilling of the lateral of a multiunit horizontal well or a well pursuant to a horizontal well unitization when such well is drilled out of or exits, whether on one or multiple occasions, the targeted reservoir(s), and which is not the primary target of the subject well and shall not be included in the relinquished rights pursuant to 52 O.S. § 87.1(h). In the event that an adjacent common source of supply may be inadvertently encountered in the drilling of the lateral of a multiunit horizontal well or a well pursuant to a horizontal well unitization when such well is drilled out of or exits, whether on one or multiple occasions, the targeted reservoir(s), then said inadvertently entered adjacent common source of supply shall be included as part of the targeted reservoir only for the purpose of the inadvertent penetrations, and any subsequent completion, commingling and production of said adjacent common source of supply with the targeted reservoir(s), but not for future development of said adjacent common source of supply [52 O.S. § 87.6(B)(1)].

(2) **"Completion interval"** shall mean, for open hole completions, the interval from the point of entry to the terminus and, for cased and cemented completions, the interval from the first perforations to the last perforations [52 O.S. § 87.6(B)(5)].

(3) **"Conventional reservoir"** shall mean a common source of supply that is not an unconventional reservoir.

(4) **"Date of first production"** shall mean the date hydrocarbons are first produced from the horizontal well, whether or not production occurs during drilling, completion, or through permanent surface equipment.

- (5) "**Directional survey**" shall mean that survey or report showing the location of any point of the wellbore as it relates to the surveyed surface location from the surface to the terminus of each lateral.
- (6) "**Horizontal component**" shall mean the calculated horizontal distance from the point of entry to the terminus [52 O.S. § 87.6(B)(8)].
- (7) "**Horizontal well**" shall mean a well drilled, completed, or recompleted with one or more laterals which, for at least one lateral, the horizontal component of the completion interval exceeds the vertical component of the completion interval and the horizontal component extends a minimum of 150 feet in the formation [52 O.S. § 87.6(B)(6)].
- (8) "**Horizontal well unit**" shall mean a drilling and spacing unit established by the Commission, after application, notice, and hearing, for a common source of supply into which a horizontal well has been or will be drilled.
- (9) "**Horizontal well unitization**" shall mean a unitization for a targeted reservoir created pursuant to 52 O.S. § 87.6 et seq. [52 O.S. § 87.6(B)(7)].
- (10) "**Lateral**" shall mean the portion of the wellbore of a horizontal well from the point of entry to the terminus [52 O.S. § 87.6(B)(9)].
- (11) "**Multiunit horizontal well**" shall mean a horizontal well in a targeted reservoir or targeted reservoirs wherein the completion interval of the well is located in more than one unit formed for the same targeted reservoir, with the well being completed in and producing from such targeted reservoir in two or more of such units [52 O.S. § 87.6(B)(10)].
- (12) "**Non-standard horizontal well unit**" shall mean a horizontal well unit that is not a standard horizontal well unit.
- (13) "**Point of entry**" shall mean the point at which the borehole of a horizontal well first intersects the top of the common source of supply [52 O.S. § 87.6(B)(12)].
- (14) "**Standard horizontal well unit**" shall mean a horizontal well unit that is a square 10-, 40-, 160-, or 640-acre tract or a rectangular 20-, 80-, 320- or 1,280-acre tract in accordance with OAC 165:10-1-22.
- (15) "**Targeted reservoir**" shall mean one or more common sources of supply which will be encountered by the horizontal lateral portion of a horizontal well, and which has been designated by the Commission as part of an order, rule or emergency rule as potentially suited for development for the applied for multiunit horizontal well or horizontal well unitization pursuant to 52 O.S. § 87.6 et seq. Provided, however, that more than one common source of supply may only be granted by the Commission and included in the targeted reservoir upon a showing of reasonable cause by the applicant requesting the multiunit well in the application requesting authority for the multiunit well prior to the drilling of said multiunit well that the inclusion of the additional common source(s) of supply shall prevent waste and protect the correlative rights of all of the owners of the oil and gas rights [52 O.S. § 87.6(B)(14)].
- (16) "**Terminus**" shall mean the end point of the borehole of a horizontal well in the targeted reservoir [52 O.S. § 87.6(B)(15)].
- (17) "**True vertical depth**" shall mean that depth at the point of entry perpendicular to the surface as measured from the elevation of the kelly bushing on the drilling rig.
- (18) "**Unconventional reservoir**" shall mean a common source of supply that is a shale or a coal bed. "Unconventional reservoir" shall also mean any

other common source of supply designated as such by Commission order or rule.

(19) **"Vertical component"** shall mean the calculated vertical distance from the point of entry to the terminus of the lateral [52 O.S. § 87.6(B) (20)].

(c) **General horizontal well requirements.**

(1) Within 60 days after completion of a horizontal well, the operator shall show that the location of the completion interval complies with the applicable general rule, location exception order, or other order of the Commission by submitting the following to the Technical Services Department:

(A) A directional survey run in the horizontal well. The survey shall be submitted electronically using a program provided by the Commission.

(B) A plat constructed from the results of the directional survey showing the completion interval.

(2) The completion interval of an oil and or gas horizontal well shall be located not closer than the minimum distance as set out below from any other oil or gas well completed in the same common source of supply except as authorized by a special order of the Commission:

(A) Three hundred feet from any other oil or gas well completed in the same common source of supply, the top of which is less than 2,500 feet in true vertical depth.

(B) Six hundred feet from any other oil or gas well completed in the same common source of supply, the top of which is 2,500 feet or more in true vertical depth.

(C) This paragraph does not apply to horizontal wells drilled in a unit created for secondary or enhanced recovery operations pursuant to 52 O.S. § 287.1 et seq. or to horizontal wells drilled in a horizontal well unitization created pursuant to 52 O.S. § 87.6 et seq. or to any wells operated by the same operator in the unit.

Notification to working interest owners must be indicated on Form 1000.

(3) The perforated interval of an oil or gas non-horizontal well shall be located not closer than the minimum distance as set out below from the completion interval of any oil or gas horizontal well completed in the same common source of supply, except as authorized by a special order of the Commission:

(A) Three hundred feet from any completion interval of any oil or gas horizontal well completed in the same common source of supply, the top of which is less than 2,500 feet in true vertical depth.

(B) Six hundred feet from any completion interval of any oil or gas horizontal well completed in the same common source of supply, the top of which is 2,500 feet or more in true vertical depth.

(C) This paragraph does not apply to non-horizontal wells drilled in a unit created for secondary or enhanced recovery operations pursuant to 52 O.S. § 287.1 et seq.

(d) **Horizontal well requirements in an unspaced common source of supply.** In a horizontal well drilled in a common source of supply in which the Commission has not established any drilling and spacing units or horizontal well units, the completion interval of a horizontal well may not be located closer to the boundaries

of the applicable mineral estate, oil and gas leasehold estate, or voluntary unit than the minimum distance set out below except as authorized by a special order of the Commission:

(1) Not less than 165 feet when the top of the common source of supply is less than 2,500 feet in true vertical depth.

(2) Not less than 330 feet when the top of the common source of supply is 2,500 feet or more in true vertical depth.

(e) Drilling and spacing units.

(1) A horizontal well may be drilled on any drilling and spacing unit.

(2) A horizontal well unit may be created in accordance with 165:10-1-22 and 165:5-7-6. Such units shall be created as new units after notice and hearing as provided for by the Rules of Practice, OAC 165:5.

(3) The Commission may create a non-standard horizontal well unit covering contiguous lands in any configuration or shape deemed by the Commission to be necessary for the development of a conventional reservoir or an unconventional reservoir by the drilling of one or more horizontal wells. A non-standard horizontal well unit may not exceed 1,280 acres plus the tolerances and variances allowed pursuant to 52 O.S. § 87.1.

(4) A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed.

(f) Horizontal well location requirements for horizontal well units and horizontal well unitizations.

(1) **Conventional reservoirs.** In a conventional reservoir, the completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20-, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80- or 160-acre horizontal well unit.

(C) Not less than 660 feet from the boundary of any 320-, 640- or 1,280-acre horizontal well unit.

(2) **Unconventional reservoirs.** In an unconventional reservoir, the completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20-, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80-, 160-, 320-, 640- or 1,280-acre horizontal well unit.

(3) **Horizontal well unitizations.** The completion interval of a horizontal well in a horizontal well unitization shall not be located less than 330 feet from the unit boundary.

(g) **Alternative well location requirements.** The Commission may establish well location requirements different from those provided in subsection (f) of this Section when necessary to prevent waste and protect correlative rights. These requirements may be established in the order creating a standard or non-standard horizontal well unit or through a special rule of the Commission covering a conventional or unconventional reservoir in a designated geographic area. (see OAC 165:10, Subchapter 29, Special Area Rules).

(h) **Allowable.**

(1) Horizontal oil well allowables may be established administratively using the standard allowables provided in Appendix A (Allocated Well Allowable Table) supplemented by the additional allowables provided in Appendix C (Table HD) to this Chapter.

(2) The allowable for a horizontal gas well shall be computed in the manner prescribed for a non-horizontal gas well in the same common source of supply. The allowable for a horizontal well in a horizontal well unit 640-acres in size or less shall be the minimum well allowable as established in the current proration order determining the allowable formula issued pursuant to OAC 165:10-17-11, unless a higher allowable is established by conducting a flow potential test. The allowable for a horizontal well in a horizontal well unit in excess of 640-acres in size shall be calculated by multiplying the minimum well allowable by the quotient of the number of acres in the unit divided by 640. If an allowable higher than the minimum well allowable is established by way of a flow potential test, then the higher allowable will be utilized in calculating the appropriate allowable for a horizontal well in a horizontal well unit in excess of 640-acres in size.

(3) The allowable for a horizontal well unit or horizontal well unitization with multiple horizontal gas wells shall be the sum of the allowables for the separate horizontal gas wells. For this summation, the allowable for each horizontal gas well will be calculated as if it were the only well in the unit.

(4) The allowable for a multiunit horizontal well shall be allocated to each affected unit using the allocation factors determined in accordance with 52 O.S. § 87.8(B)(1).

(5) A non-horizontal well in a non-horizontal drilling and spacing unit which exists concurrently with a horizontal well unit shall be assigned the same allowable as a horizontal well in the horizontal well unit producing from the same common source of supply, except as otherwise specified by Order of the Commission.

(i) **Pooling.** Horizontal well units, horizontal well unitizations and multiunit horizontal wells may be pooled as provided in 52 O.S. § 87.1, 52 O.S. § 87.6 et seq. and Commission Rules of Practice, OAC 165:5.

[Source: Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1894, eff 5-19-11 (emergency); Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 28 Ok Reg 1894, eff 5-19-11 (emergency); Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 70, eff 9-8-17 (emergency); Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1739, eff 10-1-21]

165:10-3-29. Oil storage

Oil storage tanks shall be constructed so as to prevent leakage. Dikes or retaining walls, where necessary, shall be constructed, based on tank capacity and throughput, so as to prevent oil or deleterious substances from causing pollution and to ensure public safety.

[Source: Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-3-30. Use of gas for artificial lifting

- (a) **Use of gas for artificial lifting of oil.** Gas may be used for the artificial lifting of oil; provided, all gas returned to the surface with the oil is not vented or otherwise wasted.
- (b) **The use of production.** The use of production from one common source of supply to assist in lifting the production from another common source of supply by commingling the production from both common sources of supply in the tubing string shall be permitted when the operator has authority to commingle the production in the tubing.
- (c) **Use of artificial lift.** Artificial lift, initial or subsequent, in conjunction with the separate orifice or choke assembly shall be governed by OAC 165:10-3-37.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-3-31. Use of vacuum at the well head.

- (a) **Prohibited without a permit.** Imposing a vacuum on an oil or gas bearing formation is prohibited without a permit from the Commission.
- (b) **Requirement.** A vacuum shall not be approved unless it can be shown that use of a vacuum as permitted will prevent waste and protect correlative rights.
- (c) **Application for a permit.** Each application for a permit requesting use of a vacuum on a common source of supply shall be filed with the Technical Services Department on Form 1022A. The following information shall accompany the application:
- (1) A plat, color coded as to producing zone, showing the locations of all producing wells within one-half (1/2) mile of the well location.
 - (2) An electric well log of the subject well, if available; otherwise a drillers log concerning the subject well shall be provided.
- (d) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. An affidavit reflecting that the required notice was provided shall be filed within five (5) days of filing of the application.
- (e) Notice is not required to be published if no written objection to the application is filed or if no hearing is required by the Commission pursuant to subsection (f), below.
- (f) If a written objection to the application is filed within fifteen (15) days after the application is filed or if hearing is required by the Commission, then the application shall be set for hearing, and notice thereof shall be given in the same manner specified in OAC 165:5-7-1. If no objection is filed and the Commission does not require a hearing, the matter shall be reviewed administratively by the Director of the Oil and Gas Conservation Division or the Director's designee. If the Oil and Gas Conservation Division denies an application, the applicant may request a hearing on said application.
- (g) **Records required to be kept by the operator.**
- (1) If an operator obtains a permit authorizing use of a vacuum, the operator shall make a record on a monthly basis of:
 - (A) The vacuum imposed in pounds per square inch or inches of mercury.
 - (B) The amount of gas, oil and water production per day from the well.
 - (2) Any record required to be kept under this Section shall be made available to the Oil and Gas Conservation Division upon request.

[Source: Amended at 27 Ok Reg 2128, eff 7-11-10]

PART 7. PRODUCTION

165:10-3-35. Multiple zone production

- (a) Production from more than one common source of supply from a single well is hereby prohibited except as authorized by the Conservation Division.
- (b) For the purpose of this Section, completion of a well so as to separately produce or account for the production from two or more common sources of supply shall be a multiple completion, and the production from more than one common source of supply without segregation of the production shall be commingling.
- (c) Any operator violating this Section shall be subject to a fine of \$500.00. The Conservation Division may shut down a multiply completed well pending compliance with this Section.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-3-36. Multiple zone completions

- (a) Each application for the approval of the multiple completion of a well shall be filed with the Technical Services Department on Form 1023.
- (b) A copy of the application shall be mailed or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. The applicant shall file an affidavit of delivery or mailing not later than five (5) days after the application is filed.
- (c) If a written objection to the application is filed within fifteen (15) days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be reviewed administratively by the Director of Conservation or his designee. If the Conservation Division denies an application, the applicant may request a hearing on said application.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:10-3-37. Control of multiply completed wells

- (a) Every multiply completed well shall be equipped, operated, produced, and maintained so that there will be no commingling of the production from separate common sources of supply in the well, except as hereinafter provided. The production from each common source of supply shall be separately accounted for or separately stored and measured on the lease. The production shall be measured by either:
 - (1) A positive displacement dump-type device;
 - (2) A continuous-flow measuring device; or
 - (3) A measuring device of any other type authorized by the Commission.
- (b) Each application for the approval of production through a multiple choke assembly in a well shall be filed with the Technical Services Department on Form 1023. The multiple choke assembly must be so designed and located in the wellbore as to prevent commingling within the common sources of supply, but to permit commingling in the tubing string through individual choke orifices. The commingled production shall be measured at the surface and allocated to each common source of supply.

(c) A copy of the application shall be mailed or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. The applicant shall file an affidavit of delivery or mailing not later than five days after the application is filed.

(d) If a written objection to the application is filed within 15 days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be reviewed administratively by the Director of Conservation or his designee. If the Conservation Division denies an application, the applicant may request a hearing on said application.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:10-3-38. Testing of multiply completed wells

The Conservation Division may at any time require a multiply completed well to be tested to determine the effectiveness of the separation of common sources of supply. The tests may be witnessed by representatives of the Conservation Division and may be witnessed by any offset operator. Testing procedures must be acceptable to a representative of the Conservation Division.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-3-39. Commingling of production

(a) Commingling permit required.

(1) Commingling of production from a well from separate common sources of supply is prohibited without an approved Form 1023 permit. A permit shall be required when production is from more than one source of supply, without segregation of the production in the wellbore, or is produced separately in the wellbore and then combined together downstream of the wellhead prior to measurement. A permit shall be required for horizontal wells with more than one lateral where production in the individual lateral is from separate common sources of supply. A permit shall also be required for horizontal wells where production in uphole zones is from separate common sources of supply. A permit is not required for a multiunit horizontal well or horizontal well involving production from only one lateral. Commingling downstream of the wellhead shall require Form 1024 (Packer Setting Affidavit) and Form 1025 (Packer Leakage Test) to be filed and approved. The Commission may assess a fine up to \$500.00 for non-permitted commingling either down hole or downstream prior to measurement.

(2) Each application for the approval of the commingling of a well shall be filed with the Technical Services Department on Form 1023. The following shall be filed with the application:

(A) A well log section with top and bottom of open intervals marked.

(B) A schematic of the proposed completion configuration of the well.

(C) A plat showing the locations of all wells producing from the same common sources of supply within one-half (1/2) mile radius of the subject well.

(3) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. An affidavit of mailing shall be filed within five (5) days of filing of the application. No notice is required to be published.

(4) If a written objection to the application for a commingling permit is filed within 15 days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing, and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be reviewed administratively by the Director of Conservation or his designee. If the Conservation Division denies an application, the applicant may request a hearing on said application.

(b) Restrictions.

(1) Commingling shall only be authorized when it would prevent waste and protect correlative rights.

(2) Commingling shall be prohibited where one producing zone is predominately gas and a second zone is predominately oil, unless the operator can verify in writing, submitted with the application, that no cross flow will occur resulting in reservoir damage.

(c) Commingled allowables.

(1) **Single allowable for commingled production.** Common sources of supply commingled under this Section receive a single allowable as if they constituted a single common source of supply in the wellbore.

(2) **Gross daily allowable for commingled production.** The gross daily allowable shall be based on the classification of the well as an oil or gas well for allowable purposes under OAC 165:10-13-2.

(A) **Unallocated oil well (GOR < 15,000:1).** The gross daily allowable shall be based on what would be the allowable if commingled production comes from the deepest commingled common source of supply.

(B) **Unallocated gas well (GOR > 15,000:1).** The gross daily allowable shall be a single unallocated gas allowable, as determined by OAC 165:10-17-11(c). Upon request in a commingling application or in any other appropriate application and upon proper notice thereof, the Commission may designate in a commingling permit or other appropriate order the specific gas formation, completed and producing in the applicable well, to which the allowable for such well is to be attributed when the Commission determines that such designation is necessary to prevent waste and to protect correlative rights.

(C) **Special allocated gas pool.** The gross daily allowable shall be based on what would be the allowable if the commingled production came from the special allocated gas pool in the well.

(3) **Operator option if multiple pool rules exist.** If more than one common source of supply under a commingling permit or appropriate order for a gas well is subject to gas pool rules, the order shall designate which set of pool rules is applicable for allowable purposes.

(4) **Net daily allowable.** The net daily allowable is the gross daily allowable under (3) of this subsection:

(A) Reduced accordingly by any penalty against any of the commingled common sources of supply under the permit or

appropriate order.

(B) Reduced accordingly by any overage carried forward against a commingled common source of supply.

(C) Increased by any underage carried forward for the well under applicable allocated or special allocated pool rules.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-3-40. Production of brine

(a) All wells in excess of 300 feet in depth and producing brine for the extracting of minerals shall be under the full jurisdiction of the Conservation Division.

(b) The establishment of a unitized area for the purpose of efficient operations, prevention of waste, and the protection of correlative rights may be formed by following the procedures set out in 165:5-7-21

(c) Category B surety shall be a requirement for all brine producing wells or units.
[See 165:5-7-21(f)]

SUBCHAPTER 5. UNDERGROUND INJECTION CONTROL

165:10-5-1. Classification of underground injection wells

Underground injection wells shall be classified as follows:

(1) **Enhanced recovery injection well.** An enhanced recovery injection well is a well which injects fluids to increase the recovery of hydrocarbons.

(2) **Disposal well.** A disposal well is a well which injects, for purposes other than enhanced recovery, those fluids brought to the surface in connection with oil or natural gas production.

(3) **Storage well.** A storage well is a well used to inject, for storage purposes, hydrocarbons which are liquid at standard temperature and pressure.

(4) **Simultaneous injection well.** A well that injects or disposes of salt water at the same time it is producing oil and/or gas to the surface.

[Source: Amended at 13 Ok Reg 2381, eff 7-1-96]

165:10-5-2. Approval of injection wells or disposal wells

(a) The subsurface injection or disposal of any substance for any purpose is prohibited except upon approval of the Commission pursuant to 165:10-5-5 or 165:10-5-12 and 165:10-5-13. This authorization may be conditioned upon the applicant taking corrective action to protect treatable water as specified by the Commission. The Commission may fine an operator up to \$5,000.00 for any violation of this subsection.

(b) Except as provided in (c) and (d) in this Section, every well used for injection or disposal shall be cased and tested in accordance with 165:10-3-4 and 165:10-5-6.

(c) The testing requirements of 165:10-5-6 shall not apply to wells permitted by Commission order for subsurface injection of onsite reserve pit fluids.

(d) The Conservation Division may approve a Form 1015 application to convert an existing well for injection or disposal if the well does not otherwise comply with 165:10-3-4 if:

(1) The operator attaches to the Form 1015 application a description of an alternate method of protecting treatable water.

(2) The Conservation Division approves the proposed alternate method.

(3) The application is filed in accordance with OAC 165:5-7 if a hearing is required.

(4) The application is not protested.

(e) Any proposed injection or disposal well which is within one-half (1/2) mile of any public water supply well shall not be approved without notice and hearing, and the Commission shall not issue an order authorizing injection or disposal into said well until the applicant proves at the hearing that said well shall not pollute said water supply well. A commercial disposal well shall not be approved within a designated wellhead protection area.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-3. Authorization for existing enhanced recovery injection wells and existing disposal wells

(a) Each enhanced recovery injection well authorized under order of the Commission on the effective date of this Section is an existing enhanced recovery injection well. Injection is prohibited in any existing enhanced recovery injection well unless the operator has included that well on a completed Form 1070 submitted to the Commission within one year following the effective date of this Section. Form 1070 (Inventory of Authorized Existing Enhanced Recovery Injection Wells) shall include each well name, location, authorizing Commission order number (including all orders authorizing exceptions), date of order, maximum authorized injection rate, and maximum authorized injection pressure.

(b) Each disposal well being operated under order of the Commission on the effective date of this Section is an existing disposal well. Injection is prohibited in any existing disposal well unless the operator has included that well on a completed Form 1071 submitted to the Commission within one year following the effective date of this Section. Form 1071 (Inventory of Authorized Existing Disposal Wells) shall include each well name, location, authorizing Commission order number (including all orders authorizing exceptions), date of order, maximum authorized injection rate, and maximum authorized injection pressure.

165:10-5-4. Application for approval of enhanced recovery projects

(a) An enhanced recovery project shall be permitted only by order of the Commission after notice and hearing.

(b) The application for an order authorizing an enhanced recovery project shall contain the following:

(1) The names and addresses of the operator or operators of the project.

(2) A plat showing the lease, group of leases, or unit included within the proposed project; the location of the proposed injection well or wells, and the location of all oil and gas wells including abandoned and drilling wells and dry holes; and the names of all operators offsetting the area encompassed within the project.

(3) The common source of supply in which all wells are currently completed.

(4) The name, description, and depth of each common source of supply to be affected.

(5) A log of a representative well completed in the common source of supply.

(6) A description of the existing or proposed casing program for injection wells and the proposed method of testing casing.

(7) A description of the injection medium to be used, its source, and the estimated amounts to be injected daily.

(8) For a project with an allocated pool, a tabulation showing recent gas-oil ratio and oil and water production tests for each of the producing oil and gas wells.

(9) The proposed plan of development of the area included within the Project.

(c) A copy of the application and notice of hearing shall be mailed to the owner or owners of the surface of the land upon which the project is located and to each operator offsetting the project as shown on the application within five days after the application is filed. An affidavit of compliance with this Section shall be filed on or before the hearing.

165:10-5-5. Application for approval of injection and disposal operations

(a) **Application.** Each application for the approval of a proposed injection well, disposal well, or commercial disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) **Application.** The application for the approval of an injection or disposal well(s) shall be accompanied by:

(1) **Plat.**

(A) **Noncommercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the proposed injection well or disposal well for volumes less than 20,000 barrels per day and within one-half (1/2) mile of the proposed disposal well for volumes equal to or greater than 20,000 barrels per day, and identifying the surface owner of the land on which the injection or disposal well is to be located, and each operator of a producing spacing unit or well within one-half (1/2) mile of each injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each injection or disposal well with a requested injection rate of five thousand barrels per day or more.

(B) **Commercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.

(C) **Additional required information.** The following information must be submitted in a separate document regarding wells listed on such plats:

(i) Well name and number;

(ii) Current operator of well;

(iii) Well status;

(iv) Total depth of well;

(v) Geologic name of any producing interval in the well and/or any interval used for injection or disposal purposes;

- (vi) The diameter of and setting depth for the surface casing, intermediate casing (if set), production casing (if set) and liner (if used) in the well;
- (vii) Top of cement obtained from Forms 1002A or 1002C, if specified, or a cement bond log, temperature log or cased hole log, if available, in the outermost string of casing in the well perforating the injection interval to be used by the proposed noncommercial or commercial disposal well or injection well. If such logs are not available, a calculated top of cement will be acceptable; and
- (viii) The size and amount of casing pulled, if any, and the depths of any plugs set, if any, in any plugged well.

(2) **Completion Report.** If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) **Schematic diagram.** A schematic diagram of the well showing:

- (A) The total depth or plugback depth of the well.
- (B) The depth of the injection or disposal interval indicating both the top and bottom.
- (C) The geological name (geological group) of the injection or disposal zone.
- (D) The depths of the tops and bottoms of the casing and cement to be used in the well.
- (E) The size of the casing and tubing, and the depth of the packer.

(4) **Proposed zone information.** Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

- (A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
- (B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
- (C) When the fluid injection rate is greater than 10,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 3,000 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.
- (D) If the overlying strata is less than required in (A), (B), or (C) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish to the Commission, sworn evidence and data in support of such findings. The Commission, when issuing an order approving fluid injection, shall consider the following:

- (i) Maximum injection rate.
- (ii) Maximum surface injection pressure.
- (iii) Injection fluid.
- (iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

(A) Daily injection rates and pressures. The maximum permitted surface injection pressure may be the pressure requested in the application or 1/2 psi per foot of depth to the top of the injection/disposal interval, whichever is less, unless the results of a fracture pressure step-rate test support a higher pressure. The Conservation Division may designate areas of interest in which pressures and volumes may be more restrictive. The UIC Department may request that the applicant perform a fracture pressure step-rate test.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids. Sample collection date(s) must be no more than 12 months prior to the date the application is filed.

(D) Qualitative and quantitative analysis of representative sample of Class II fluids to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) Application for approval. A copy of the Form 1015 application for approval of injection or disposal of Class II fluids in a well and, where noted, required attachments to Form 1015, except for proofs of publication, fresh water analyses, analyses of representative samples of Class II fluids to be injected, and electric or radioactivity logs, shall be served by the applicant within five (5) business days of the date the application is filed by regular mail or delivered to the following, and applicant must submit an affidavit of mailing or delivery to the UIC Department not later than five (5) business days after the date the application is filed:

- (1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;
- (2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;
- (3) For a proposed injection or noncommercial disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of such proposed well along with required Form 1015 attachments;
- (4) For a proposed noncommercial disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within two (2) miles of such proposed well along with required Form 1015 attachments;
- (5) For a proposed horizontal injection or noncommercial disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half

(1/2) mile of the lateral of such proposed well along with required Form 1015 attachments;

(6) For a proposed noncommercial horizontal disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within two (2) miles of the lateral of such proposed well along with required Form 1015 attachments;

(7) For a proposed injection well with a requested injection rate of five thousand (5,000) barrels per day or more, to each operator of a producing spacing unit or well within one (1) mile of such proposed well along with required Form 1015 attachments; and

(8) For a proposed horizontal injection well with a requested injection rate of five thousand (5,000) barrels per day or more, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well along with required Form 1015 attachments.

(d) **Notice of application.** Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. Applicant shall file with the UIC Department proof of publication regarding the notice of application. The notice shall include:

- (1) UIC tracking number.
- (2) Name and address of applicant.
- (3) Location of proposed well to nearest 10 acre tract.
- (4) Well name.
- (5) The geological name of the injection formation.
- (6) The top and bottom of the injection interval.
- (7) Maximum injection pressures.
- (8) Maximum BID or MCFID injection rate.
- (9) The type of well (injection, disposal, commercial).

(e) **Written objection.** If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application on the pollution docket. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who may sign the permit.

(f) **Surety requirements for commercial disposal well facilities.**

(1) Any operator of a commercial disposal well facility shall file with the Surety Department for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(2) The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(3) Operators of commercial disposal well facilities authorized prior to the effective date of this subsection must either comply with this subsection or close such facilities within one (1) year of the effective date of this subsection.

(g) In addition to the requirements listed above, the Manager of Underground Injection Control may request the applicant to submit the following information as a prerequisite to approval of the application:

(1) For those wells included in OAC 165:10-5-5(b)(1) which penetrate the top of the injection interval, a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.

(B) The present status of the wells.

(C) The identity of any abandoned well which was improperly plugged or remains unplugged.

(2) A list of the following information, if available, to the applicant:

(A) The shut-in bottom hole formation pressure in psi; or the stabilized shut-in surface pressure and fluid level in the proposed injection well.

(B) The permeability of the proposed injection zone expressed in millidarcies.

(C) The porosity of the proposed injection zone expressed as a percentage of pore volume.

(D) Documentation of the methods used to arrive at the data requested above.

(h) Authorization of an injection well or a disposal well or a commercial disposal well will expire and become null and void if no well completion report (Form 1002A) is filed or if no mechanical integrity test is performed pursuant to OAC 165:10-5-6 within sixty (60) days from the date of completion or conversion of the well.

(i) In addition to the well construction requirements as set out in 165:10-3-1, commercial disposal wells shall comply with the following requirements:

(1) At a minimum, the well shall be constructed with a wellhead, surface casing, production casing, tubing, and packer.

(2) The surface casing shall be set and cemented at least fifty (50) feet below the base of the treatable water bearing zone. The production casing will not be allowed to also serve as the surface casing.

(3) The production casing must be set and cemented through the injection zone with the cement circulated behind the casing to a height at least two hundred fifty (250) feet above the disposal zone. A cement bond log

showing quality and placement of the cement must be furnished to and approved by the Commission before the well may be used for injection or disposal. The Manager of Underground Injection Control may approve the Arbuckle Formation for open hole completion.

(4) The annulus between the tubing and the casing must be open from the surface to the packer to allow for pressure testing and monitoring of the injection tubing and packer and the annulus filled with a packer fluid that protects against corrosion.

(5) The packer must be set at least within seventy-five (75) feet of the top of the perforations.

(6) Adequate gauges shall be installed on each annulus to allow proper monitoring of the disposal operation.

(7) Tubing must be internally coated or lined to prevent corrosion from injected fluids. PVC, Plastic Coated, Stainless Steel or Fiberglass will qualify.

(8) The packer must be either internally coated or stainless steel.

(9) Commercial disposal wells authorized with a positive injection pressure must be equipped with a down hole shut-off device with a seal divider installed between the packer and the tubing. A Stainless Steel Profile Nipple and an "ON-OFF" Tool will qualify under this Section.

(j) No Commercial disposal well will be permitted whose injection pressure approaches or exceeds the demonstrated frac gradient of the injection zones(s).

(k) The geologic injection intervals authorized by the order or permit which are not perforated during the initial or subsequent completion of the disposal well will not expire until the disposal well is plugged, or the authority to inject is terminated or vacated.

(l) In the event the Commission has evidence that an applicant for a commercial disposal well may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the applicant should be authorized to operate such commercial disposal well.

[Source: Amended at 11 Ok Reg 3691, eff 7-11-94; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-6. Testing and monitoring requirements for injection wells and disposal wells

(a) **Mechanical integrity during injection.** The operator of an injection, disposal or commercial disposal well must maintain mechanical integrity in order to continue operation of the well.

(b) **Initial pressure test requirements for wells permitted on or after December 2, 1981.**

(1) **Mandatory initial mechanical test.** Before commencement of operation, each well authorized for injection or disposal by a Commission order issued on or after December 2, 1981, must pass an initial pressure test of the casing tubing annulus according to the minimum testing standards of (2) of this subsection, unless a Commission order or permit authorizes other test procedures of the mechanical integrity of the well. Any operator failing to comply with initial mechanical integrity testing and reporting requirements may be fined up to \$500.00.

(2) **Minimum testing standards for initial tests.** For each initial test required by (1) of this subsection, the minimum testing standards are:

(A) **Witnessing of the test.** The test shall be witnessed by an authorized representative of the Conservation Division. It shall be the responsibility of the well operator to secure the presence of the Commission representative.

(B) **Down-hole equipment.** Injection and disposal shall be through adequate tubing and packer.

(C) **Aboveground extensions and fittings.** Adequate aboveground extensions shall be installed in each annulus in the well. In addition, the operator shall install an adequate working pressure gauge with a cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative. An operator is required to keep adequate working gauges on the tubing and annulus of the well.

(D) **Packer setting depth under the order.** The mechanical packer shall be set within 40 feet of the packer setting depth prescribed by the order permitting the well for injection or within 75 feet of the perforations of the injection zone(s) opened.

(E) **Verification of packer setting depth.** The Commission District Manager may require the operator of the well to verify the packer setting depth by running a wireline or other method approved by the Manager of the Underground Injection Control Department.

(F) **Minimum testing pressure for noncommercial disposal and injection wells.** Noncommercial disposal and injection wells shall be tested as follows:

(i) If the maximum authorized injection pressure for the well is less than 300 psig under the order or permit authorizing the well for injection, the minimum testing pressure shall be 300 psig.

(ii) If the maximum authorized injection pressure is greater than 300 psig under the order or permit authorizing the well for injection, the minimum testing pressure shall be the lesser of 1000 psig or the maximum authorized injection pressure under the order permitting the well.

(G) **Minimum testing pressure for commercial disposal wells.** Commercial disposal wells shall be tested at the maximum injection pressure authorized in the order or permit authorizing the well for injection, but not less than 300 psig.

(H) **Thirty minute minimum testing period.** The minimum testing period shall be 30 minutes at the testing pressure.

(I) **Ten percent maximum permitted bleed-off.** The maximum permitted change in pressure during the testing period shall be ten percent of the maximum testing pressure used.

(J) **Test report on Form 1075.** The Field Inspector shall submit the results of the mechanical integrity test on Form 1075 within 30 days from the date the test is performed.

(K) **Cement circulated above injection zone.** The annulus between the casing and the borehole must be cemented through the injection or disposal zone to a height at least two hundred fifty (250) feet above the injection or disposal zone. If a cement squeeze

is necessary to raise annular cement to the minimum height of 250 feet, a cement bond log showing quality and placement of the cement must be furnished to be approved by the Commission before the well may be used for injection or disposal.

(L) **Packer setting depth.** The packer must be set at a depth which is at least 50 feet below the depth of the top of cement behind the production casing.

(3) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a pressure increase of 250 psi on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department. The Manager of the UIC Department may allow the alternative test procedure to be used as the initial mechanical integrity test, which permission shall be reflected in the order or permit regarding the well.

(4) **Use of fluid seal without a mechanical packer.** Use of a fluid seal without a mechanical packer is prohibited.

(c) Initial pressure test requirements for wells permitted prior to December 2, 1981.

(1) Mandatory initial pressure test or monitoring test.

(A) Each well authorized for injection or disposal by Commission order issued prior to December 2, 1981, must pass an initial mechanical integrity test according to the minimum testing standards of (2) of this subsection.

(B) In lieu of casing test required in (A) of this paragraph, the operator shall monitor and record during actual injection the pressure in the casing-tubing annulus monthly and report the pressure annually on Form 1075. A measurable positive pressure must be maintained at the casing valve and be continuously measured to qualify.

(2) Minimum testing standards for initial mechanical integrity tests.

(A) **Wells with casing-tubing annulus.** The minimum testing standards of (b)(2) of this Section for an initial test of a well with a casing tubing annulus shall apply with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test on Form 1075.

(iii) The minimum testing pressure shall be 200 psig.

(B) **Wells without a casing-tubing annulus or wells with perforations above the packer.** The minimum testing standards for an initial test of a well without a casing-tubing annulus or wells with perforations above the packer are:

(i) The test shall be witnessed by an authorized representative of the Conservation Division unless the District Manager for the Conservation Division waives the requirement of witnessing the initial test. It shall be the responsibility of the well operator to secure the presence of the commission representative for witnessing the test.

- (ii) If the test is not witnessed, then the operator shall submit on Form 1075 documentation of the test to the Conservation Division within 30 days after the test.
- (iii) The operator shall install a one-fourth (1/4) inch female fitting, with cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative using a gauge having a one-fourth (1/4) inch male fitting.
- (iv) For purposes of the test, a mechanical packer, retrievable bridge plug, or seating nipple plug shall be placed in the injection string not more than 75 feet above the top of the injection interval.
- (v) The well operator shall pressure test the tubing string for at least 30 minutes. The minimum testing pressure shall be the greater of 300 psig, or the maximum authorized injection pressure provided that the actual working injection pressure for the well may be used instead of the maximum authorized injection pressure when necessary to prevent damage to the casing or packer.
- (vi) The maximum permitted bleedoff during the testing period shall be ten percent of the maximum testing pressure used.
- (vii) A radioactive tracer survey shall be run demonstrating that the injected fluid is going into the authorized zone when there is no cement bond log or cementing reports to demonstrate sufficient cement behind pipe to isolate the injection zone or to insure the packer is properly set.
- (viii) In lieu of a pressure test using a liquid testing media, the UIC Department may approve a mechanical integrity test using a gas media if it conforms to a method previously approved by the EPA.
- (ix) The Field Inspector shall submit the results of the mechanical integrity test on Form 1075 to the Conservation Division within 30 days after the test.

(d) Subsequent mechanical integrity test requirements for noncommercial disposal wells and injection wells.

(1) Pressure tests.

(A) Noncommercial disposal wells permitted for injection at volumes equal to or greater than 20,000 barrels per day. Unless a well has been approved by an order or permit of the Commission for other testing procedures or monitoring, each noncommercial disposal well permitted for injection at volumes equal to or greater than 20,000 barrels per day shall demonstrate mechanical integrity by using one of the following methods:

- (i) Conduct a pressure test of the casing tubing annulus at least once every year according to the minimum testing standards of (3) of this subsection, or
- (ii) If a continuous pressure monitor is installed on the casing tubing annulus that will automatically notify the operator of a mechanical failure, then the well shall demonstrate mechanical integrity at least once every five

years according to the minimum testing standards of (3) of this subsection.

(B) Noncommercial disposal wells permitted for injection at volumes less than 20,000 barrels per day and injection wells.

Unless a well has been approved by an order or permit of the Commission for other testing procedures or monitoring, each noncommercial disposal well permitted for injection at volumes less than 20,000 barrels per day, and each injection well permitted for injection shall demonstrate mechanical integrity at least once every five years according to the minimum testing standards of (3) of this subsection.

(C) Penalty for noncompliance. Any operator failing to comply with periodic mechanical integrity testing and reporting requirements may be fined up to \$500.00.

(2) Required retest if down-hole equipment is moved or replaced. After a well passes a pressure test required by this Section, if the operator moves the packer or replaces either the packer or the tubing, then the operator shall notify the Commission and retest the well according to the minimum testing standards of (3) of this subsection.

(3) Minimum testing standards.

(A) Wells with casing-tubing annulus. For a five year test or retest required by this subsection, the minimum testing standards of (b)(2) of this Section shall apply to wells with casing-tubing annulus with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed due to waiver, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test.

(iii) The minimum testing pressure shall be 200 psig for a noncommercial disposal or injection well.

(B) Wells without a casing-tubing annulus or wells with perforations above the packer. For a five year test or retest required by this subsection, the minimum testing reporting standards of (c)(2)(B) of this Section, shall apply to wells without a casing-tubing annulus or wells with perforations above the packer.

(e) Subsequent mechanical integrity test requirements for commercial disposal wells.

(1) Pressure tests.

(A) The well shall be tested a minimum of every twelve (12) months according to the minimum testing standards of (b)(2) of this Section.

(B) After a well passes a pressure test required by this Section, if the operator moves the packer or replaces the packer or tubing, then the operator shall notify the Commission and retest the well according to the minimum testing standards of (b)(2) of this Section.

(C) Any operator failing to comply with periodic mechanical integrity testing and reporting requirements may be fined up to \$500.00.

(2) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a pressure increase of 250 psig on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department. The Manager of the UIC Department may allow the alternative test procedure to be used as the initial mechanical integrity test, which permission shall be reflected in the order or permit regarding the well.

(f) **Fluid level monitoring required by UIC orders or permits to address wells ascertained during the permitting process that may require remediation.**

(1) **Fluid level monitoring.** The operator must perform on an annual basis fluid level monitoring tests if required by a UIC order or permit.

(2) **Fluid level test procedures.**

(A) Unless otherwise stated in UIC orders or permits for fluid level monitoring, the well must be shut in for a minimum of 48 hours before a fluid level test is performed. A variance to the 48-hour shut-in period may be granted by the Manager of the UIC Department if it can be demonstrated that reservoir pressure will stabilize prior to the expiration of the 48-hour time period.

(B) Fluid level test procedures shall be designed to determine reservoir pressure and such tests must be approved by the Conservation Division.

(C) The appropriate Field Inspector shall be notified at least 48 hours in advance of a fluid level test to allow a Commission representative an opportunity to witness the test.

(D) The operator is required to perform the fluid level monitoring test annually during the two month time period in May and June and submit the annual monitoring test results by June 30 of each year to the Manager of the Underground Injection Control Department.

(3) **Fluid level monitoring test failure.** If the fluid level in a well is determined to be within 150 feet or less below the base of treatable water, the test shall be deemed a failure, and the following actions must be performed:

(A) The operator shall immediately cease injection or disposal operations.

(B) The operator shall notify the Manager of the Underground Injection Control Department of the results within 24 hours of the performance of the fluid level test, and shall submit the results of the test and a corrective action plan in writing to such Manager within 7 days of the test.

(4) **Failure to perform fluid level test.** Any operator who fails to perform annual fluid level tests as required by a UIC order or permit pursuant to this subsection is subject to the following:

(A) Injection or disposal into the UIC well is prohibited until the operator performs the test and submits the results to the Manager of the Underground Injection Control Department.

(B) The operator may be fined up to \$1,000.00, and

(C) The UIC order or permit is subject to termination after notice and hearing.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 11 Ok Reg 3691, eff 7-11-94; Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 17 Ok Reg 1860, eff 7-1-00; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1

(a) **Scope.** This Section applies to:

- (1) Notice of Initial Commencement of Disposal Operations.
- (2) Report of Injection Projects, disposal wells and LPG storage wells on Form 1012 or Form 1012C.
- (3) Notice of Voluntary Termination of Operations on Form 1072.
- (4) Notice of mechanical failure or down-hole problems on Form 1075.

(b) **Notice of initial commencement of disposal operations.** The operator of a well permitted as a disposal well in the Arbuckle formation shall give at least 48 hours notice by electronic mail or facsimile to the Manager of Underground Injection Control regarding the time when initial disposal operations will begin.

(c) **Report of injection projects, disposal wells and LPG storage wells.**

(1) **Submit Form 1012.** Each operator of a disposal well, LPG storage well or an authorized waterflood, pressure maintenance project, gas repressuring project, or other enhanced recovery project shall submit Form 1012 for every well to the Conservation Division by January 31 for the previous calendar year for all noncommercial wells.

(2) **Submit Form 1012C.** Each operator of a commercial disposal well shall submit Form 1012C for every well to the Conservation Division by January 31 and July 31 for the previous six-month period.

(3) **Failure to submit Form 1012 or Form 1012C.** Any operator who fails to submit the report on Form 1012 or Form 1012C as required by (c)(1) and (c)(2) of this Section may be fined up to \$500.00 and:

(A) Injection into the project is prohibited until the operator submits Form 1012 or Form 1012C for each injection or disposal well.

(B) The order or permit is subject to termination.

(4) **Required monitoring.**

(A) On a monthly basis, the operator of each injection well and disposal well and LPG storage well shall monitor and record the injection rate and surface injection pressure for the well.

(B) On a daily basis, the operator of each well authorized for disposal into the Arbuckle formation shall monitor and record the volumes, the casing tubing annulus pressure and the surface injection pressure for the well. The operator must maintain the information required by this subparagraph for a minimum of three years. This information shall be produced upon request by an authorized representative of the Commission.

(5) **Requested monitoring and reporting within areas of interest regarding seismicity or potentially critical environmental or public safety impacts.** Upon request by the Manager of the Induced Seismicity Department, the following actions must be performed and the information provided to the Manager of the Induced Seismicity Department:

(A) Operators shall monitor on a daily basis volumes and pressures for wells authorized for disposal within areas of interest designated by the Oil and Gas Conservation Division regarding seismicity or

potentially critical environmental or public safety impacts. The information shall be submitted on Form 1012D at a minimum on a weekly basis or as designated by the Manager of the Induced Seismicity Department.

(B) Operators of wells authorized for disposal within areas of interest designated by the Oil and Gas Conservation Division regarding seismicity or potentially critical environmental or public safety impacts shall supply bottom hole pressure data using a method approved by the Manager of the Induced Seismicity Department.

(6) **All UIC wells.** Information regarding disposal wells, injection wells and storage wells shall be reported on Form 1012 or Form 1012C individually according to the order or permit authorizing disposal.

(d) Monitoring requirements for commercial disposal well.

(1) The operator of a commercial disposal well shall monitor and record the casing tubing annulus pressure and the injection pressure on a daily basis.

(2) The operator of a commercial disposal well shall make available upon request of the Commission a log of all loads of Class II fluids disposed at the well. The log shall be kept on file for a period of at least five (5) years. The log of record shall include at a minimum, the date and time the load was received, the volume, the legal description of the well and/or source, and the operator and/or owner of the source of the Class II fluids.

(e) Notice of voluntary termination.

(1) If an operator permanently terminates injection into a well, the operator shall submit to the Conservation Division Form 1072 within 30 days after termination of injection. Form 1072 shall state:

(A) The legal description of the well.

(B) The reason for termination.

(2) The operator is also required to file, along with the Form 1072, or a Form 1003 Plugging Record, a Form 1012 or Form 1012C for that portion of the calendar year the operator has operated the well prior to submitting the Form 1072 or Form 1003 to the Commission.

(3) Submission of Form 1072 to permanently terminate injection or a Form 1003 Plugging Record shall terminate the authority under the order.

(f) Notice of mechanical integrity problem.

(1) **Notice of mechanical failure or down-hole problem.** When a mechanical problem occurs, then:

(A) The well operator shall notify the Field Inspector for Conservation within 24 hours after discovery of the problem.

(B) Within five days after discovery of the problem, the well operator shall submit to the Manager of Underground Injection Control written notice of the failure and a plan to repair and/or retest the well.

(C) The well must be brought into compliance within ninety days after discovery of the problem.

(D) Repair shall be reported on the Form 1012 or Form 1012C for the well.

(E) Any operator failing to timely notify the Commission or bring the well into compliance may be fined up to \$1,500.00.

(2) **Notice of unreported repairs.** Any prior unreported repair of the well shall be reported on the next Form 1012 or Form 1012C to be submitted to

the Manager of the UIC Department.

(g) Shutdown or other action.

(1) **Administrative shutdown or other action regarding a well.** The Conservation Division may shut down or take other action, including the issuance or execution of administrative agreements, regarding a well pursuant to 17 O.S. § 52, 52 O.S. §139(D)(1) and other applicable authority, to address matters including, but not limited to, seismic activity, or if a mechanical failure or down-hole problem indicates that injected substances are not or may not be entering the injection interval authorized by order or permit of the Commission.

(2) **Request for technical conference.** If an operator objects to the shutdown or other action regarding its well by the Conservation Division, the operator shall submit a written request for a technical conference to the Director of the Conservation Division or designee within five business days of the date of the shut down notice or other Conservation Division action regarding the well. If a resolution of the shutdown or other action regarding the well is not reached by the operator and the Conservation Division after a technical conference occurs, then the provisions of paragraph (5) below are applicable.

(3) **Failure to request a technical conference.** Except for good cause shown, if an operator fails to timely submit a written request for a technical conference pursuant to paragraph (2) above, such failure shall be deemed to constitute an agreement by the operator to the shutdown or other Conservation Division action regarding the well.

(4) **Administrative authority to recommence injection.** After receiving a written request for a technical conference from an operator pursuant to paragraph (2) above, the Conservation Division may consider, but not be limited to, the following in determining whether the operator will be authorized to recommence injection into the well:

- (A) the mechanical integrity of the well for injection; and
- (B) if construction of the well demonstrates the injected substances are going into and are confined to the permitted injection interval.

(5) **Resolution of disputes by order of the Commission.** In the event of a dispute between the Conservation Division and the operator as to the suitability of a well for injection, the operator or the Conservation Division may seek relief by order of the Commission. Upon application, notice, and hearing pursuant to OAC 165:5-7-1 and other applicable Commission rules, the Commission may issue an order determining whether or not the well should be used for further injection.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 11 Ok Reg 3691, eff 7-11-94; Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-8. Liquid hydrocarbon storage wells

Authorization for storage wells will be granted by order of the Commission after notice and hearing, provided there is a finding that the proposed operation will not endanger fresh water strata.

165:10-5-9. Duration of underground injection well orders or permits

- (a) Subject to 165:10-5-10, 17 O.S. § 52, 52 O.S. §139(D)(1) and other applicable authority, authorization of injection into injection wells and disposal wells shall remain valid for the life of the well, unless revoked by the Commission for just cause or lapses and becomes null and void under the provisions of 165:10-5-5(h).
- (b) An order or permit granting underground injection may be suspended, modified, vacated, amended, or terminated during its term for cause. This may be at the Commission's initiative or at the request of any interested person through the prescribed complaint procedure of the Conservation Division. All requests shall be in writing and shall contain facts or reasons supporting the request.
- (c) An order or permit may be suspended or temporarily modified by the Commission pursuant to 17 O.S. § 52, 52 O.S. §139(D)(1), 165:10-5-7(g) and other applicable authority.
- (d) An order or permit may be permanently modified, vacated, amended, or terminated after notice and hearing if:
- (1) There is a substantial change of conditions in the injection well or the disposal well operation, or there are substantial changes in the information originally furnished.
 - (2) Information as to the permitted operation indicates that the cumulative effects on the environment are unacceptable.
- (e) If an operator fails to perform the initial mechanical integrity test on a well within eighteen (18) months after the effective date of the order or permit authorizing injection into the well, then the order or permit authorizing injection into the well shall expire.

[Source: Amended at 11 Ok Reg 3691, eff 7-17-94; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-10. Transfer of authority to inject

- (a) An order or permit authorizing an injection well(s), disposal well, commercial disposal well, or hydrocarbon storage well(s) shall not be transferred from one operator to another without the following:
- (1) The new operator, or transferee, must comply with 165:10-1-10 before a change in operator is approved.
 - (2) Change of operator Form 1073I or Form 1073IMW must be signed by both the transferor and transferee, with both stipulating that the facts presented are true and correct as to the area covered and the wells being transferred. The new operator shall file Form 1073I or Form 1073IMW to notify the Conservation Division of any change of operation of any underground injection well within thirty (30) days of transfer of the well.
 - (3) Notice in writing to the Commission on Form 1073IMW. For transfers involving more than ten (10) wells, a transferor and transferee may file a single Form 1073IMW with the Conservation Division indicating the transfer of multiple wells, provided that such multiple well transfer shall be accompanied by a well list containing the following information for each well transferred:
 - (A) API number of the well;
 - (B) Well name and number;
 - (C) Legal location of the well, described by section, township and range; and
 - (D) The Commission Order or permit number(s) authorizing the injection, disposal, or hydrocarbon storage activity.

(4) The well list may be provided in spreadsheet form, if possible, and may be filed in digital format specified by the Conservation Division. In lieu of the information listed in subparagraphs (a)(3)(A) through (D), the transferor and transferee, at their option, may file one Form 1073IMW indicating the transfer of multiple wells with an OCC Form 1002A Completion Report attached for each well transferred. Upon review by the Conservation Division, it may require additional information from the transferor and/or the transferee to assist in identifying the specific well(s) being transferred. The additional information may include, but not be limited to, the quarter, quarter, quarter section calls, footages from the south and west quarter section lines, and the drilling and completion dates, and initial injection, disposal or storage dates.

(5) Notice in writing to the Commission on Form 1075 demonstrating that a mechanical integrity test was performed within one year prior to the date of transfer. For commercial disposal wells, the Mechanical Integrity Test shall be conducted within 30 days prior to the date of transfer.

(6) The performance of the mechanical integrity test required in (a)(5) of this subsection shall not apply to any operator transfer when the following conditions are present:

(A) The interest of the currently designated operator is transferred to its subsidiary or parent company, or a subsidiary of a parent company;

(B) The interest of the currently designated operator is transferred to a surviving or resulting corporation or business entity due to, respectively, a merger, consolidation or reorganization involving the transferor and transferee. As used in this subparagraph, "business entity" means a domestic or foreign partnership, whether general or limited; limited liability company; business trust; common law trust, or other unincorporated business; or

(C) The currently designated operator undergoes a name change. The relief afforded by this subparagraph is not applicable to situations where the name change involves the following conditions:

(i) The assignment of a new Federal Employer Identification number by the Internal Revenue Service to the new company;

(ii) The name change is accompanied by a change in the majority of partners in a partnership;

(iii) The name change is associated with a divorce between a husband and wife when the husband and wife comprise a partnership;

(iv) The name change is associated with the death of one spouse in a partnership comprised of a husband and wife;

(v) The name change involves a sole proprietorship; or

(vi) The name change is associated with such other circumstances where the Commission determines upon application, notice and hearing that the relief provided in this subparagraph is not applicable, or that an exception to any exclusion should be granted.

(vii) As used in this subparagraph, the term "partnership" means a domestic or foreign partnership, whether general or

limited.

(7) A Form 1012, Form 1012C or Form 1012D for that portion of the calendar year the transferor has operated the well prior to submitting the Form 1073I to the Commission.

(b) The Conservation Division shall notify both the transferor and transferee in writing within thirty (30) days of the Conservation Division's approval or disapproval of the transfer of authority to inject for the subject well(s).

(c) If an operator is not in compliance with an enforceable order or permit of the Commission, the Conservation Division shall not approve any Form 1073I or Form 1073IMW transferring well(s) to said operator until the operator complies with the order or permit. The transferor of the well(s) listed on the Form 1073I or Form 1073IMW remains responsible for the well(s) until any transfer is approved by the Commission.

(d) Before the operatorship of a well can be transferred to a new operator when the current or former operator is unavailable for signature, one of the following may be submitted as proof of operatorship:

(1) A certified copy of a recorded lease or assignment transferring all rights, title, and interest to the wells described on Form 1073I or Form 1073IMW to the new operator.

(2) A certified copy of a journal entry of judgment rendered by a district court of Oklahoma having jurisdiction over the wells described on Form 1073I or Form 1073IMW vesting legal title to the new operator.

(3) A certified copy of a bankruptcy proceeding by the bankruptcy court having jurisdiction over the wells described on Form 1073I or Form 1073IMW.

[Source: Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 17 Ok Reg 802, eff 12-28-99 (emergency); Amended at 17 Ok Reg 1860, eff 7-1-00; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-5-11. Notarized reports

In lieu of notarization, all Conservation Division reports shall contain the following statement signed and dated by the responsible party representing the entity which is submitting the report:

"I declare that I have knowledge of the contents of this report, which was prepared by me or under my supervision and direction, with the data and facts stated herein to be true, correct, and complete to the best of my knowledge and belief".

165:10-5-12. Application for administrative approval for the subsurface injection of onsite reserve pit fluids

Except upon a case-by-case approval of the Commission pursuant to 165:10-5-13, the subsurface injection of reserve pit fluids is prohibited into:

(1) A newly drilled well which is to be plugged and abandoned, or

(2) The casing annulus of:

(A) A well being drilled.

(B) A recently completed well.

(C) A well which has been worked over.

165:10-5-13. Application for permit for one time injection of reserve pit fluids

(a) **General.**

- (1) Injection of reserve pit fluids shall be limited to injection of only those fluids generated in the drilling, deepening, or workover of the specific well for which authorization is requested.
- (2) An annular injection site shall be inspected by a duly authorized representative of the Commission prior to injection.
- (3) The applicant shall file with the Underground Injection Control an affidavit of delivery or mailing not later than five days after the application is filed.
- (4) An operator who disposes of drilling fluid into the surface casing or annulus without approval from the Manager of Pollution Abatement may be fined up to \$2,500.00.

(b) Criteria for approval.

- (1) Intermediate casing injection may be authorized if injection will not endanger treatable water and provided that intermediate casing is set at least 200 feet below the base of treatable water, except as otherwise provided by the Commission.
- (2) Injection pressure shall be limited so that vertical fractures will not extend to the base of treatable water.
- (3) **Required form and attachments.** Each application for annular injection shall be submitted to the UIC Department on Form 1015T. The form must be properly completed and signed. Attached to the form shall be the following:
 - (A) Affidavit of mailing a copy of the Form 1015T or Form 1000 to the landowner and to each operator of a producing lease within 1/2 mile of the subject well.
 - (B) Cement Bond Log of subject well (if run).
- (4) **Expiration of the permit.** The permit shall expire on its own terms three months after the date of issuance of the permit.

(c) Emergency authority to inject into the annulus. The Manager of the UIC Department may grant emergency authority to inject pit fluids into the annulus provided an imminent environmental endangerment exists.

(d) Protest period. If no protest is received within 15 days of the mailing of Form 1015T, the application shall be submitted for administrative approval. If a protest is received within the protest period, the operator shall, within 30 days, set and give proper notice of a date for hearing on the Pollution Docket before an Administrative Law Judge.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-5-14. Exempt aquifers

(a) Upon application after notice and hearing, the Commission may issue an order designating an underground source of drinking water (USDW) as an exempted aquifer if the USDW:

- (1) Does not currently serve as a source of drinking water.
- (2) Cannot now and has no reasonable future prospect of serving as a source of drinking water because:
 - (A) It is mineral, hydrocarbon or geothermal energy producing source; or
 - (B) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

- (C) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.
- (b) For purposes of 165:10-3-4 and 165:10-5-2 through 165:10-5-13, an exempted aquifer shall not be considered as productive of treatable water.
- (c) Each application under subsection (a) of this Section shall comply with 165:5-7-28.
- (d) Each order designating a USDW as an exempted aquifer shall be subject to approval by the U.S. Environmental Protection Agency.

165:10-5-15. Application for permit for simultaneous injection well

(a) General.

- (1) Simultaneous injection of salt water without a valid permit from the Underground Injection Control Department may result in the assessment of a fine up to \$5,000 per day of operation.
- (2) A simultaneous injection facility shall be inspected by a representative of the commission prior to operation.

(b) Criteria for approval.

- (1) Simultaneous injection may be permitted if the following conditions are met and injection will not adversely affect offsetting production nor endanger treatable water.

- (A) Injection zone is located below the producing zone in the borehole.

- (B) Injection pressure is limited to less than the local fracture gradient.

- (C) If injection is by gravity flow, no Area of Review will be required.

- (D) If injection is by positive pump pressure, a 1/4 mile Area of Review will be required. If unplugged or mud-plugged boreholes are located within the 1/4 mile radius, the operator of the proposed simultaneous injection well will be required to reconcile these boreholes prior to a permit being issued.

- (E) Simultaneous injectors must meet the requirements of 165:10-3-4 as they apply to producing wells.

- (F) Simultaneous injectors may be authorized to accept produced water from other wells. The UIC Department will determine on a case-by-case basis whether such a well warrants designation as a simultaneous injector, or whether the well requires a Commission order.

- (2) **Required form and attachments.** Each application for simultaneous injection shall be submitted to the UIC Department on Form 1015SI in quadruplicate. The forms must be properly completed and signed. Attached to one copy of the application form shall be the following:

- (A) Affidavit of mailing a copy of the completed Form 1015SI to each operator of a producing lease within 1/2 mile of the subject well.

- (B) Schematic diagram of the well showing all casing and tubing strings, packers, perforations and pumps.

- (3) **Monitoring, testing and reporting requirements for simultaneous injection wells.**

(A) Upon receiving a permit, operator shall file an amended Completion Report Form 1002A within 30 days of recompletion.

(B) Mechanical integrity will be demonstrated by filing annual reports of surface casing pressure, production casing pressure and fluid level.

(C) Annual Report Form 1012 shall be submitted by January 31 of each year for the previous calendar year and semi-annual report Form 1012C shall be submitted by January 31 and July 31 of each year for the previous six-month period.

(4) If no protest is received within 15 days of the mailing of Form 1015SI, the application shall be submitted for administrative approval. If a protest is received within the protest period, the operator shall, within 30 days, set and give proper notice of a date for hearing on the Pollution Docket before an Administrative Law Judge.

(c) **Expiration of the permit.** The permit shall expire on its own terms if the subject well is not recompleted or if a revised Form 1002A is not submitted within 180 days from the date on the permit.

[Source: Added at 13 Ok Reg 2381, eff 7-1-96; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18]

SUBCHAPTER 7. POLLUTION ABATEMENT

PART 1. GENERAL PROVISIONS

165:10-7-1. Pollution abatement [RESERVED]

165:10-7-2. Administration and enforcement of rules

(a) The Manager of Pollution Abatement and/or the Manager of the Underground Injection Control Department shall supervise and coordinate the administration and enforcement of the rules of this Subchapter under the direction of the Director of Conservation and the Commission.

(b) Site assessments and remediation projects for petroleum and produced water pollution should adhere to the general practices appearing in the Oil and Gas Conservation Division's Guardian Guidance document including the Guidelines and Numerical Criteria for New or Historic Produced Water/Brine Spills Appendix. Any alternative plan shall be approved by the Manager of Pollution Abatement prior to implementation.

(c) **Specific areas of Conservation Division jurisdiction to which Pollution Abatement and/or Underground Injection Control rules apply:**

(1) Field operations for geologic and geophysical exploration for oil, gas and/or brine, including seismic shot holes, stratigraphic test holes or other test wells.

(2) Exploration, drilling, development, production or processing of oil, gas and/or mineral brine at the lease site.

(3) The exploration, drilling development and operation of wells used in connection with the recovery, injection, or disposal of mineral brines including construction, operation, maintenance, closure and abandonment of the facilities and activities.

(4) Reclaiming and/or recycling facilities associated with the exploration, drilling, development, production or transportation of oil and/or gas (including the processing of saltwater, crude oil, natural gas condensate,

tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment).

(5) Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR parts 144 through 148 for Class II injection wells, Class V wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act.

(6) Tank farms for storage of crude oil and petroleum products located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities that are not subject to the jurisdiction of the Oklahoma Department of Environmental Quality.

(7) Construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum projects, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation [not including pipelines in natural gas liquids extraction plants, refineries, or reclaiming facilities other than those specified in OAC 165:10-7-2(c)(6).

(8) The handling, transportation, storage and disposition of saltwater, drilling fluids, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, production, and operation of oil and gas wells at any facility or activity specifically subject to Commission jurisdiction or other oil and gas extraction facilities and activities.

(9) Spills of deleterious substances associated with facilities and activities specified in OAC 165:10-7-2(c)(8) or otherwise associated with oil and gas extraction and transportation activities.

(10) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission.

(d) Monitoring of sites. Before consideration for closure by the Conservation Division or the Commission, the responsible party shall monitor a remediation project subject to implementation of the water quality standards for a period of one (1) year, unless:

- (1) Otherwise provided by Commission order, or
- (2) As directed by the Manager of Pollution Abatement or designated Conservation Division staff.

(e) Public participation; Resolution of complaint or disagreement with Conservation Division staff.

(1) In any case where the Conservation Division determines the need for public participation in the resolution of a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution, the Conservation Division may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.

(2) In any case where a pollution complaint involving the implementation of the water quality standards or other issues relating to pollution cannot be resolved administratively between the responsible party and the complainant or because of a disagreement with the Conservation Division's Manager of Pollution Abatement, Manager of Field Operations, or other Conservation Division staff, regarding the complaint, the responsible party or the complainant may file an application and notice of hearing to request resolution of the complaint by adjudicative hearing and Commission order.

[Source: Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:10-7-3. Cooperation with other agencies

(a) The rules of this Subchapter shall not be construed as modifying the rights, obligations, or duties of any person under any law of this State or under any order, rule, or regulation of the Oklahoma Water Resources Board, State Department of Health, Oklahoma Wildlife Conservation Commission, State Board of Agriculture, Department of Environmental Quality, or any other agency of this State with respect to the pollution of fresh water.

(b) Whenever a written complaint against any person is filed with the Commission alleging pollution as prohibited by 165:10-7-5, the Manager of Pollution Abatement shall immediately initiate such action as may be necessary or appropriate to abate the pollution.

(c) OPERATORS TAKE NOTE: Federal statutes, such as the Bald Eagle Protection Act (16 U.S.C. Sections 668-668d), the Migratory Bird Treaty Act (16 U.S.C. Sections 703-711), the Endangered Species Act (16 U.S.C. Sections 1531-1542), and the Lacey Act Amendments of 1981 (16 U.S.C. Sections 3371-3378), dictate substantial fines and penalties for persons who allow birds of certain species to become fatally injured due to incidental contact with oil or oil by-products. These fines may be levied upon persons allowing such fatalities to occur, whether accidental or not. Misdemeanor and felony convictions may include imprisonment. Information on affected bird species, regulations under these Acts, and measures which can be taken to prevent such occurrences, such as the netting or covering of open-topped tanks and pits which contain oil or oil by-products, can be obtained from the U.S. Fish and Wildlife Service Office in Oklahoma City or the nearest Oklahoma Department of Wildlife Office.

(d) **Operators drilling in the Arbuckle-Simpson Aquifer.** The Arbuckle-Simpson Aquifer located in Pontotoc, Murray, and Johnston Counties has unique and unusual hydrogeologic conditions. Any operator intending to drill in this area should contact the Technical Services Department of the Oil and Gas Conservation Division prior to filing an intent-to-drill. The Technical Services Department may request a technical meeting prior to approval of an intent-to-drill to determine if additional protection of this aquifer is necessary.

[Source: Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:10-7-4. Water quality standards

(a) **Scope.** The Commission hereby adopts the State water quality standards established and promulgated by the Oklahoma Water Resources Board (OWRB) or its successors effective October 7, 1987, and additions and revisions as lawfully published in the Oklahoma Register effective as provided by statute. The Commission's Oil and Gas Conservation Division (Conservation Division) shall implement the water quality standards with regard to its particular jurisdictional areas as referred to in 165:10-7-2(c).

(b) General considerations.

(1) The primary goal of the implementation of the water quality standards in the context of a remediation project subject to Commission jurisdiction shall be the protection and/or restoration of the beneficial use of the land, the soil and any surface or subsurface waters of the State adversely impacted or impaired by pollution from a Commission regulated site or facility.

(2) A remediation project utilizing the water quality standards shall adhere to the general practices appearing in the Conservation Division's *Oklahoma Water Quality Standards Implementation Plan (WQSIP)*.

(3) Where appropriate, a remediation project utilizing the water quality standards shall follow the use support assessment protocols (OWRB-OAC 785:46-7) as specified in *Oklahoma Water Quality Standards Implementation Plan*.

[Source: Amended at 18 Ok Reg 2370, eff 7-1-01; Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-7-5. Prohibition of pollution

(a) **General.** Pollution is prohibited. All operators, contractors, drillers, service companies, pit operators, transporters, pipeline companies, or other persons shall at all times conduct their operations in a manner that will not cause pollution.

(b) **Workable coal seams.** Sections 305, 306, 307, and 308 of Title 52, Oklahoma Statutes Annotated, governing the drilling, operations, and plugging of oil and gas wells in workable coal beds are hereby adopted as rules of the Commission as fully as if set out verbatim herein.

(c) **Reporting nonpermitted discharges (spills, etc.).**

(1) All operators, contractors, drillers, service companies, pit operators, transporters, pipeline companies, or other persons conducting operations regulated by the Commission shall:

(A) Report by telephone, or by electronic mail, with respect to their operations, to the Commission District Office or Field Inspector within 24 hours of discovery:

(i) Any non-permitted discharge of deleterious substances of ten bbls. or more (single event) to the surface.

(ii) Any discharge of a deleterious substance, regardless of quantity, to the waters of the State.

(iii) Name of party reporting, firm name, telephone number, and electronic mail address.

(iv) Legal location.

(v) Lease or facility name.

(vi) Operator.

(vii) Circumstances surrounding discharge of deleterious substance(s) and whether discharge was to water or soil.

(viii) Date of occurrence.

(ix) Volumes of deleterious substance(s) discharged.

(x) Type of materials discharged.

(xi) Method of cleanup (if any) undertaken and completed.

(xii) Volumes of deleterious substance(s) recovered.

(xiii) Estimated time period for reclamation.

(xiv) Plan for continued remedial undertaking (upon request by the Pollution Abatement Department).

(B) Maintain adequate records of each non-permitted discharge reflecting the information, time, and manner of reporting pursuant to this Section for a minimum of three (3) years. Such documents shall be produced upon demand by an authorized representative of the Commission.

(C) Report hazardous substances that meet reportable quantities under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (40 C.F.R. Part 302) in the format as

required under this subsection.

(2) Any operator, contractor, driller, service company, pit operator, transporter, or pipeline company who fails to comply with provisions of this rule may be fined \$500.00 per incident.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-6. Protection of public water supplies

The Commission, upon application of any municipality or other governmental subdivision, may enter an order establishing special field rules within a defined area to protect and preserve fresh water and fresh water supplies.

[Source: Amended at 32 Ok Reg 768, eff 8-27-15]

165:10-7-7. Informal complaints, red tags, and shut down of operations

(a) This Section applies only to Field Operations Department of the Oil and Gas Conservation Division.

(b) For an alleged violation of an order or provision of this Chapter, a district manager or field inspector may attempt to contact the alleged violator or his agent, in person, by telephone or by sending a Form 1085. The Form 1085 may be mailed or emailed to the last known address of the alleged violator according to Commission records.

(c) Where surface or subsurface pollution is apparent, a district manager or field inspector may direct an alleged violator to take steps necessary to stop and/or clean up pollution. Said steps may include a temporary shut down of the lease or facility. If an alleged violator cannot be located, the district manager or field inspector may take emergency action necessary to abate pollution.

(d) If the inspection shows that the alleged violator failed to comply as directed, the district manager or field inspector may:

(1) Refer the matter to the Office of General Counsel for prosecution, and/or

(2) Temporarily shut down the lease or facility until further notice from the Commission.

(e) In shutting down a lease or facility, the district manager or field inspector shall affix at the site a red tag (directive to shut down). If the alleged violator removes or ignores a red tag, the district manager or field inspector shall refer the matter to the Office of General Counsel for prosecution, and the Commission may levy a fine up to \$5,000.00.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-8. Inspection and enforcement [RESERVED]

165:10-7-9. Scheduled monetary fines [REVOKED]

[Source: Added at 9 Ok Reg 2295, eff 6-25-92; Revoked at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-10. Registration for land application of deleterious substances

(a) All persons who contract to land apply fluids pursuant to OAC 165:10-7-17, OAC 165:10-7-19, OAC 165:10-7-26 or OAC 165:10-9-2 shall:

(1) Comply with OAC 165:30-3-11, OAC 165:30-3-13, all applicable laws and all applicable Commission rules regarding Deleterious Substance Transport Permits; and

(2) Submit to the Conservation Division a performance bond in the amount of \$50,000.00, or other form of surety in an amount as approved by the Manager of the Pollution Abatement Department. The form of surety shall include an irrevocable commercial letter of credit, cash, a cashier's check, a certificate of deposit, a blanket surety bond, or other approved negotiable instrument. Financial statements are not an acceptable form of surety. The surety may be released upon request made no sooner than thirty (30) days subsequent to the completion of operation(s) that have been permitted under such surety, if Conservation Division personnel determine, after inspection or review, that the release of surety is appropriate.

(b) Any person violating this Section may be fined in an amount up to \$2,500.00. Any operation in violation of this Section may be shut down pending compliance with this Section.

[Source: Added at 30 Ok Reg 1041, eff 7-1-13]

PART 2. ANODE GROUNDBEDS

165:10-7-14. Anode groundbeds

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

(1) "**Anode**" means the electrode of an electrochemical cell at which oxidation occurs.

(2) "**Cathodic protection**" means a technique used to reduce the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

(3) "**Deep anode groundbed**" means one or more anodes installed vertically at a depth of fifty (50) feet or more below the earth's surface in a drilled hole for the purpose of providing cathodic protection.

(4) "**Shallow anode groundbed**" means one or more anodes installed either vertically or horizontally at a nominal depth of less than fifty (50) feet.

(5) "**Annular space**" means the space between the surface casing and the borewall or the space between two or more strings of casing placed in the borehole.

(6) "**Operator**" means the person who is duly authorized and in charge of the development of the operation of the pipeline or the development of a lease for the production of hydrocarbons.

(b) **Permit to drill.**

(1) The operator shall make application on Form 1000B and obtain a permit to drill a deep anode groundbed.

(2) A permit to drill shall be valid only for one or more deep anode groundbeds within a designated 10 acre tract.

(3) The Commission shall approve or deny the application within 30 days of date of receipt.

(4) Any contractor drilling a deep anode groundbed shall be licensed within the State of Oklahoma.

(5) Any operator who drills a deep anode groundbed without a permit may be fined up to one thousand dollars (\$1,000.00).

- (c) **Expiration.** A permit to drill shall expire six (6) months from the date of issuance, unless drilling operations are commenced.
- (d) **Posting of permit to drill at the site.** During any activity subject to this Section the operator shall maintain at the site a legible copy of the permit to drill for inspection.
- (e) **Notice.** The Commission's District Manager or Field Inspector shall be given at least twenty-four (24) hours notice prior to commencing drilling operations.
- (f) **Notice of failure to comply with permit conditions.** The operator shall notify the district office or the field inspector within twenty-four (24) hours of any failure to comply with the construction requirements approved on the permit.
- (g) **Deep anode groundbed abandonment.**
- (1) In the event the hole is lost during drilling, the hole will be plugged as soon as possible.
 - (2) Upon abandonment of a deep anode groundbed, the hole shall be plugged within thirty (30) days of abandonment.
- (h) **Construction standards.**
- (1) **Shallow anode groundbeds.**
 - (A) Shallow anode groundbeds shall be constructed in order to prevent runoff water from entering the anode system or the commingling of water from separate groundwater bearing formations.
 - (B) Vertical shallow groundbeds shall be sealed by backfilling the hole with native cuttings or an approved sealing material.
 - (2) **Deep anode groundbeds.**
 - (A) Deep anode groundbeds shall be constructed in order to prevent runoff water from entering the anode system or the commingling of groundwater formations with different water quality.
 - (B) Surface casing shall be set a minimum of twenty (20) feet below ground level, or at a depth previously approved by the Oil and Gas Division's Technical Department.
 - (C) If surface casing is not placed in the hole, the hole shall be filled with bentonite or cement from the top of the Coke Breeze Column to three (3) feet below surface. Native cuttings or soil shall be used to fill the remaining portion of the hole.
 - (D) The annular space between the casing and drilled hole shall be a minimum of two (2) inches to allow for a proper seal.
 - (E) The sealing material for the annular space for surface casing shall be bentonite, cement or a material previously approved by the Oil and Gas Division's Technical Department.
 - (F) Centralizers shall be used at a minimum of one (1) for every twenty-five (25) feet of surface casing run in the hole unless previously approved by the Oil and Gas Division's Technical Department on form 1000B.
 - (G) The groundbed shall be capped to prevent the entry of foreign material. Allowances for a vent pipe will be approved.
- (i) **Groundbed materials.** Groundbed materials that do not contaminate groundwater shall be required at all times.
- (j) **Plugging requirements.**
- (1) All wires and vent pipe must be cut off at the top of the ten (10) foot surface plug, and the vent pipe must be securely capped and plugged.

- (2) Cased holes shall be filled to at least ten (10) feet from the surface with native cuttings, anode materials, cement or with a material approved by the Pollution Abatement Department.
- (3) Cement or bentonite shall be placed in the hole at a minimum of ten (10) feet below the surface to within three (3) feet of the surface. The remainder of the hole shall be filled with native cuttings, soil or a material approved by the Pollution Abatement Department.
- (4) If the standard method is inadequate to stop artesian flow, alternate remedies must be employed to do so.
- (5) All holes shall be properly completed or plugged to protect groundwater.

[Source: Added at 14 Ok Reg 2198, eff 7-1-97; Amended at 28 Ok Reg 1949, eff 7-11-11]

PART 3. STORAGE AND DISPOSAL OF FLUIDS

165:10-7-15. Drilling or seismic activity near superfund sites or hazardous waste facilities

Any drilling or seismic activity related to oil or gas exploration or production shall be prohibited within 500 feet of the boundary of any superfund site pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601, et. seq., or active hazardous waste treatment, storage, or disposal facility. A current listing of all superfund sites and active hazardous waste facilities is available from the Manager of Pollution Abatement. Seismic work, monitoring wells, or recovery wells necessary for identification, monitoring, or remediation of the superfund site or hazardous waste facility shall be exempt from this Section. Any request for exception to this Section shall comport with the requirements generally for filing of applications under the Commission's Rules of Practice (see 165:5-7-1); in addition, notice shall be given to the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma 73152.

165:10-7-16. Use of noncommercial pits

(a) **Scope.** This Section shall cover the permitting, construction, operation, and closure requirements for any noncommercial pit. A noncommercial pit is an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not cover disposal well pits. (See 165:10-7-20 and 165:10-9-3.)

(b) Liner requirements.

(1) Reserve/circulation and/or completion/fracture/workover pits.

(A) To assist in determining the construction requirements for a particular proposed reserve/circulation pit, either on-site or off-site, the operator of the pit shall indicate on Form 1000 the type of mud system(s) to be used, the maximum and average anticipated chloride concentration of the mud (based on drilling records in the area), whether or not pit fluids will be segregated, and shall furnish other information required by this Section or requested by the Commission's Technical Services Department.

(B) The Commission's Technical Services Department shall evaluate the site based upon Oklahoma Geological Survey maps

and other pertinent information and shall assign one of the following categories to any proposed reserve/circulation pit, designating same on Form 1000 and indicating whether or not a liner is required:

(i)

(I) Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located in alluvial deposit area or an area where the static water table is within 10 feet of the surface shall utilize a geomembrane liner for all drilling fluids and cuttings and/or completion/fracture/workover fluids.

(II) Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 U.S.C. Section 300h-7, Safe Drinking Water Act), or within one mile of public water well for which the WPA has not been delineated, shall be required to have a geomembrane liner.

(ii)

(I) Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located over a terrace deposit shall be required to have either a soil liner or a geomembrane liner.

(II) Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located over any bedrock aquifer or HSA and is used to contain water-based drilling fluids and/or cuttings and/or completion/ fracture/workover fluids with chlorides in excess 5,000 mg/l shall be required to have a soil liner or a geomembrane liner. A separate unlined pit may be used to contain fluids and/or cuttings with a chloride content of less than of 5,000 mg/l.

(iii) Any pit which is used to contain water-based drilling fluids, cuttings and/or completion/fracture/ workover fluids with a set of conditions different from Categories 1A and 1B shall not be required to be lined.

(iv) Any pit used to contain oil-based drilling fluids, cuttings and/or completion/ fracture/workover fluids shall be required to have a geomembrane liner.

(v) Any pit used to contain the cuttings from an air-based system shall not be required to be lined. The discharge of produced water into a category 4 pit is prohibited.

(2) Other type pits.

(A) Any basic sediment pit shall be required to have a geomembrane liner.

(B) Any emergency pit shall not be required to be lined.

(C) Any flare pit shall not be required to be lined.

(D) Any recycling/reuse pit, spill containment pit, slit trench, or remediation pit shall conform to the same criteria for determining liner requirements for reserve/circulation and/or completion/fracture/workover pits, pursuant to (b)(1) of this Section.

(3) **Converted pits.** Any pit that is to be converted from one use to another, e.g., reserve pit to completion or fracture pit, shall have the more stringent liner requirements, pursuant to (c)(6) and (c)(7) of this Section.

(4) **Offsite pits.** Any offsite pit shall conform to the liner requirements in this Section and will require a permit. The operator of the proposed pit shall submit Form 1014 to the appropriate Conservation Division District Office for review and approval. No offsite reserve pit may be permitted or constructed at a spacing closer than one pit per governmental quarter quarter section and a distance less than 600 feet from any other pit. Any offsite reserve pit may be reclassified or considered as a commercial pit, pursuant to 165:10-9-1, if it is constructed or used at a spacing closer than one reserve pit per governmental quarter quarter section. Closure of any offsite reserve pit shall not warrant the permitting of another offsite reserve pit within the same governmental quarter quarter section. For use of a pit without a permit, the pit operator may be fined up to \$1,000.00.

(5) **Variations.** Any variance from the liner requirements of this Section may be granted by the Manager of the Technical Services Department after receipt of a written request and supporting documentation required by the Department.

(c) Construction requirements.

(1) **Field or area rules.** Any noncommercial pit which is to be constructed or used in an area covered by a field or area rule shall be subject to the more stringent requirements of either this Section or the field or area rule.

(2) **Stockpiling of topsoil.** Prior to constructing any noncommercial pit, except an emergency pit, all top soil within the top twelve inches shall be stripped and stockpiled for use as the final cover of fill at the time of closure. The top soil may be stockpiled in the berms, provided it is not mixed with other materials and can be readily distinguishable from other materials at the time of closure.

(3) **Exclusion of runoff water.** Any noncommercial pit shall be constructed and maintained so that runoff water from outside the location is not allowed to enter it.

(4) **Flood protection.** Any noncommercial pit which is constructed in any area subject to frequent flooding according to the Soil Conservation Service County Soil Survey shall have berms substantial enough to prevent overtopping or washing out.

(5) **Constructing on fill.** Any noncommercial pit which requires a liner and is constructed on fill shall be constructed so that the maximum level of the solid contents will be maintained at least three feet below the natural ground level.

(6) Soil liners.

(A) Soil materials used or to be used in a soil liner shall undergo permeability testing either before or after construction, unless exempt pursuant to (B) of this paragraph.

(i) Pre-construction permeability testing shall consist of laboratory permeability tests on at least two specimens of

representative soil liner materials compacted in the laboratory to approximately 90 percent of the material's Standard Proctor Density (ASTM D-698).

(ii) Post-construction permeability testing shall consist of at least two laboratory permeability tests on undisturbed samples of the completed soil liner or one field permeability test on the completed soil liner. Particular emphasis shall be placed on selecting the location(s) for permeability tests or test samples where nonuniformity in soil texture or color can be observed.

(iii) Laboratory permeability test procedures must conform to one of the methods described for fine-grained soils in the Corps of Engineers Manual EM-1110-2-1906 Appendix VII. In no case shall the pressure differential across the specimen exceed five feet of water per inch of specimen length. Field permeability tests shall be conducted only by the double ring infiltrometer method as described in ASTM D-3385. Permeability tests may be discontinued prior to flow stabilization upon satisfactory evidence that the permeability rate is less than 1.0×10^{-6} cm/sec.

(iv) If permeability testing shows that addition of bentonite or other approved material is needed to assist the native soils in meeting the permeability standard, it shall be applied at a minimum rate specified by the testing or engineering firm. Any bentonite used for liner material shall not have been previously used in drilling muds.

(B) Permeability testing requirements for soil materials may be exempt if laboratory testing of a minimum of two representative samples of the soil materials found throughout the entire depth of the proposed excavation indicates that the plasticity index is greater than 16 (ASTM D-4318) and that the amount passing the No. 200 U.S. standards sieve is greater than 60 percent (ASTM D-1140).

(C) Any soil liner shall be constructed by disturbing the soil to the depth of the bottom of the liner, applying fresh water as necessary to the soil materials to achieve a moisture content wet of optimum, then recompacting it with heavy construction equipment, such as a footed roller, until the required density is achieved, pursuant to (H) of this paragraph.

(D) Any soil liner shall cover the bottom and interior sides of the pit entirely.

(E) Any soil liner shall be installed on a slope no steeper than 3:1 (horizontal to vertical).

(F) Any soil liner shall have a minimum thickness of six inches (after compaction), and shall have a maximum coefficient of permeability of 1.0×10^{-6} cm/sec, unless it conforms to (G) of this paragraph.

(G) A soil liner may have a coefficient of permeability greater than 1.0×10^{-6} cm/sec if it is greater in thickness and constructed in accordance with the following:

(i) A minimum twelve inch compacted soil liner shall have a maximum coefficient of permeability of 2.0×10^{-6} cm/sec.

(ii) A minimum 18 inch compacted soil liner shall have a maximum coefficient of permeability of 3.0×10^{-6} cm/sec.

(iii) A compacted soil liner may not be constructed thicker than 18 inches for the purpose of meeting a coefficient of permeability greater than 3.0×10^{-6} cm/sec.

(iv) Any soil liner with a minimum twelve inch or 18 inch thickness shall be constructed in maximum lifts of six inches (after compaction). Each lift shall be scarified before placement of the next lift and shall conform to (H) of this paragraph.

(H) Any soil liner shall be field tested for compaction, unless a post-construction permeability test is performed, pursuant to (A)(ii) of this paragraph.

(i) The pit operator shall notify the appropriate Conservation Division District Office at least two (2) business days prior to field testing a soil liner for compaction to afford a Commission representative an opportunity to witness the field testing.

(ii) A minimum of six compaction tests shall be performed on any soil liner; a minimum of four widely spaced tests in the bottom of the pit and two tests on different slopes of the pit are required, unless otherwise directed by a Field Operations representative. Particular emphasis shall be placed on selecting locations for compaction tests where nonuniformity in soil texture or color can be observed.

(iii) Compaction tests shall be conducted in accordance with ASTM methods D-2922 or D-1556.

(iv) The soil materials of any liner shall be compacted to at least 90 percent of the Standard Proctor Density (ASTM D-698).

(7) Geomembrane liners.

(A) Any geomembrane liner that is installed in a reserve/circulation pit, spill prevention pit, or remediation pit, completion/fracture/workover pit, basic sediment pit, or recycling/reuse pit shall have a minimum thickness of 20-mil.

(B) Any geomembrane liner used in a noncommercial pit shall be chemically compatible with the type of substances to be contained and shall have ultraviolet light protection.

(C) Any geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(D) Any geomembrane liner shall be continuous, although it may include seams, and shall cover the bottom and interior sides of the pit entirely. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit or anchored in an equivalent manner approved by the appropriate Conservation Division District Office.

(8) Certification of liner. The operator of any noncommercial pit that is constructed with a soil or geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It

shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner (e.g., permeability and compaction test results, bentonite receipts, and geomembrane liner specifications from the manufacturer), and shall make them available at all times for review by any representative of the Conservation Division.

(d) Operation and maintenance requirements.

(1) **Freeboard.** The fluid level of any noncommercial pit shall be maintained at all times at least 24 inches below the lowest elevation on the top of the berm.

(2) **Reserve/circulation pits.** The operator of any reserve/ circulation pit shall limit its contents to the fluids and cuttings from a single well unless authorized by the District Manager.

(3) **Off-site reserve pits.** A waterproof sign shall be posted within 25 feet of any off-site reserve pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(4) **Recycling/reuse pits.**

(A) Any pit permitted for drilling mud recycling or reuse may contain the fluids and cuttings from multiple wells, provided that those wells are operated by the pit operator.

(B) A waterproof sign shall be posted within 25 feet of any recycling/reuse pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(5) **Prevention of pollution.**

(A) All noncommercial pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a noncommercial pit, sufficient measures shall be taken by the operator to stop or control the loss of contents, and reporting procedures pursuant to 165:10-7-5(c) shall be followed. Any materials lost from a pit shall be cleaned up as directed by any Field Operations representative. For a willful non-permitted discharge from a noncommercial pit, the operator may be fined up to \$2,000.00.

(B) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil be removed or the surface area covered by the oil be protected from access to birds. [See Advisory Notice 165:10-7-3(c)].

(e) Closure requirements.

(1) **Designation of disposal method.** The operator of any reserve/ circulation pit shall indicate the proposed method of disposal of drilling fluids and/or cuttings on Form 1000 as required by 165:10-3-1(f). Options shall be limited to the following, unless written approval is granted by a District Manager or Field Inspector Supervisor:

(A) Evaporation/dewatering and backfilling.

(B) Chemical solidification of pit contents.

(C) Annular injection (requires permit).

(D) Land application (requires permit).

(E) Disposal in permitted commercial pit.

(F) Disposal at permitted commercial soil farming facility.

(G) Disposal at permitted recycling/reuse facility.

(2) **Trenching.**

(A) Before trenching, stirring or otherwise disturbing the bottom of any noncommercial pit, the pit shall be completely dewatered.

(B) Trenching, stirring, or other similar practice shall be prohibited for any lined pit.

(3) **Lined pits.**

(A) When closing any noncommercial pit with a soil or geomembrane liner, extreme care shall be taken to preserve the integrity of the liner.

(B) For any lined reserve/circulation pit, completion/fracture/workover pit, recycling/reuse pit, or basic sediment pit, all free liquids shall be removed or chemically solidified with nonhazardous material.

(C) For any lined oil-based reserve/circulation pit, all cuttings or other materials remaining in the pit shall be chemically solidified with nonhazardous material.

(D) Soil cover, pursuant to (5) of this subsection, shall follow.

(4) **Soil cover.** Closure procedures for any noncommercial pit shall include a minimum of three feet of soil cover over any remaining pit contents, with all stockpiled topsoil being applied last. The materials shall be mounded or sloped to encourage runoff. A variance from this provision may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation is required. The appropriate Conservation Division District Office shall respond in writing within five business days either approving or disapproving the request.

(5) **Erosion control.** Any noncommercial pit shall be closed in such a manner that any future erosion will not cause the discharge of the pit contents. This may require vegetative cover and/or a diversion terrace(s).

(6) **Notification to appropriate Conservation Division District Office.** The operator of any noncommercial pit shall notify the appropriate Field Inspector or appropriate Conservation Division District Office at least 48 hours prior to commencing closure, and for reserve/circulation pits shall advise if the disposal method is different from that indicated on Form 1000. The operator shall also notify the Field Inspector or appropriate Conservation Division District Office within 48 hours after reclamation of the site has been completed.

(7) **Time limits.** Any noncommercial pit shall be closed within the time limits set forth in this paragraph. Any extension of time for pit closure must be requested by the operator, who shall file an application pursuant to OAC 165:5-7-33. A legal change of operator of any noncommercial pit shall not extend the time limit for closure. If a noncommercial pit is converted from one type of use to another, the last use shall determine the time limit for closure.

(A) Any Category 1A, 1B or 2 reserve/circulation pit, either on-site or off-site, shall be closed within twelve months after drilling operations cease.

(B) Any Category 3 reserve/circulation pit, either on-site or off-site, shall be closed within six months after drilling operations cease.

(C) Any Category 4 pit shall have closure procedures commenced within 30 days and completed within 90 days after drilling

operations cease.

(D) Completion/fracture/workover pits.

(i) Any reserve/circulation pit converted to a completion/fracture/ workover pit shall be closed within six (6) months after drilling operations cease. Upon request by the operator, a six (6) month extension shall be granted by the Conservation Division, after review by a field inspector to confirm the pit is in compliance with 165:10-7-16 (c) and (d) requirements.

(ii) Any completion/fracture/workover pit not converted from a reserve/circulation pit shall be closed within 60 days after completion, fracture, or workover operations cease.

(E) Any emergency pit shall be emptied of its contents as soon as possible and closed within 60 days after the emergency situation ceases to exist.

(F) Any flare pit shall be closed within 30 days of abandonment of a lease.

(G) Any spill containment pit shall be closed within 30 days of abandonment of a lease.

(H) Any basic sediment pit shall be closed within 60 days after use of the pit ceases.

(I) Any recycling/reuse pit shall be closed within twelve months after operations cease.

(J) Any remediation pit shall be closed immediately after receipt of all contaminated materials.

(8) For failure to comply with any closure requirement, the operator may be fined up to \$1,000.00.

(9) **Waiver of closure requirements.** Exemption from closure and transfer of responsibility for any noncommercial pit to the surface owner or other party shall be requested by filing an application pursuant to OAC 165:5-7-34. No approval shall be granted unless the analyses of the fluids show that the following ranges or concentrations are not exceeded:

(A) pH - 6.0-9.5 s.u.

(B) Chlorides - 3500 mg/l

(C) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS)- 7000 mg mg/l

(D) Chromium (Total) - 10 mg/l

(E) Arsenic - 20 mg/l

(f) Noncommercial pits with capacity in excess of 50,000 barrels.

(1) **Scope:** This subsection shall cover the permitting, construction, operation, and closure requirements for any noncommercial pit with a capacity in excess of 50,000 barrels used to contain deleterious substances. Such pits may be located either onsite or offsite of a well drilling location. The permitting, construction, operation, and closure requirements for any noncommercial pit with a capacity of 50,000 barrels or less are addressed in OAC 165:10-7-16(a)-(e).

(2) **Application.** Prior to constructing any pit, the pit operator shall obtain a permit from the Manager of the Pollution Abatement Department or a Commission order authorizing the pit. For use of a pit without a permit or Commission order, the pit operator may be fined up to \$5,000.00.

Application for a pit permit shall be submitted to the Pollution Abatement

Department on Form 1014F.

(3) **Application requirements.** The pit operator shall attach to the Form 1014F two complete sets of documents in support of the application, which documents shall include, but not be limited to, the following:

(A) Written permission from the surface owner allowing a pit to be constructed and used on the subject tract.

(B) A lithologic log of test borings, identifying the subsurface materials encountered and the depth at which groundwater was encountered pursuant to (5)(A)(v) of this subsection.

(C) A topographic map of the pit site.

(D) The appropriate Soil Conservation Service (SCS) soil survey aerial photo and legend.

(E) A detailed drawing of the site, with complete construction plans drawn to scale by or under the supervision of a registered professional engineer.

(F) A plan for closure of the pit which shall provide for a minimum three feet of soil cover and shall specifically state how all aspects of closure shall be accomplished, including volume and fate of liquids, earthwork to close the pit (including placement of stockpiled topsoil), and revegetation of the site.

(G) An itemization of projected hauling, closure, reclamation, maintenance, and monitoring costs.

(H) A plan for post-closure maintenance and monitoring which shall address maintenance of the site as well as monitoring and plugging of wells. Exemption from the plugging of monitor wells may be obtained upon written request and approval of the Manager of Pollution Abatement.

(I) A plan for operation which shall address the method(s) by which excess water will be disposed.

(4) **Notice.**

(A) **Notice of application.** Notice of the application for a permit for a pit with a capacity in excess of 100,000 barrels shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the subject lands are located. The notice shall include the following information:

(i) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(ii) The location of the proposed pit to the nearest 40 acre tract.

(iii) The capacity of the proposed pit.

(iv) The type of fluids to be stored in the proposed pit.

(v) The notice must also include the following language:

(I) Written protests to the relief sought must be submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days after publication of the

notice. Written protests must specify the name of the applicant, location of the proposed pit, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).

(II) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(B) Proof of notice. The applicant shall submit affidavit(s) of publication to the Pollution Abatement Department to show compliance with the requirements of subparagraph (4)(A) above.

(C) Procedure.

(i) If a written protest to the application is submitted to the Pollution Abatement Department within fifteen (15) days after the date the notice of application is published, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.

(ii) If no written protest is submitted to the Pollution Abatement Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review.

(5) Construction requirements.

(A) Site limitations.

(i) Any pit that is to be constructed or operated in an area covered by a field or area rule shall be subject to the more stringent requirements of either this subsection or the field or area rule.

(ii) No pit shall be constructed or used unless an investigation of the soils, topography, geology, and hydrology conclusively shows that storage of fluids at the site will not be harmful to groundwater, surface water, soils, plants, or animals in the surrounding area. No pit shall be constructed or used on or in an abandoned mine, strip pit, quarry, canyon, or streambed.

(iii) No pit shall be constructed or used on any site that is located within a 100-year flood plain.

(iv) No pit shall be constructed or used within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act), or within one mile of a public water well for which the WPA has not been delineated.

(v) No pit shall be constructed unless it can be shown that there will be a minimum of 25 feet between the bottom of

the pit and the groundwater level. To ascertain this and to demonstrate the subsurface profile of the site, a minimum of three test borings (the exact number of locations to be determined by the Pollution Abatement Department) shall be drilled to a minimum depth of 25 feet below the proposed bottom of the pit and into the first free water encountered. Perched water tables are not considered for the purposes of this unit. Test borings need not extend deeper than 50 feet below the bottom of the pit if free water has not been encountered before that depth. All boreholes converted to monitor wells shall conform to (6)(A) of this subsection. All boreholes not converted to monitor wells shall be plugged from top to bottom with bentonite, cement, and/or other method approved by the Pollution Abatement Department within 30 days of drilling completion.

(B) Runoff water prohibited. No runoff water from surrounding land surfaces shall be allowed to enter a pit.

(C) Stockpiling of topsoil. Prior to constructing a pit, all topsoil within the top twelve inches of soil at the site shall be stockpiled for use as the final cover at the time of closure. The topsoil may be stockpiled in the outside slopes of the berms, provided it is not used for structural purposes and is readily distinguishable from other soil materials at the time of closure.

(D) Maximum fluid depth. Any pit shall be constructed to contain a maximum fluid depth as authorized by the Manager of the Pollution Abatement Department on the Form 1014F, or in the Commission order authorizing the pit. A minimum freeboard of three feet shall be maintained.

(E) Maximum authorized volume. The maximum authorized volume allowed to be stored in a pit shall be calculated from three (3) feet below the point of the lowest elevation of the top of the berm wall.

(F) Width of the crown. The crown (top) of any berm shall be a minimum eight feet in width.

(G) Slopes. The inside slope of any exterior berm of the pit shall not be steeper than 3:1 (horizontal to vertical) and the outside slope of the pit shall not be steeper than 2.5:1.

(H) Earthwork compaction. All earthwork shall be compacted to achieve a minimum 90% Standard Proctor Density and shall be applied in lifts where some method of bonding is achieved between lifts, with each lift not to exceed eight inches prior to compaction.

(I) Unique design requirements. For pits that may require special construction considerations, variances may be granted by the Manager of the Pollution Abatement Department or by Commission order if the proposed design meets or exceeds the requirements appearing in this subsection.

(J) Geomembrane liners.

(i) Pits permitted under this subsection must contain a geomembrane liner. The geomembrane liner must have a minimum thickness of 40 mil.

(ii) The geomembrane liner shall be chemically compatible with the type of substances to be contained in the pit and shall have ultraviolet light protection sufficient to withstand the time the pit is to remain open.

(iii) The geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects. The pit operator shall notify the appropriate Conservation Division District Office at least two (2) business days prior to installation of the liner in the pit to afford a Commission representative an opportunity to inspect the site prior to the liner being installed. If a Commission representative has not inspected the pit site within two (2) business days following notification, the pit operator may proceed to install the liner in the pit.

(iv) The geomembrane liner shall be continuous, although it may include welded or extruded seams, and it must cover the bottom and interior sides of the pit entirely. Sewing of seams is prohibited. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(K) Fluid level marker. A minimum of one stationary fluid level marker shall be erected in each pit. The marker shall be erected in a location within the pit where it can be easily observed. The marker shall be of such design that the maximum fluid level at any time may be clearly identified. Details of the proposed marker installation shall be approved by the Manager of the Pollution Abatement Department prior to installation.

(L) Hydrologically sensitive areas. If the proposed pit is to be located over a hydrologically sensitive area, in addition to the foregoing construction requirements, the following additional requirements shall apply:

(i) A minimum 40-mil geomembrane liner, double-lined, with a leachate collection system between the liners shall be required.

(ii) The Manager of Pollution Abatement shall determine the minimum depth of all monitor wells.

(6) Monitor wells and leachate collection systems.

(A) A minimum of three monitor wells-one (1) upgradient and two (2) downgradient from the pit-shall be installed. The exact number and location of the monitor wells shall be approved by the Manager of Pollution Abatement prior to installation. Additional monitor wells may be required for pits constructed in the general vicinity of public water supply wells, well head protection areas and hydrologically sensitive areas. No monitor well shall be installed more than 250 feet from the toe of the outside berm of the pit, nor shall any existing water well be used as a monitor well unless approved by the Manager of Pollution Abatement. All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered, and all monitor wells shall be drilled to a depth of at least ten feet below the base of the pit. All

new monitor wells shall be drilled and completed by a licensed monitor well driller. If documentation is submitted to the Manager of Pollution Abatement prior to drilling the monitor wells to show that no free water will be encountered within 50 feet below the bottom of the pit, the Manager of Pollution Abatement may give approval for the wells to be drilled to a lesser depth. All new monitor wells shall meet the requirements set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when the well is being sampled.

(ii) Within 30 days of installation, specific completion information, a diagram of the locations and numerical labeling for all monitor wells shall be submitted to the Manager of Pollution Abatement.

(B) Leachate collection system: The pit operator may elect to install a leachate collection system in lieu of monitor wells, if such system will adequately detect any leak from the pit. The plan for the leachate collection system must accompany the Form 1014 and such plan must be approved by the Manager of Pollution Abatement prior to installation of the leachate collection system.

(7) Monitor well and leachate collection system sampling. The pit operator shall sample the monitor wells or leachate collection system prior to placing any fluids other than fresh water in the pit. The following procedures shall be used:

(A) The appropriate Field Inspector shall be notified at least 24 hours prior to sampling to allow a Commission representative an opportunity to witness the sampling.

(B) Samples shall be collected and handled by the pit operator according to EPA-approved standards. (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September 1986, pp. 99-107.)

(C) If requested by a representative of the Conservation Division, a sufficient portion of each sample (approximately one (1) pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(D) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(E) All samples must be analyzed for pH, chlorides and TDS by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. The Manager of the Pollution Abatement Department may require samples to be analyzed for additional constituents.

(F) A copy of each analysis and a statement as to the depth to groundwater encountered in each well or leachate collection system, or a written statement that no water was encountered, shall be forwarded to the appropriate Conservation Division District Office within 30 days of sampling.

(G) The pit operator is required to conduct sampling every six months after the date pit operations commence and for a minimum of one year after closure is completed. The Manager of the Pollution Abatement Department may require sampling on a more frequent basis.

(8) **Liner certification.** An affidavit signed by the person who was responsible for installing the pit liner, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules, shall be submitted to the Manager of the Pollution Abatement Department before operation of the pit commences. Supporting documentation shall also be submitted, such as geomembrane liner specifications from the manufacturer, if requested by the Manager of the Pollution Abatement Department.

(9) **Pit approval.** The pit operator shall notify the appropriate Conservation Division District Office at least two (2) business days prior to commencing pit operations to afford a Commission representative an opportunity to inspect the site. If a Commission representative has not inspected the pit site within two (2) business days following notification, the operator may commence pit operations, provided the affidavit and any supporting documentation referred to above has been submitted to the District Manager.

(10) **Operation and maintenance requirements.**

(A) **Vegetative cover.** Vegetative cover shall be established on all areas of earthfill on the outside slope of the pit immediately after pit construction or during the first planting season following the construction of the pit if the pit construction is completed out of season. The cover shall be sufficient to protect those areas from soil erosion and shall be maintained. The Manager of the Pollution Abatement Department may approve alternative erosion control measures if the alternative method meets or exceeds the vegetative cover requirement.

(B) **Fencing.** The pit shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence.

(C) **Sign.** A waterproof sign bearing the name of the pit operator, legal description, and emergency telephone number shall be posted within 25 feet of the pit and shall be readily visible.

(D) **Site security.** All sites shall be secured by a locked gate. Fluids shall be placed in a pit only when representative(s) designated by the operator are present at the site if trucks are to be used in the operation. A key or combination to the lock shall be provided to the appropriate Field Inspector for the purpose of carrying out inspections.

(E) **Acceptable materials.** No operator of a pit shall place any substances in the pit other than deleterious substances or fresh water if required for hydraulic fracturing operations. The pit may receive fluids from additional wells as long as the company authorized on the Form 1014F or in a Commission order operates or is a working interest owner in the additional wells. Another operator may use the pit on a temporary basis if the pit operator submits to and obtains the Commission's approval of an amended Form 1014F permitting

such temporary use. If the pit is in compliance with this Section, the Manager of the Pollution Abatement Department may approve the amended Form 1014F administratively without additional notice and hearing. If the Manager of the Pollution Abatement Department determines conditions have changed since the issuance of the permit, then the Manager of the Pollution Abatement Department may request that the operator seeking approval to use the pit on a temporary basis obtain the issuance of a Commission order authorizing the operator's use of the pit after application, notice and hearing.

(F) Oil film.

(i) The pit shall not contain an oil film.

(ii) The protection of migratory birds shall be the responsibility of the pit operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil films be removed as soon as possible from the pit or that the surface of the pit be protected from access to birds. [See Advisory Notice in OAC 165:10-7-3(c)].

(G) Aesthetics. All pit sites shall be maintained so that there is no junk iron or cable, oil or chemical drums, paint cans, domestic trash, or debris on the premises.

(H) Structural integrity. All pits shall be used, operated, and maintained at all times so as to prevent the escape of their contents. All erosion, cracking, sloughing, settling, animal burrows, or other condition that threatens the structural stability of any earthfill shall be repaired immediately upon discovery.

(I) Time period for operation. The period of time during which the pit is to remain in operation shall be specified on the approved Form 1014F or Commission order.

(11) Prevention of pollution. All pits shall be used, operated, and maintained at all times so as to prevent pollution. In the event of a non-permitted discharge, sufficient measures shall be taken to stop or control the loss of materials, and reporting procedures in OAC 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division. For a willful non-permitted discharge, the pit operator may be fined up to \$5,000.00.

(12) Closure requirements.

(A) Notification. The Manager of the Pollution Abatement Department shall be notified in writing whenever the pit becomes inactive, or operation of the pit ceases for any reason.

(B) Time limit. Closure shall be commenced within 60 days and completed within one year of when the pit becomes inactive or cessation of operations. In cases where extenuating circumstances exist, one extension of six (6) months may be administratively approved in writing by the Manager of the Pollution Abatement Department. The pit operator must file an application and notice of hearing pursuant to OAC 165:5-7-1 et seq. and obtain the issuance of a Commission order concerning any additional request for an extension of time for pit closure.

(C) Trenching. Trenching, stirring or other similar practice shall be prohibited with respect to the pit.

(D) **Preserving integrity of liner.** Extreme care shall be taken to preserve the integrity of the liner when closing the pit. All fluids shall be removed from the pit when closing the pit. Once fluids have been removed from the pit, the liner may be folded and closed in place.

(E) **Soil cover.** A minimum of three feet of soil cover shall be placed over the pit, with all stockpiled topsoil being applied last. The soil cover shall be mounded or sloped to encourage runoff and so as to prevent erosion. The Manager of the Pollution Abatement Department may require the pit operator to establish a vegetative cover over the pit. The pit operator can request a variance to these requirements by submitting a written request and supporting documentation to the Manager of the Pollution Abatement Department. The Manager of the Pollution Abatement Department shall respond in writing within five (5) business days after receipt of a request for a variance to the requirements in this subsection from the pit operator.

(F) **Notification to appropriate Conservation Division District Office.** The pit operator shall notify the appropriate Field Inspector or appropriate Conservation Division District Office at least 48 hours prior to commencing closure. The pit operator shall also notify the Field Inspector or appropriate Conservation Division District Office within 48 hours after reclamation of the site has been completed.

(G) **Penalty for failure to comply with closure requirements.** A pit operator failing to comply with the closure requirements set out in this subsection may be fined up to \$1,000.00.

(H) **Post closure monitoring.** The pit operator is required to sample the monitor wells or leachate collection system at the site for a minimum of one year after closure of the pit is completed, and the pit operator must comply with the sampling and reporting requirements appearing in OAC 165:10-7-16(f)(7), above. Variances to the post closure monitoring and reporting requirements may be granted in writing by the Manager of the Pollution Abatement Department if an approved leachate collection system has been employed at the site and if additional hydrogeologic data which demonstrates the pit has not leaked is submitted to and accepted by the Manager of the Pollution Abatement Department.

(13) **Surety requirements.**

(A) **Agreement with Commission.** The operator of a pit shall file with the Surety Department for the Conservation Division an agreement to properly close and reclaim the site in accordance with approved closure and reclamation procedures upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to close the pit or take remedial action as required by law and the rules of the Commission, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(B) Surety amount and type. The Manager of the Pollution Abatement Department shall establish the amount of surety for the authority to construct and/or operate the pit. The amount of surety shall be based on factors such as dimensions of the pit and costs of hauling, closure, reclamation, and monitoring. The amount may be subject to change for good cause. Upon approved closure of a pit, the Manager of the Pollution Abatement Department may reduce the surety requirement to an amount which would cover the cost of monitoring the site and plugging the monitor wells. Surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, or irrevocable letter of credit. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(14) Application to existing pits. Operators of pits permitted prior to the effective date of this subsection must either comply with parts (f)(6) (monitor wells and leachate collection systems), (f)(7)(monitor well and leachate collection system sampling) and (f)(13)(surety requirements) or close such pits within one (1) year of the effective date of this subsection. Operators of pits permitted prior to the effective date of this subsection must also comply with parts (f)(5)(K) (fluid level marker), (f)(10)(operation and maintenance requirements), (f)(11) (prevention of pollution) and (f)(12) (closure requirements). All pits permitted but not yet constructed as of the effective date of this subsection shall also be subject to the construction requirements in part (f)(5).

(15) Variances. Except as otherwise provided in this subsection, variances from provisions of this subsection may be granted for good cause by order after application, notice, and hearing.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 16 Ok Reg 2230, eff 7-1-99; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-17. Surface discharge of fluids

(a) Scope. This Section shall cover the surface discharge of hydrostatic test water, storm water from diked areas, and produced water from tanks or other containment vessels.

(b) Discharge of hydrostatic test water.

(1) Hydrostatic test water used in the testing of new pipeline segments, new casing, new tubing, new tanks and new vessels, may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

(A) Low chlorides. Chloride concentration does not exceed 1000 mg/l.

(B) Sheen. There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.

(C) Notice to appropriate Conservation Division District Office. Any discharges exceeding 1,000 barrels shall require notification to the appropriate Conservation Division District Office.

(2) Hydrostatic test water used in the testing of existing tanks, vessel lines and transmission pipelines may be discharged upon notification to the Oklahoma Corporation Commission appropriate Conservation Division District Office on Form 1014HD provided that the following conditions are met:

- (A) **Oil and grease.** The oil and grease content of the discharge water shall not exceed 15 mg/l.
- (B) **Sheen.** There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.
- (C) **Total Suspended Solids.** The Total Suspended Solids shall not exceed 45 mg/l.
- (D) **pH.** The pH shall not be less than 6.5 nor exceed 9 s.u.
- (E) **Foreign material.** The discharge must be free from foreign material such as welding scrap tank sediments or sand blasting waste material.
- (F) **Soil erosion.** Standard soil erosion prevention procedures shall be required.

(3) Hydrostatic test water that meets the requirements listed in (b) (2) of this Section may be discharged in volumes less than 15 bbls without filing Form 1014HD.

(4) Hydrostatic test water that will be discharged to land and not directly into waters of the state and which may exceed the discharge parameters specified in (b)(2), shall be discharged only upon submission and approval by the Pollution Abatement Department of a plan for one-time discharge.

(5) Hydrostatic test water not covered under (b)(1) from transmission lines and tanks that contain waste products that are listed as hazardous waste under the Resource Conservation and Recovery Act and have not been cleaned or pigged must meet the following discharge requirements in addition to (b)(2) of this Section:

- (A) The following parameters may not be exceeded: Benzene, .028 MG/L; toluene, .3 MG/L; phenol, .250 MG/L.
- (B) EPA analytical method 8020 shall be used unless approved by the Manager of Pollution Abatement.

(c) **Discharge of storm water.** Storm water accumulations in any diked area built for the containment of tank battery spills may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

- (1) **No hydrocarbons.** A visual inspection of the storm water is made and there is no sheen or other visible evidence of hydrocarbons being present.
- (2) **Low chlorides.** Chloride concentration does not exceed 1000 mg/l.
- (3) **Conditions recorded.** The operator records the conditions required by (1) and (2) in this subsection for each discharge, maintains those records for a period of three (3) years, and makes them available upon request to any representative of the Field Operations Department.

(d) **Discharge of produced water.**

(1) **Site restrictions.** Discharge of produced water shall only occur on land having an Exchangeable Sodium Percentage (ESP) no greater than 15, pursuant to (f)(3) of this Section, and all of the following characteristics as determined by the appropriate Soil Conservation District or by a qualified soils expert:

- (A) A maximum slope of five percent.
- (B) Depth to bedrock at least 20 inches.
- (C) Slight salinity (defined as electrical conductivity less than 4,000 micromhos/cm) in the topsoil or upper six inches of the soil.
- (D) A water table deeper than six feet from the soil surface, except a perched water table.
- (E) A minimum distance of 100 feet from any stream designated by Oklahoma Water Quality Standards (available for viewing at the Commission's Oklahoma City Office and appropriate Conservation Division District Offices) or any fresh water pond, lake, or wetland (designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service and available for viewing at the Commission's Oklahoma City Office).

(2) **Water quality limitations.** A surface discharge permit shall not be issued if the produced water to be discharged exceeds either of the following concentrations:

- (A) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) - 5000 mg/l.
- (B) Oil and Grease - 1000 mg/l.

(e) **Sampling requirements.**

(1) **Contact with appropriate Conservation Division District Office.** The appropriate Conservation Division District Office shall be contacted at least two business days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and produced water to be discharged. A variance from this provision may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five working days after receipt, either approving or disapproving the request.

(2) **Produced water.** Produced water to be discharged shall be sampled using the following procedure, unless exempt pursuant to (f)(4) of this Section.

- (A) Prior to sampling, fresh water shall not be added to any tank or other containment vessel for dilution or any other purpose.
- (B) A sample of the produced water to be discharged shall be taken from the bottom of the tank or other containment vessel. A minimum two quart sample shall be placed into a foil or teflon covered, glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.
- (C) Another sample of the produced water to be discharged (approximately one pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector, unless exempt by the District Manager.

(3) **Receiving soil.** Soil samples shall be taken from the proposed discharge area and analyzed, unless exempt pursuant to (f)(4) of this Section. A minimum of 20 representative surface core samples (0-6 inches) must be taken from each sample area, combined and thoroughly mixed, then a minimum one pint composite sample taken and placed in a clean container

for delivery to the lab. No sample area shall exceed 40 acres.

(f) Analysis requirements.

(1) **Certified laboratory.** The samples of soil and produced water shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Department of Environmental Quality or in the North American Proficiency Testing System, unless exempt pursuant to (4) of this subsection.

(2) **Parameters for produced water.** Parameters for analysis of the produced water shall include, but not be limited to, Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) and Oil and Grease.

(3) **Parameters for soil.** Parameters for analysis of the receiving soil shall include, but not be limited to, Electrical Conductivity or Total Soluble Salts (TSS) and Exchangeable Sodium Percentage (ESP).

(4) **Exemptions.** The appropriate Conservation Division District Office may exempt the analysis of produced water if an analysis of the produced water from a well located within one mile and producing from the same formation has been previously submitted. Analysis of the receiving soil may be exempt if an analysis of the same soil type(s) within one mile of the proposed discharge site has been previously submitted.

(g) Application for permit.

(1) **Permit required.** No person shall discharge produced water from a tank or other containment vessel without applying for and obtaining a permit issued under this subsection. An operator discharging produced water without a permit may be fined up to \$1,000.00.

(2) **Who may apply.** Only the operator of the well associated with the tank or other containment vessel, the contents of which are sought to be discharged, may apply for a surface discharge permit.

(3) **Required form and attachments.** Each application for surface discharge of produced water shall be submitted to the appropriate Conservation Division District Office on Form 1014D in quadruplicate. The forms shall be properly completed and signed. Attached to at least one of the forms shall be the following:

(A) A copy of written notice to the surface owner that the applicant intends to discharge produced water as per 165:10-7-17 to a specific portion of real property as designated by legal description.

(B) If the operator has an agent, a contractual agreement between the parties or an affidavit designating the contractor or agent (Form 1014LA).

(C) A well prepared map or diagram, drawn to scale, showing the proposed and potential discharge areas.

(D) Site suitability report, pursuant to (d)(1) of this Section, provided by a qualified soils expert (include qualifications).

(E) Analysis of produced water, unless exempt pursuant to (f)(4) of this Section.

(F) Soil analysis, unless exempt pursuant to (f)(4) of this Section.

(G) Other information as required by this Section or requested by the appropriate Conservation Division District Office.

(4) **Review period.** The appropriate Conservation Division District Office shall review the application, either approve or disapprove it, and return a copy of Form 1014D within five business days of submission of all required or requested information. If approved, a permit number shall be

assigned to Form 1014D; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) Maximum application rate.

(1) Soil loading standards. The maximum application rate shall be calculated by the appropriate Conservation Division District Office using the following soil loading standards. (Soil loading standards are based upon standards set forth in "Diagnosis and Improvement of Saline and Alkaline Soils," U.S. Agriculture Handbook 60. Pub. U.S. Salinity Laboratory, Riverdale, California, 1954. "Critical Concentrations for Irrigation Water Supplies," Water Quality Criteria, 1972 Ecological Research Series, EPA R2-73033, March, 1973).

(A) Total Soluble Salts - 6,000 lbs/acre (less TSS in soil).

(B) Oil and Grease - 500 lbs/acre.

(2) Determination of most limiting parameter. The maximum application rate shall be restricted by the most limiting parameter. It may require more than one application to achieve the maximum application rate while avoiding runoff. The appropriate Conservation Division District Office shall indicate on the permit what the maximum application rate shall be after making the following calculations:

**PROCEDURE FOR
CALCULATING APPLICATION
RATE OF TOTAL SOLUBLE
SALTS (TSS)**

$$\frac{\text{_____ ppm TSS in soil}^1 \times 2}{\text{TSS in soil}} = \text{_____ lbs/ac}$$

$$6000 \text{ lbs/ac TSS} - \text{_____ lbs/ac TSS in soil}$$

$$= \text{Maximum TSS (lbs/ac) to applied}$$

$$\text{Maximum TSS (lbs/ac) } \div (\text{_____ ppm TSS in water}^1 \times .000001) = \text{Maximum lbs/ac of water to be applied _____}$$

$$\text{Maximum lbs/ac } \div \text{_____ lbs/bbl}^2 = \text{Maximum bbls/ac _____}$$

**PROCEDURE FOR
CALCULATING APPLICATION
RATE OF OIL AND GREASE**

$$500 \text{ lbs/ac} \div (\text{_____ ppm in water} \times .000001) = \text{Maximum lbs/ac of water to be applied _____}$$

$$\text{Maximum lbs/ac } \div \text{_____ lbs/bbl}^2 = \text{Maximum bbls/ac _____}$$

¹ Electrical Conductivity (EC expressed in micromhos/cm) may be used to estimate TSS: EC × 0.64 - ppm TSS.

² Based on documented weight of composite sample.

(i) **Conditions of permit.** Any discharge of produced water that is done under this Section shall be subject to the following conditions or stipulations of the permit.

(1) **Presence of representative.** A representative of the operator shall be on the discharge site at all times that water is being applied. A variance from this provision may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five business days after receipt, either approving or disapproving the request.

(2) **Weather restrictions.** Surface discharge shall not be done:

(A) During precipitation events or when precipitation is imminent.

(B) When the soil moisture content is at a level such that the soil would not readily take the addition of water.

(C) When the ground is frozen.

(D) By spray irrigation when the wind velocity is such that even distribution of water cannot be accomplished or the buffer zones, pursuant to (3) of this subsection, cannot be maintained.

(3) **Buffer zones.** Surface discharge shall not be done within the following buffer zones:

(A) Fifty feet of a property line boundary.

(B) Fifty feet of any stream not designated by Oklahoma Water Quality Standards.

(C) Three hundred feet of any actively-producing water well used for domestic or irrigation purposes.

(D) Eight hundred feet of any public water well.

(4) **Application rate.** The maximum application rate of produced water stipulated by the permit shall not be exceeded. Application of produced water outside the approved plot shall be prohibited. Accurate records shall be kept as to the quantities discharged and the dates of each discharge.

(5) **Discharge method.** Discharge of produced water shall be uniform over the approved discharge plot and shall be made by spray irrigation or other method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(6) **Runoff or ponding prohibited.** No runoff or ponding of discharged water shall be allowed during application.

(7) **Annual report.** An annual report shall be submitted by April 1 of each year and shall be made on Form 1014P. Attached to the annual report shall be current (within three months) analyses of the produced water and soil from the discharge plot, pursuant to (8) of this subsection.

(8) **Additional testing.** The produced water shall be analyzed annually and the receiving soils shall be sampled and analyzed a minimum of every five (5) years, pursuant to (e)(1) through (e)(3) and (f)(1) through (f)(3) of this Section. When 75 percent of the maximum permitted application volume of TSS or Oil and Grease [(h) of this Section] has been applied or when the ESP exceeds 11, water and soil sampling shall be done quarterly or semiannually as determined by the appropriate Conservation Division District Office.

(9) **Expiration of permit.** The permit shall expire by its own terms when testing, pursuant to (8) of this subsection, indicates that the concentration of TSS or Oil and Grease in the water exceeds the limitations of (d)(2) of this

Section, or more than 98 percent of the maximum application rate of TSS or Oil and Grease [(h) of this Section] has been applied or the ESP exceeds 15.

(10) **Violations.** If the applicant violates the conditions of the permit or this Section, the surface discharge shall be discontinued and the appropriate Conservation Division District Office shall be contacted immediately. The appropriate Conservation Division District Office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, surface discharge may resume with Field Operations' approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(j) **Discharge from reserve pits.** Water accumulation in any reserve pit used for the containment of air drilling cuttings or water-based drilling fluids may be discharged to land provided a permit is obtained from the Commission. Any operator discharging without a permit may be fined \$5,000.00.

(1) **Who may apply.** Only the operator of the well or the operator's designated agent may apply for the permit.

(2) **Required form and attachments.** Application for discharge of water to land shall be submitted to the appropriate Conservation Division District Office on Form 1014X. Attached to the application shall be the following:

(A) Written permission of the surface owner.

(B) A topographic map(s) with the location of the discharge area.

(C) Analysis of the water.

(D) Copies of all chain of custody forms.

(E) If there is an agent, a notarized affidavit designating the agent, signed by the operator (Form 1014LA).

(3) **Conditions of permit.**

(A) **Notice to field inspector.** The applicant shall notify the appropriate Conservation Division District Office at least 24 hours prior to discharge to allow a Commission representative an opportunity to be present.

(B) **Presence of representative.** A representative of the operator shall be on the discharge site at all times during discharge.

(C) **Condition of water.**

(i) Chloride content must not exceed 1,000 mg/l and TDS must not exceed 1,500 mg/l.

(ii) There must be no visible sheen or discoloration as a result of drilling operations.

(iii) The pH shall not be less than 6.5 nor exceed 9 standard units.

(D) **Foreign material.** The discharge shall be free of foreign material such as debris, sediments, and drilling mud solids.

(E) **Maximum slope.** A maximum slope of 5% if vehicles with a diffusion system are to be used; a maximum slope of 8% if a spray irrigation system is used.

(F) All discharge must be a minimum of 100 feet from any perennial stream, pond, lake or wetland and 50 feet from any intermittent stream. All land applications shall be a minimum of 50 feet from any property line.

(G) **Land application method.** The land application equipment must be approved by the Commission prior to use. The application

method must not allow soil erosion to occur. If the irrigation method is to be used, the area must be terraced or appropriate erosion control methods shall be used. The integrity of the pit wall shall be maintained at all times to avoid the discharge of drilling mud solids.

(H) Runoff prohibited. No runoff shall be allowed. Ponding may be allowed as long as practices are in place that will not allow the water to run into creeks or drainage ways.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 13 Ok Reg 2381, eff 7-1-96; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-18. Discharge to surface waters

Discharge of deleterious substances to streams or other surface waters is prohibited except by order of the Commission; unless permitted by a valid National Pollutant Discharge Elimination System (NPDES) Permit issued by U.S. EPA.

165:10-7-19. Land application of water-based fluids from earthen pits, tanks and pipeline construction

(a) Authority for land application. No person shall land apply fluids except as provided by 165:10-9-2, 165:10-7-17, or this Section. Any operator failing to obtain a permit may be fined up to \$2,000. The land application permit shall be posted at the well site, pad or pipeline construction location.

(b) Scope. This Section shall cover the land application of water-based drilling fluids and cuttings from earthen pits, tanks, or other containment structures; however, this Section shall not be exclusive of other authorities for land application listed in (a) of this Section. Any land application made under this Section shall be done from a single well, single pad (containing multiple wells), or pipeline construction location. Permits shall not be granted for lands that have been previously permitted and used for these practices or similar practices such as soil remediation within the last three (3) years.

(c) Site suitability restrictions. Land application shall only occur on land having all of the following characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (f)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of eight percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock must be at least 20 inches.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy loam, fine sandy loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream shown on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and appropriate Conservation Division District Offices) and a minimum of 100 feet to any freshwater pond, lake, or wetland. [Designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service, available for viewing at the Commission's Oklahoma City Office (also, see (h)(6) of this Section)].

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well and pipeline construction location and the receiving site. At the well site or pad generating the waste or pipeline construction location the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed. A stockpile of cuttings at the receiving site must be located within the permitted area and the areas used for this practice must be lined and bermed. The stockpile of cuttings, whether at the well or pipeline construction location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspector shall be contacted at least two business days prior to sampling of the receiving soil and sampling of the drilling fluids and/or cuttings to be land applied from an earthen pit. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative core samples from the surface (0-6 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one-pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory.

(3) **Drilling fluids and/or cuttings.**

(A) **Earthen pits.** Drilling fluids and/or cuttings to be land applied shall be sampled using the following procedure:

(i) Prior to sampling, fresh water (except natural precipitation) shall not be added to any pit for dilution or any other purpose.

(ii) A minimum of four samples, each from different quadrants of the pit and representative of the materials to be land applied, must be taken if the volume to be land applied is 25,000 bbls. or less. If more than 25,000 bbls. are to be land applied, a minimum of four quadrant samples plus one sample for each 5,000 bbls. over 25,000 bbls. will be

required. The samples shall be combined and thoroughly mixed, then a minimum two quart composite sample placed into a foil or teflon covered glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.

(iii) After samples have been taken for analysis from a pit, the operator shall not allow the addition of fluids or other materials, except natural precipitation or fresh water to decrease the viscosity of the fluid.

(B) **Tanks.** Sampling of the drilling fluids and/or cuttings shall occur after the application has been approved. A minimum of one representative sample must be taken from each tank, the contents of which are to be land applied.

(e) **Analysis requirements.**

(1) **Testing.**

(A) The composite sample(s) of soil shall be tested by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System. Either a 1:1 extract or saturated paste extract shall be used for sample preparation.

(B) **Methods of analysis.**

(i) The composite sample(s) of drilling fluids and/or cuttings shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System.

(ii) Samples of the drilling fluids and/or cuttings may be tested on-site. A filter press shall be used for preparation of samples. Tests must be performed by a person who is knowledgeable and experienced in the chemical testing of fluids. Acceptable on-site testing protocol may be obtained from the appropriate Conservation Division District Office.

(2) **Parameters for receiving soil.** Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(3) **Parameters for drilling fluids and/or cuttings.**

(A) **Earthen pits.** Parameters for analysis of the drilling fluids and/or cuttings shall include at a minimum EC and Oil and Grease (O&G). Dry Weight shall also be determined if a significant amount of solids will be land applied.

(B) **Tanks.** EC shall be a required parameter for analysis of drilling fluids and/or cuttings. Dry weight shall also be determined if a significant amount of solids will be land applied.

(f) **Application for permit.**

(1) **Who may apply.** Only the operator of a well or pipeline or the operator's designated agent may apply for a land application permit under this Section, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure.

(2) **Required form and attachments.** Each application for land application of drilling fluids and/or cuttings shall be submitted to the Pollution Abatement Department on Form 1014S. A legible application shall be

required. The following shall be attached to the application:

- (A) Written permission from the surface owner to allow the applicant to land apply drilling fluids and/or cuttings. For purposes of obtaining such consent, the applicant shall use Form 1014L.
- (B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1,320 feet of the boundary of the land application area.
- (C) A site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.
- (D) Analysis of drilling fluids and/or cuttings (for earthen pits only).
- (E) Analyses of soil samples.
- (F) Loading calculations.
- (G) Copies of all chains-of-custody related to sampling.
- (H) Manufacturer, model number, and specifications of testing equipment to be used (for tanks only).
- (I) If there is an agent, a notarized affidavit designating same, signed by the operator within the last twelve months (Form 1014LA).
- (J) Identification of any soil farming permit that has been issued in the same quarter section within the last three years. This information is available in the OCC Soil Farming Database on the web at www.occeweb.com.
- (K) Other information as required by this Section or requested by the Pollution Abatement Department.

(3) **Review period.** The Pollution Abatement Department shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five business days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(g) **Calculating maximum application rate.**

(1) **Earthen pits.**

(A) The maximum application rate shall be calculated by the applicant or the applicant's designated agent based on the analyses of the pit materials and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant or the

applicant's designated agent shall use the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, and shall also calculate the maximum application rate of each ten acre (or less) application area using the respective TDS or TSS values of each soil sampling area. The applicant or the applicant's designated agent shall decide which of the two loading rates to use and notify the appropriate Conservation Division District Office when notification of commencement of land application is given, pursuant to (h)(1) of this Section.

(B) Soil loading formulas contained in Appendix I shall be used.

(C) The maximum application rate shall be restricted by the most limiting parameter. The Pollution Abatement Department shall indicate on the permit the maximum application rate and the minimum acreage that must be used.

(2) Tanks.

(A) The applicant shall calculate the maximum application rate based on the analysis of each tank or other containment vessel to be land applied and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant shall have the option of using the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, or calculating the maximum application rate of each ten-acre (or less) application area using the respective TDS or TSS value of each soil sampling area.

(B) Soil loading formulas contained in Appendix I shall be used.

(C) Based on the maximum application rate, the applicant or its designated agent shall determine where the fluids will be applied and supervise the land application process.

(h) Conditions of permit. Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:

(1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.

(2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission (Form 1014CA).

(3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which fluids and/or cuttings are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.

(4) **Materials to be land applied.** Land application shall be limited to water-based drilling fluids and/or cuttings.

(5) **Weather restrictions.** Land application, including incorporation, shall not be done:

(A) During precipitation events.

(B) When the soil moisture content is at a level such that the soil cannot readily take the addition of drilling fluids.

(C) When the ground is frozen to a degree that the soil cannot readily take the addition of fluids.

(D) By spray irrigation when the wind velocity is such that even distribution of materials cannot be accomplished or the buffer zones, pursuant to (6) of this subsection, cannot be maintained.

(6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:

(A) Fifty feet of a property line boundary.

(B) Three hundred feet of any water well or water supply lake used for domestic or irrigation purposes.

(C) One-quarter (1/4) mile of any public water well or public water supply lake.

(7) **Land application rate.** The maximum calculated application rate of drilling fluids and/or cuttings shall not be exceeded. It may require more than one pass to achieve the maximum application rate while avoiding runoff or ponding, pursuant to (9) of this subsection. Application of drilling fluids and/or cuttings outside the approved plot shall be prohibited.

(8) **Land application method.**

(A) Application of drilling fluids and/or cuttings shall be uniform over the approved land application plot, shall not be applied at a rate to cause permanent vegetation damage, and shall be made by a method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(B) For earthen pits, if more than 500 lbs/acre of Oil and Grease or 50,000 lbs/acre of Dry Weight materials are applied, the materials shall be incorporated into the soil by use of the injection method, or by disking or some other method approved by the Commission.

(C) All land application vehicles shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 100 barrels, and the vehicle shall be equipped so as to minimize pooling and ruts caused by tire tracks. It shall have a diffuser mechanism to spread the mud/fluids in a fan pattern. Spreader bars shall not be used. The mud/fluids shall be forced from the tank with air pressure or a mechanical pump. Gravity applications are prohibited. Transport/tanker trucks (18 wheel vehicles) shall not be used for land application at any time. Use of an unauthorized vehicle or equipment may result in the revocation of the land application permit. A fine of up to \$2,000.00 may be assessed for each violation of this paragraph.

(D) Drill cuttings shall be spread with an industrial mechanical spreader capable of broadcasting and/or fanning out the cuttings. Dozers, backhoes, motor blades or scrapers shall not be used to spread drill cuttings or drill solids during land application at any time.

(9) **Runoff or ponding prohibited.** No runoff of land applied materials shall be allowed during application. Ponding is prohibited, except where the flood irrigation method is approved. In order to comply with this rule, some applications will require the use of more than the minimum calculated

acreage and/or a drying period between applications.

(10) **Vegetative cover.** If the vegetative cover is destroyed or significantly damaged by disking, injection, or other practice associated with land application, a bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.**

(A) **Earthen pits.** Land application shall be completed within 90 days from the date of the permit. At the end of the 90-day period, the permit shall expire by its own terms.

(B) **Tanks.** Land application shall be completed within 90 days after drilling ceases. At the end of the 90-day period, the permit shall expire by its own terms.

(12) **Post-application report.** A post-application report (Form 1014R) shall be submitted by the operator or the operator's agent to the Manager of the Pollution Abatement Department within 90 days of the completion of land application. One extension may be granted for a period of up to 90 days by the Manager of the Pollution Abatement Department. If approval is obtained to amend the permit to authorize land application of contaminated soils and petroleum hydrocarbon based cuttings, any extension of time for submission of the post-application report granted by the Manager of the Pollution Abatement Department shall begin on the date the amended permit is approved. The report shall give specific details of the land application, including test results of materials applied and loading rate calculations (for tanks only), volumes of materials applied, and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. All applicable loading calculations from Appendix I of this Chapter shall be included in the Form 1014R. The report shall contain a statement certifying that the land application was done in accordance with the approved permit. Failure to timely submit a Form 1014R may result in the assessment of a fine of up to \$500.00.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Pollution Abatement Department shall be contacted immediately. The Pollution Abatement Department may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with the Pollution Abatement Department's approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(14) **Requirements to close pit.** Neither filing an application nor receiving a permit under this Section shall extend the time limit for closing a reserve pit pursuant to 165:10-7-16, or a commercial pit pursuant to 165:10-9-1.

(i) **Variances.** A variance from the time provisions of (d)(1), (h)(1), or (h)(10) of this Section may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five business days after receipt, either approving or disapproving the request.

[Source: Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-20. Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater

(a) **Scope.** This Section shall apply to any production operation where a pit is used for temporary storage of saltwater, except (c)(7) of this Section, which shall apply to any noncommercial well, regardless of whether or not a pit is used. Any pit sought to be approved pursuant to this Section will require a permit. The operator of the proposed pit shall submit Form 1014 to the appropriate Conservation Division District Office for review and approval.

(b) **Construction requirements.**

(1) **Splash pad/apron.** A splash pad/apron shall be constructed at the unloading area of any noncommercial disposal well or enhanced recovery pit to the design and dimensions necessary to contain and direct all materials unloaded into the pit, unless the pit is of such design that discharge directly into it presents no spill potential.

(2) **Pit specifications.** Except as provided by (4)(A) of this subsection, any noncommercial disposal or enhanced recovery well pit shall be constructed of concrete or steel or be lined with a geomembrane liner according to the following:

(A) Concrete pits must be steel reinforced and have a minimum wall thickness of six inches. A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the concrete pits.

(B) Steel pits must have a minimum wall thickness of three-sixteenths (3/16) inch. A previously used steel pit may be installed, provided it is free of corrosion or other damage. A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the steel pits.

(C) Geomembrane liners must:

(i) Have a minimum thickness of 30 mils, be chemically compatible with the type of wastes to be contained, and have ultraviolet light protection.

(ii) Be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(iii) Be continuous (may include seams) and cover the bottom and interior sides of the pit entirely. The edges must be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(iv) A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the geomembrane lined pit.

(3) **Certification of liner.** The operator of any saltwater storage pit that is constructed with a geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner, such as geomembrane liner specifications from the manufacturer, etc., and shall make them available to a representative of the Conservation Division upon request.

(4) **Monitoring of site.**

(A) If not constructed according to one of the three methods in (2) of this subsection, any noncommercial disposal or enhanced recovery well pit shall be required to have a leachate collection system or at least one monitor well, unless it can be shown that the pit is not located over a hydrologically sensitive area. The District Manager may require more than one monitor well if he has reason to believe one would not be sufficient to adequately monitor the site.

(B) Any monitor well shall be installed within 100 feet of the pit. An existing nearby water well may be used as a monitor well upon written approval by the District Manager or Manager of Field Operations.

(C) Any new monitor well shall be drilled to a depth of at least ten feet below the top of the first free water encountered and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted to the District Manager prior to drilling the monitor well to show that no free water will be encountered within a depth of 50 feet from the surface, the District Manager may allow the monitor well(s) to be drilled to a lesser depth or eliminated.

(D) Any new monitor well shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap placed on top of the casing. The cap must remain locked at all times, except when a well is being sampled.

(ii) Within 30 days of installation, construction details for any leachate collection system or specific completion information for any monitor well and a diagram of the location of any monitor well in relation to the pit shall be submitted to the Manager of Field Operations.

(c)

(1) **Fencing.** All noncommercial disposal or enhanced recovery well surface facilities that have a pit shall be completely enclosed by a fence at least four feet in height. Said fence shall be constructed in such a manner as to prevent livestock from entering the pit area.

(2) **Site maintenance.** The normal access surface of any well site that has a pit, including the access road(s), shall be maintained in a condition that will safely and easily allow access.

(3) **Exclusion of runoff water.** No pit shall be allowed to receive runoff water.

(4) **Freeboard.** The fluid level in any concrete or steel noncommercial disposal or enhanced recovery well pit shall be maintained at all times at least six inches below the top of the pit wall. Any geomembrane lined pit shall have a minimum of 18 inches of freeboard at all times.

(5) **Temporary storage only.** No pit shall be used as permanent storage for salt water.

(6) **Sampling of monitor wells or leachate collection systems.**

(A) Sampling of monitor wells and leachate collection systems shall occur once every six months, during the months of January and July.

(B) The appropriate District Manager shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(C) Samples shall be collected, preserved, and handled by the operator according to EPA approved standards (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September, 1986, pp. 99-107) and analyzed for pH, chlorides (Cl) and total dissolved solids (TDS) by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required as determined by the District Manager or Manager of Field Operations. A copy of each analysis and a statement as to the depth to groundwater encountered in each well, or a written statement that no water was encountered, shall be forwarded to the Manager of Field Operations, within 30 days of sampling.

(D) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(7) **Prevention of pollution.** All noncommercial disposal or enhanced recovery wells shall be maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from surface facilities, sufficient measures shall be taken immediately to stop, contain, and control the loss of materials. Reporting of said discharge shall be in compliance with 165:10-7-5(c). Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division of the Commission.

(8) **Oil film.** The operator of a saltwater pit shall be responsible for the protection of migratory birds. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil films, all open top tanks and pits containing fluid be kept free of oil films or sludge or be protected from access to birds. [See Advisory Notice 165:10-7-3(c)]

(d) Closure requirements.

(1) **Time limit.** Within 180 days of the cessation of operations, all associated pits shall be emptied of all contents, and either removed or filled with soil. All monitor wells shall be plugged with bentonite or cement, unless exempt in writing by the District Manager or Manager of Field Operations. The site shall be revegetated within one (1) year.

(2) **Burial.** If any concrete, steel, geomembrane, or other materials associated with the site are to be left on-site, they shall be buried under a minimum soil cover of three feet, pursuant to 165:10-3-17.

(e) **Prospective application to existing facilities.** All provisions of this Section, except those in (b)(2) and (b)(3), shall apply to all existing pits within the scope of this Section which are, or have been, in operation prior to the effective date of this Section. Operators shall have one (1) year from the effective date of this Section in which to bring their facilities into compliance with the applicable provisions of this Section. Failure to comply with any applicable provision may result in revocation of the authority to operate.

(f) Variances.

(1) A variance from the time requirements of (c)(6), (d)(1), or (e) of this Section may be granted by the District Manager or Manager of Field

Operations for justifiable cause. A written request and justifiable explanation is required. The District Manager or Manager of Field Operations shall respond in writing within five business days, either approving or disapproving the request.

(2) Any variance from the liner requirements as required under (b)(2) of this Section may be granted by the Manager of Field Operations after receipt of a written request and supporting documentation required by the department.

[Source: Amended at 16 Ok Reg 2190, eff 7-1-99; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-21. Refining and processing of oil and gas

(a) All deleterious substances obtained or used in the processing and refining of oil and gas shall be disposed of in a manner that will prevent the pollution of fresh water.

(b) Chemicals, gasolines, oil, and other deleterious substances shall be stored, where necessary, in tanks or containers of a material and of a construction and in a manner that will prevent the escaping, seepage, or draining of such liquids into any fresh water.

165:10-7-22. Permits for County Commissioners to apply waste oil, waste oil residue, or crude oil contaminated soil to roads

(a) **Prohibition against application of waste oil, waste oil residue, or crude oil contaminated soil without permit.** This Section prohibits any Board of County Commissioners from applying waste oil, waste oil residue, or crude oil contaminated soil to a street or road without a permit.

(b) **Permit by appropriate Conservation Division District Office.** A District Manager for the Conservation Division may issue to a Board of County Commissioners for a county within the district a permit to apply waste oil, waste oil residue, or crude oil contaminated soil to a street or road within the county.

(c) Permit requirements.

(1) **Use of Form 1014W.** The application and permit to apply waste oil, waste oil residue, or crude oil contaminated soil shall be made on Form 1014W, which shall be submitted by electronic mail to the Manager of the appropriate Conservation Division District Office.

(2) **Telephone permits.** In case of emergency, a District Manager may issue a permit by telephone. If an applicant obtains a permit by telephone, then the applicant shall file Form 1014W and attachment within five business days after receipt of the permit by telephone.

(3) Conditions for permit.

(A) Waste oil, waste oil residue, and contaminated soils applied under this Section shall consist of crude oil and materials produced with crude oil only and shall not contain any refined oils such as motor oils, lubricants, compressor oils or hydraulic fluids.

(B) If required by the District Manager, a hydrocarbon analysis shall be submitted with Form 1014W. The analysis shall be performed by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma in accordance with OCC-approved methods.

(C) Waste oil, waste oil residue, and crude oil contaminated soil shall be applied in such a manner that pollution of surface or subsurface waters will not likely occur and public and private property adjoining the street or road will be protected.

(D) During operations for road oiling, all necessary signs, lights, and other safety and warning devices shall be used to alert road users to conditions. A sign shall be posted with the contractor or authority's name and phone number to contact in case of emergency.

(E) Following completion of the project there shall be a uniform soil/oil base (all liquid worked in), with no visible free-standing oil.

(F) Proper care shall be taken to avoid runoff of oil or water into borrow ditches or adjacent areas.

(G) No road oiling shall be conducted:

(i) When the temperature is less than 45° F.

(ii) In any area where water collects and stands.

(iii) Where soil moisture content or road conditions such as soil type, tight soil conditions, packed soil conditions, or grade limits prevent rapid absorption of the oil.

(d) **Notice to appropriate Conservation Division District Office.** The Board of County Commissioners receiving the permit shall notify the appropriate Conservation Division District Office at least two days prior to commencement of road oiling under a permit.

(e) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the road oiling operation to ensure compliance with this Section.

(f) **Duration of permit.** The permit shall state the duration of the permit, and it shall also state that if the application fails to comply with either the terms of the permit or the terms of this Section, then the permit shall terminate automatically.

(g) **Disapproval or cancellation of permits.**

(1) If a District Manager receives a complaint about a road oiling permit, he shall cause an investigation of the complaint to be made as soon as practicable. During the investigation, the District Manager may direct the applicant to cease road oiling under a permit. If necessary, the District Manager may verbally revoke the permit.

(2) If a District Manager disapproves an application or cancels a permit, the applicant may apply to the Commission for an order under OAC 165:5-7-41.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-23. Disposal of waste oil

(a) All waste oil and waste oil residue shall be disposed of in one of the following ways:

(1) Transfer or sale to a reclaimer or transporter.

(2) Transfer or sale to County Commissioners.

(3) Administrative approval from the Conservation Division.

(b) All operators or owners of pits, tanks, commercial disposal operations, or reclaimers shall maintain books and records describing the disposition of all waste oil or waste oil residue. A copy of the run or load ticket will satisfy this requirement

if the information required in (c) of this Section is contained therein.

(c) The following information shall be contained in said books and records and subject to audit and inspection by representatives of the Commission for a minimum period of three years:

- (1) The amount of waste oil or waste oil residue removed.
- (2) The location of the waste oil or waste oil residue prior to disposal.
- (3) The destination of waste oil or waste oil residue as reported by transporter.
- (4) The name of the transporter of waste oil or waste oil residue.

165:10-7-24. Waste management practices reference chart

(a) **Scope.** This Section provides reference guidelines for the disposal of wastes under the jurisdiction of the Commission which are generated by oil and gas operators and pipeline companies. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(b) **Waste materials and disposal options.** Consistent with EPA's policy on source reduction, recycling, treatment and proper disposal, operators shall use waste management practices as listed in (c) of this Section which describes the various management practices for the following waste materials. For any of the following waste materials where option (16) of subsection (c) is listed, option (16) shall be considered before any other option.

- (1) Produced water: Options 1, 7 & 9
- (2) Weighted water: Options 1 & 7
- (3) Used treatment fluids, frac sand, and other flowback wastes: Options 1, 2, 5 & 7 and, for frac sand only, options 3 & 20
- (4) Water based mud: Options 1, 2, 5, 6, 7, 8 & 19
- (5) Water based mud cuttings: Options 1, 2, 3, 4, 5, 6, 7, 8, 12 & 19
- (6) Oil based mud: Options 1, 2, 3, 4, 5, 7, 12 & 22
- (7) Oil based mud cuttings: Options 1, 2, 3, 4, 5, 7, 8, 12 & 14
- (8) Crude oil: Options 1, 4, 12, 13 & 14
- (9) Used motor, gear, lube, compressor and hydraulic oils: Options 1, 15 & 16
- (10) Used solvents: Options 1, 15 & 16
- (11) Oily debris: Options 1, 3, 13 & 20
- (12) Filter media and backwash: Options 1, 3, 7, 15, 16 & 20
- (13) Glycol, amine, and caustic wash: Options 1 & 7
- (14) Iron sponge: Options 3 & 20
- (15) Molecular sieve: Options 3 & 20
- (16) Produced sand/sediment: Options 3, 7, 8, 17 & 20
- (17) Tight emulsions: Options 1, 4, 8, 12, 14 & 17
- (18) Unused treatment chemicals: Options 1, 15 & 16
- (19) Tank bottoms from E&P: Options 1, 3, 4, 7, 8, 10, 12, 14 & 17
- (20) Paraffin: Options 1, 3, 4, 12, 14, 15, 16 & 20
- (21) Asbestos insulation: Options 3 & 15
- (22) Non-asbestos insulation: Options 3, 15 & 20
- (23) Used batteries: Options 1, 3, 15 & 16
- (24) Oils containing PCBs: Option 11
- (25) Oils not containing PCBs: Options 1, 15 & 16
- (26) Empty oil and chemical drums: Options 1, 3 & 15
- (27) Salt contaminated soils: Options 3, 6, 8 & 17
- (28) Crude oil contaminated soils: Options 1, 3, 4, 8, 10, 12, 14, 17 & 22

- (29) Pit sludges from wellsites, disposal well pits and gathering systems: Options 1, 3, 4, 7, 8, 12, 17 & 20
- (30) Gathering line pigging wastes: Options 1, 3, 7 & 20
- (31) Gas plant sweetening wastes: Options 1, 3, 7 & 20
- (32) Gas plant dehydration wastes: Options 1, 3 & 7
- (33) Cooling tower blowdown from gas plants: Options 7 & 15
- (34) Wastes from subsurface natural gas storage: Options 1, 3, 7 & 20
- (35) Wastes other than refined product removed from produced water and other well fluids prior to injection or disposal: Options 1, 7, 8, 17 & 20
- (36) Gases removed from the production stream: Options 1, 7, 13 & 18
- (37) Waste crude oil and light hydrocarbons (gas condensate) in reserve pits, other impoundments or tankage at wellsites: Options 1, 7, 8, 13 & 17
- (38) Contaminated ground water (except refined products): Options 1, 7, 21 & 22
- (39) Pipeline sludge and other deposits removed from pipe or equipment on E&P gathering systems: Options 1, 3, 7, 8, 10, 17 & 20
- (40) Residues and truckwash from inside the tank of trucks used to transport saltwater, drilling mud or spent completion fluids: Options 1, 3, 7 & 20
- (41) Sewage and wastes from portable toilets: Option 15
- (42) Crude pipeline pigging wastes, contaminated soil and residue from transmission and trunk lines: Options 1, 3, 4, 8, 12, 15, 16, 17 & 22
- (43) Water or soil contaminated by refined product from E&P operations: Options 1, 16, 21 & 22
- (44) Rigwash and supply water: Options 1, 5, 7 & 8
- (45) Storm water and hydrostatic test water from E&P operations: Options 1, 7, 9 & 22
- (46) Spent filters: Options 1 & 3
- (47) Trash and debris: Options 15 & 20
- (48) Refined petroleum product releases: Options 1, 3, 8, 13, 16, 17 & 22
- (49) Refined petroleum product pigging wastes: Options 1, 3, 8, 15, 16, 17 & 22
- (50) Water or soil contaminated by refined products from pipelines: Options 1, 16, 21 & 22
- (51) Hydrostatic test water from pipelines: Options 1, 9, 16 & 22
- (52) Tank bottoms from crude pipeline facilities: Options 1, 3, 4, 8, 10, 12, 14, 16, 17 & 22
- (53) Tank bottoms from refined product pipeline facilities: Options 1, 3, 14, 15, 16, 17 & 22
- (54) Water based mud and cuttings associated with pipeline construction: Options 6 and 8 (165:10-7-19 only)

(c) Disposal options and rule reference guide. The following waste disposal options are referenced in (b) of this Section:

- (1) Reclaim and/or recycle.
- (2) Burial (in accordance with 165:10-7-16).
- (3) Landfills regulated by the Oklahoma Department of Environmental Quality.
- (4) Road applications by County Commissioners (in accordance with 165:10-7-22 and 165:10-7-28).
- (5) Noncommercial pits (in accordance with 165:10-7-16).
- (6) Commercial mud disposal pits (in accordance with 165:10-9-1).

- (7) Underground injection (in accordance with 165:10-5-1 through 165:10-5-14).
- (8) Land application (in accordance with 165:10-7-19 and 165:10-7-26).
- (9) Discharge (in accordance with 165:10-7-17).
- (10) Reclaim and/or recycle (in accordance with 165:10-7-23).
- (11) In accordance with EPA; Code of Federal Regulations (CFR), Title 40, Part 761.60 through 761.79.
- (12) Application to lease roads, well locations, and production sites (in accordance with 165:10-7-27 and 165:10-7-29).
- (13) Open burning in accordance with Oklahoma Department of Environmental Quality regulations.
- (14) Disposal of waste oil as specified in 165:10-7-23.
- (15) Disposal in accordance with Oklahoma Department of Environmental Quality regulations.
- (16) If the waste is determined to be a hazardous waste under the Federal Resource Conservation and Recovery Act (RCRA), disposal will be determined by the Oklahoma Department of Environmental Quality; if a non-hazardous waste, Option 17 may be used or other disposal option as approved by the Commission.
- (17) On-site or in-situ bioremediation/remediation.
- (18) Flaring or venting (in accordance with 165:10-3-15).
- (19) Commercial soil farming (in accordance with 165:10-9-2).
- (20) Burial as approved by the Commission.
- (21) Surface discharge as approved by the Commission.
- (22) Land application as approved by the Commission.

[Source: Amended at 12 Ok Reg 2039, eff 7-1-95; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 19 Ok Reg 1947, eff 7-1-02; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-7-25. One-time land application of water-based fluids from tanks or other containment vessels [REVOKED]

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Revoked at 14 Ok Reg 2198, eff 7-1-97]

165:10-7-26. Land application of contaminated soils and petroleum hydrocarbon based drill cuttings

(a) **Authority for land application.** No person shall land apply soils or drill cuttings contaminated by salt or petroleum hydrocarbons except as provided by this Section. Any operator failing to obtain a permit may be fined up to \$2,000.00. The land application permit shall be posted at the well site, pad or pipeline construction location.

(b) **Scope.** This Section shall cover the land application of soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. [Reference 40 CFR Subtitle C and EPA publication EPA530-K-95-003 "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation"]. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality. Any land application made under this Section shall be done from a single well or a single pad (containing multiple wells). Permits shall not be granted for lands that have been previously permitted and used for this practice or similar practices such as soil remediation within the last three (3) years.

(c) **Receiving site suitability restrictions.** Land application shall only occur on land having all of the characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (g)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of eight percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock will be at least 20 inches if crude oil contaminated soils or petroleum hydrocarbon-based drill cuttings are to be applied; 20 inches if salt contaminated soils are to be applied.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy loam, fine sandy loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream found on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and appropriate Conservation Division District Offices); and a minimum of 100 feet to any freshwater pond, lake, or wetland designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service (available for viewing at the Commission's Oklahoma City Office). Also, see (h)(6) of this Section.

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well location and the receiving site. At the well site or pad generating the waste, the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed. A stockpile of cuttings at the receiving site must be located on the permitted area. The stockpile of cuttings, whether at the well location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspectors shall be contacted at least two business days prior to sampling of the receiving soil and materials to be land applied. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the

proposed application area and analyzed. A minimum of four representative surface core samples from the surface (0-6 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory.

(3) **Materials to be land applied.** Representative samples of the materials to be land applied shall be taken, composited into a minimum one-pint sample, and placed in a clean container for delivery to the laboratory. Alternatively, materials to be land applied may be composited by the laboratory.

(e) **Analysis requirements.**

(1) **Salt contaminated soils or drill cuttings.** Analysis requirements will be dependent upon the loading method that is chosen. For most applications, loading based on Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) will be most appropriate. However, applicants proposing to land apply on a site in western Oklahoma, where the soils commonly contain moderate to high levels of gypsum, may benefit from using the loading formula based on Chlorides (Cl).

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils. Either a 1:1 extract or saturated paste extract shall be used for sample preparation for TDS or TSS or Cl loading. A saturated paste moisture equivalent is necessary where the saturated paste sample preparation method is used.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC, TDS or TSS, and ESP for TDS/TSS loading. For Chloride loading, parameters shall include Chlorides (dry weight basis) and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by salt shall include at a minimum EC for TDS/TSS loading and both EC and Cl for Chloride loading.

(2) **Soils and drill cuttings contaminated by petroleum hydrocarbons.**

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by petroleum hydrocarbons shall include at a minimum a test of the appropriate carbon range(s), which is determined by the nature of the waste material. These include Gasoline Range Organics (GRO) - C6 to C10 (EPA test method 8015/8020 M) and TPH (Oklahoma method 1005 extended C35).

(f) **Application rates.**

(1) **Calculations.** The maximum application rate for TDS or TSS, Cl, and GRO, or TPH shall be calculated by the applicant based upon the analyses of the materials to be land applied and the soil of the application area. For salt contaminated soils or drill cuttings, if the application area encompasses more than one soil sampling area, the rate shall be calculated in one of two ways, depending on how the application will be made. The applicant may

either calculate the maximum application rate for the entire application area based upon the highest soil TDS or TSS or Cl value of any sampling area (averaging not allowed), or calculate it for each ten acre (or less) application area using the respective soil TDS or TSS or Cl values of each sampling area.

(2) **Soil loading formulas.** The maximum application rate for any application area shall be restricted by the most limiting parameter. To determine this, the soil loading formulas in Appendix I of this Chapter shall be used as applicable.

(3) **Variations.** In special situations, a request for a variance relating to soil loading of petroleum hydrocarbons may be administratively approved by the Manager of the Pollution Abatement Department. The applicant shall submit a written request explaining the circumstances or conditions which warrant a variance and shall also submit a management plan for reducing the petroleum hydrocarbon content in the soil to two percent or less.

(g) **Application for permit.**

(1) **Who may apply.** Only the operator responsible for generating the waste to be land applied or the operator's designated agent may apply for a land application permit, except that the Oklahoma Energy Resources Board or its designated contractor may make application to land apply materials for which there is no responsible party.

(2) **Required form and attachments.** Each application for land application of soils contaminated by salt and/or crude oil or petroleum hydrocarbon-containing deleterious substances shall be submitted to the Pollution Abatement Department on Form 1014S. A legible application shall be required. The following shall be attached to the application:

(A) Written permission from the surface owner to allow the applicant to land apply, incorporate, and fertilize materials. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1320 feet of the boundary of the land application area.

(C) Receiving site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analyses of receiving soil samples.

(E) Analyses of contaminated soil or petroleum hydrocarbon-based drill cuttings.

(F) For contaminated soils, an investigation report and diagram, drawn to scale, detailing the aerial extent and depth of the contamination; and sampling procedures which were used to assure that representative samples were taken.

(G) Loading calculations.

(H) Copies of all chains-of-custody related to sampling.

(I) If there is an agent, a notarized affidavit designating same, signed by the operator within the last 12 months (Form 1014LA).

(J) Identification of any soil farming permit that has been issued in the same quarter section within the last three (3) years. This information is available in the OCC Soil Farming Database on the web at www.occeweb.com.

(K) Other information as required by this Section or requested by the Pollution Abatement Department.

(3) **Review period.** The Pollution Abatement Department shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five business days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:

(1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.

(2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission (Form 1014CA).

(3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which materials are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.

(4) **Materials to be land applied.** Land application under this Section shall be limited to soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils or drill cuttings land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(5) **Weather restrictions.** Land application, including incorporation, shall not be done:

(A) During precipitation events.

(B) When the soil moisture content is at a level such that the soil cannot readily take the addition of materials.

(C) When the ground is frozen to a degree that the soil cannot readily take the addition of fluids.

(6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:

(A) Fifty feet of a property line boundary.

(B) Three hundred feet of any water well or water supply lake used for domestic or irrigation purposes.

(C) One-quarter (1/4) mile of any public water well or public water supply lake.

(7) **Land application rate.** The maximum calculated application rate of materials shall not be exceeded. Under no circumstances shall land applied materials exceed a two inch depth. Furthermore, no runoff or ponding of land applied materials shall be allowed. It may require more than one pass or lift to achieve the maximum application rate while avoiding runoff or ponding. For land applications involving petroleum hydrocarbons all free oil shall be removed.

(8) **Land application method.**

(A) Application of materials shall be uniform over the approved land application area, and shall be made by a method approved by the Commission prior to use. Land applied materials shall be incorporated into the soil by disking or chiseling during or immediately after application to a minimum depth of two times the depth of applied materials; however, if any contaminated sandy soil is applied to any clayey soil, incorporation shall be to a minimum depth of four times the depth of the applied materials. Tillage of grassland may not be necessary. If materials are land applied on grassland a reduced application rate may be necessary.

(B) All land application vehicles shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 100 barrels, and the vehicle shall be equipped so as to minimize pooling and ruts caused by tire tracks. It shall have a diffuser mechanism to spread the materials in a fan pattern. Spreader bars shall not be used. The materials shall be forced from the tank with air pressure or a mechanical pump. Gravity applications are prohibited. Transport/tanker trucks (18 wheel vehicles) shall not be used for land application at any time. Use of an unauthorized vehicle or equipment may result in the revocation of the land application permit. A fine of up to \$2,000.00 may be assessed for each violation of this paragraph.

(C) The materials shall be spread with an industrial mechanical spreader capable of broadcasting and/or fanning out the cuttings. Dozers, backhoes, motor blades or scrapers shall not be used to spread materials during land application at any time.

(9) **Fertilizer.** For any land application involving petroleum hydrocarbon-contaminated soils and/or drill cuttings, if it is determined that revegetation is needed, fertilizer shall be applied at an appropriate rate as indicated by soil testing for available N-P-K to adjust the average carbon-nitrogen ratio in order to enhance biodegradation of the petroleum hydrocarbons and assist in reestablishing vegetation. Soil tests shall also include at a minimum EC, ESP, N-P-K, C:N ratio and TPH. Soil samples shall be collected from the affected area at a depth of six (6) inches. Background samples shall be collected from an adjacent unaffected area. In the absence of soil testing, Nitrogen, Phosphorus, and Potassium shall be applied at a rate of 160-40-40 lbs. per acre (actual N-P-K). Application of fertilizers shall be done in a manner that minimizes runoff potential (split applications) and so as to increase availability of nutrients to

microorganisms for degradation of petroleum hydrocarbons.

(10) **Vegetative cover.** A bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.**

(A) Land application shall be completed within 90 days of the anticipated completion date shown on the approved application form; or

(B) Land application shall be completed within 90 days after drilling ceases. At the end of the 90-day period the permit shall expire by its own terms.

(12) **Post-application report.** A post-application report (Form 1014R) shall be submitted by the operator or the operator's agent to the Manager of the Pollution Abatement Department within 90 days of the completion of land application. One extension may be granted for a period of up to 90 days by the Manager of the Pollution Abatement Department. If approval is obtained to amend a permit to land apply water-based fluids so as to authorize land application of contaminated soils and petroleum hydrocarbon based cuttings, any extension of time for submission of the post-application report granted by the Manager of the Pollution Abatement Department shall begin on the date the amended permit is approved. The report shall give specific details of the land application, including volumes of materials applied and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. All applicable loading calculations from Appendix I of this Chapter shall be included in the Form 1014R. The report shall contain a statement certifying that the land application was done in accordance with the approved permit. Failure to timely submit a Form 1014R may result in the assessment of a fine of up to \$500.00.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Pollution Abatement Department shall be contacted immediately. The Pollution Abatement Department may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with approval of the Pollution Abatement Department. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(i) **Variiances.** A variance from the time provisions of (d)(1), (h)(1), or (h)(10) of this Section may be granted by the appropriate Conservation Division District Office for justifiable cause. A written request and supporting documentation shall be required. The appropriate Conservation Division District Office shall respond in writing within five business days after receipt, either approving or disapproving the request.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 12 Ok Reg 2039, eff 7-1-95; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-27. Application of waste oil, waste oil residue, or crude oil contaminated soil by oil and gas operators and pipeline companies

(a) **Scope.** This Section shall cover the application of waste oil, waste oil residue, or crude oil contaminated soil by oil and gas operators and pipeline companies to lease roads, pipeline service and tank farm roads, well locations, and production sites. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(b) **Permit by appropriate Conservation Division District Office.** A District Manager for the Conservation Division may issue to an oil or gas operator or pipeline company within the District a permit for road application of waste oil, waste oil residue, or crude oil contaminated soil to lease roads, pipeline service and tank farm roads, well locations, and production sites within the District. This subsection prohibits any operator from applying waste oil, waste oil residue, or crude oil contaminated soil without a permit. Any operator or pipeline company violating this subsection may be fined up to \$2,000.00.

(c) **Permit requirements.**

(1) **Use of Form 1014X.** The application to apply waste oil, waste oil residue, or crude oil contaminated soil shall be made on Form 1014X, which shall be submitted by electronic mail to the Manager of the appropriate Conservation Division District Office.

(2) **Landowner permission.** Attached to the application shall be written permission by the surface owner to allow the operator or pipeline company to apply waste oil, waste oil residue, or crude oil contaminated soil as per this Section to a specific portion of real property as designated by legal description.

(3) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If an operator or pipeline company obtains a permit by telephone, the operator or pipeline company shall file Form 1014X and attachments within five business days after receipt of the permit by telephone.

(4) **Conditions for permits.**

(A) Waste oil, waste oil residue, and contaminated soils applied under this Section shall consist of crude oil and materials produced with crude oil only. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(B) If required by the District Manager, a hydrocarbon analysis shall be submitted with Form 1014X. The analysis shall be performed by a laboratory that is operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality in accordance with OCC-approved methods.

(C) Waste oil, waste oil residue, and crude oil contaminated soil shall be applied in such a manner that pollution of surface or subsurface waters will not likely occur and public and private property adjoining the application area will be protected.

(D) During application, any necessary signs, lights and other safety and warning devices shall be used as traffic requires to alert users to conditions. A sign shall be posted with the contractor's or operator's name and phone number to contact in case of an emergency.

(E) No application shall be conducted:

(i) When the temperature is less than 45°F.

(ii) In any area where water collects and stands.

(iii) Where conditions such as grade, soil moisture content, soil type, tight soil conditions, or packed soil conditions

cause runoff or prevent rapid absorption of the oil.

(F) Following completion of the project, there shall be a uniform soil/oil base (all liquids worked in), with no visible free-standing oil.

(G) Proper care shall be taken to avoid runoff of oil into borrow ditches or adjacent areas.

(d) **Notice to Field Inspector.** The operator or pipeline company receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of application.

(e) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application operation to ensure compliance with this Section.

(f) **Duration of permit.** The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the operator or pipeline company fails to comply with either the terms of the permit or this Section, the District Manager may direct the operator or pipeline company to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the operator or pipeline company to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-7-41.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-28. Application of freshwater drill cuttings by County Commissioners

(a) **Scope.** This Section shall cover the one-time application of freshwater drill cuttings by a Board of County Commissioners to a street or road.

(b) **Permits by District Office.** A District Manager for the Conservation Division may issue to any Board of County Commissioners within the District a permit for road application of freshwater drill cuttings to a street or road within the county. This Section prohibits any Board of County Commissioners from applying freshwater drill cuttings without a permit.

(c) **Site restrictions.** Application of freshwater drill cuttings shall only occur on sites having an:

- (1) Electrical Conductivity (EC) no greater than 6,000 micromhos/cm; and
- (2) Exchangeable Sodium Percentage (ESP) less than 15.0.

(d) **Sampling requirements.**

(1) The appropriate Field Inspector shall be contacted at least two business days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and freshwater drill cuttings to be applied.

- (2) The receiving soil shall be sampled using the following procedure:
- (A) A minimum of five samples shall be taken for each one-half (1/2) mile section of road (or borrow ditch) and composited into one sample for analysis.
 - (B) Sampling shall be to a minimum depth of six inches.

(3) The freshwater cuttings shall be sampled by taking a minimum of one representative sample for every five cubic yards of freshwater cuttings to be applied and composited into one quart sample for analysis.

(e) **Analysis requirements.**

- (1) The composite samples of soil and drill cuttings shall be analyzed by a laboratory which tests soils.
- (2) The parameters for the receiving soil shall include ESP and either EC or Total Dissolved Solids (TDS) or Total Soluble Salts (TSS).
- (3) The parameters for the drill cuttings shall include TDS or Total Soluble Salts (TSS).

(f) **Maximum application rate.**

- (1) The maximum application rate shall be calculated by the Board of County Commissioners using the following formula:

_____ ppm TDS or TSS in receiving soil \times 2 = _____ lbs/as TDS or TSS in receiving soil.

10,000 lbs/ac TDS or TSS- _____ lbs/ac TDS or TSS in receiving soil = Maximum TDS or TSS(lbs/ac) to be applied _____.

Maximum TDS or TSS (lbs/ac) to be applied _____ \div (_____ ppm TDS or TSS in cuttings \times .000001) = Maximum lbs/ac of cuttings to be applied _____.

Actual weight of drill cuttings _____ lbs/cu ft \times 27 = _____ lbs/cu yd.

Maximum lbs/ac to be applied _____ \div _____ lbs/cu yd = _____ cu yds/ac to be applied.

Total volume _____ cu yds \div _____ cu yds/ac = Minimum acres required _____.

- (2) Calculations shall be submitted with the application.

(g) **Permit requirements.**

- (1) **Use of Form 1014W.** The application to apply freshwater drill cuttings shall be made on Form 1014W, which shall be submitted by electronic mail to the Manager of the appropriate Conservation Division District Office.
- (2) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If any Board of County Commissioners obtains a permit by telephone, the applicant shall file Form 1014W within five business days after receipt of the permit by telephone.
- (3) **Conditions for permits.**

- (A) The method to be used for application of freshwater drill cuttings shall not pollute surface or subsurface waters and shall protect public and private property adjoining the application area.
- (B) During application, any necessary signs, lights and other safety and warning devices shall be used to alert users to conditions. A sign shall be posted with the contractor's or authority's name to contact in case of an emergency.
- (C) All free liquids shall be removed before cuttings are applied.
- (D) Following completion of the project, there shall be a uniform soil/cuttings base.

(h) **Notice to Field Inspector.** The Board of County Commissioners receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of the application.

(i) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application

operation to ensure compliance with this Section.

(j) **Duration of permit.** The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the Board of County Commissioners fails to comply with either the terms of the permit or this Section, the District Manager may direct the Board of County Commissioners to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the Board of County Commissioners to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-7-41.

[Source: Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-29. Application of freshwater drill cuttings by oil and gas operators

(a) **Scope.** This Section shall cover the one-time application of freshwater drill cuttings by oil and gas operators to private access areas, well locations, and production sites.

(b) **Permits by appropriate Conservation Division District Office.** A District Manager for the Conservation Division may issue to an operator within the District a permit for application of freshwater drill cuttings to private access areas, well locations, and production sites within the District. This Section prohibits any operator from applying freshwater drill cuttings without a permit. Any operator violating this subsection may be fined up to \$2,000.00.

(c) **Site restrictions.** Application of freshwater drill cuttings shall only occur on sites having an:

- (1) Electrical Conductivity (EC) no greater than 6,000 micromhos/cm; and
- (2) Exchangeable Sodium Percentage (ESP) less than 15.0.

(d) **Sampling requirements.**

- (1) The appropriate Field Inspector shall be contacted at least two business days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and freshwater drill cuttings to be applied.
- (2) The receiving soil shall be sampled using the following procedure:
 - (A) A minimum of five samples shall be taken for each one-half (1/2) mile section of road (or borrow ditch), well location, or production facility and composited into one sample for analysis.
 - (B) Sampling shall be to a minimum depth of six inches.
- (3) The freshwater cuttings shall be sampled by taking a minimum of one representative sample for every five cubic yards of freshwater cuttings to be applied and composited into one quart sample for analysis.

(e) **Analysis requirements.**

- (1) The composite samples of soil and drill cuttings shall be analyzed by a laboratory which tests soils.
- (2) The parameters for the receiving soil shall include ESP and either EC or Total Dissolved Solids (TDS) or Total Soluble Salts (TSS).
- (3) The parameters for the drill cuttings shall include TDS or Total Soluble Salts (TSS).

(f) **Maximum application rate.**

- (1) The maximum application rate shall be calculated by the operator using the following formula:

$$\underline{\hspace{2cm}} \text{ ppm TDS or TSS in receiving soil} \times 2 = \underline{\hspace{2cm}} \text{ lbs/as TDS or TSS in}$$

receiving soil.

10,000 lbs/ac TDS or TSS - _____ lbs/ac TDS or TSS in receiving soil =
Maximum TDS or TSS (lbs/ac) to be applied _____.

Maximum TDS or TSS (lbs/ac) to be applied _____ ÷ (_____ ppm TDS or TSS in
cuttings x .000001) = Maximum lbs/ac of cuttings to be applied _____.

Actual weight of drill cuttings _____ lbs/cu ft × 27 = _____ lbs/cu yd.

Maximum lbs/ac to be applied _____ ÷ _____ lbs/cu yd = _____ cu yds/ac to be
applied.

Total volume _____ cu yds ÷ _____ cu yds/ac = Minimum acres required
_____.

(2) Calculations shall be submitted with the application.

(g) Permit requirements.

(1) **Use of Form 1014X.** The application to apply freshwater drill cuttings shall be made on Form 1014X, which shall be submitted by electronic mail to the Manager of the appropriate Conservation Division District Office.

(2) **Landowner permission.** Attached to the application shall be written permission by the surface owner to allow the operator to apply freshwater drill cuttings as per this Section to a specific portion of real property as designated by legal description.

(3) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If an operator obtains a permit by telephone, the applicant shall file Form 1014X within five business days after receipt of the permit by telephone.

(4) Conditions for permits.

(A) The method to be used for application of freshwater drill cuttings shall not pollute surface or subsurface waters and shall protect public and private property adjoining the application area.

(B) During application, any necessary signs, lights, and other safety and warning devices shall be used as traffic requires to alert users to conditions. A sign shall be posted with the contractor's or operator's name to contact in case of an emergency.

(C) All free liquids shall be removed before cuttings are applied.

(D) Following completion of the project, there shall be a uniform soil/cuttings base.

(h) Notice to Field Inspector. The operator receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of the application.

(i) Site inspection. At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application operation to ensure compliance with this Section.

(j) Duration of permit. The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the operator fails to comply with either the terms of the permit or this Section, the District Manager may direct the operator to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the operator to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-

7-41.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-30. Enhanced recovery project surface facilities [REVOKED]

[Source: Added at 9 Ok Reg 2337, eff 6-25-95; Revoked at 16 Ok Reg 2190, eff 7-1-99]

165:10-7-31. Seismic and stratigraphic operations

(a) **Scope.** This Section shall cover the permitting, bonding, and plugging requirements for seismic exploration activities and stratigraphic test holes. Check-shots and vertical seismic profiles or other downhole wellbore seismic operations are excluded from this Section. Claims for damages sustained as a result of seismic operations, court proceeding costs and other matters concerning personal injury or property damage associated with seismic operations shall be brought in the district courts, pursuant to the Seismic Exploration Regulation Act (Okla. Stat. Tit. 52 §§ 318.21 through 318.23).

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) **"Seismic exploration"** and **"seismic operation"** shall mean the drilling of seismic shot holes and use of surface energy sources such as weight drop equipment, thumpers, hydro pulses and vibrators and any of the activities associated therewith. This definition does not include surveying of the seismic area or the activity of conducting private negotiations between parties.

(2) **"Stratigraphic test holes"** shall mean holes drilled for the sole purpose of obtaining subsurface geological information through direct analysis of cores or cuttings or through the use of geophysical measurements that do not require the use of artificial sources of seismic energy.

(3) **"Operator"** or **"applicant"** shall mean the person or entity who is either the owner of the right to conduct seismic exploration or who acts on behalf of the owner.

(4) **"Surface estate"** shall mean the fee simple or absolute fee ownership of a tract of real property as defined by Okla. Stat. Tit. 60 §§5 and 23, less and excluding the mineral estate.

(5) **"Surface owner"** shall mean the owner or owners of record of the surface estate of the property upon which the seismic exploration is to occur, based upon the records of the county clerk of the county within which the surface estate is actually located.

(6) **"Technical information and data"** shall be defined as pre-plats as referenced in (c)(2)(B) and post-plats as referenced in subsection (c)(5).

(c) Seismic permitting.

(1) Before commencing any seismic operations in the State of Oklahoma, the applicant shall:

(A) Be duly registered with the Commission, including provision of a permanent address.

(B) Post a financial surety guarantee with the Commission.

(C) Provide to the Commission the name and business or field address of the contractor responsible for the operations being conducted.

(D) Obtain a permit from the Conservation Division for each seismic operation.

(E) Attempt to notify all owners of the surface estate where seismic operations will occur at least fifteen (15) days prior to commencement of operations on such surface estate. It shall be sufficient notice pursuant to this Section when notice is given to the current surface owner(s) at the last address shown of record for the surface owner in the records of the county clerk in the county where the surface estate is located, or an address that is known by applicant to be more accurate than the foregoing address of record. If the applicant has the right to conduct seismic operations and has attempted to give actual notice of intent to conduct seismic operations to the surface owner any time before fifteen (15) days prior to conducting seismic operations, such action shall be considered sufficient notification for the purposes of this Section. For the purposes of this Section, an attempt to notify shall be considered sufficient when the notification is sent by U.S. mail, the notice is postmarked at least fifteen (15) days prior to commencement of any seismic operations, and has been given at the last address shown of record for the surface owner in the records of the county clerk in the county where the surface estate is located, or an address which is known by applicant to be more accurate than the foregoing address of record.

(F) File an affidavit, within ninety (90) days of the last mailing of the notice, with the Commission and the county clerk in the county where the property is located, setting out that mailing of the notice has occurred in compliance with this Section and the Seismic Exploration Regulation Act (Okla. Stat. Tit. 52 §§ 318.21 through 318.23).

(G) The notice shall include a copy of the oil or gas lease or seismic permit or other legal instrument of similar nature authorizing the use of the surface for seismic operations and shall contain the information that is required for notices by Okla. Stat. Tit. 52 § 318.22.

(2) The applicant shall make application on the Commission's Form 1000S.

(A) The permit shall be valid for only one operation as approved on Form 1000S.

(B) A pre-plat of the operation area shall be attached to the application showing the location of the operation area delineated to the nearest section

(C) Post a performance bond in the amount of \$50,000, or other form of surety in an amount as approved by the Conservation Division. The performance bond may be filed for each operation, or may be filed on an annual basis to cover all operations that may be undertaken during the year. If the performance bond is filed for a single operation, the amount may be approved by the Conservation Division for less than \$50,000 or in another form of financial surety guarantee, depending on the nature of the seismic operation involved, the number of shot holes or surface energy source points, the cost of the operation and the size of the applicant's business. The form of surety shall not include letters of credit or financial statements. Such bond(s) or other surety may be released upon request made no sooner than thirty (30) days subsequent to the

completion of the applicant's operation(s), which have been permitted under such bond(s) or other surety, upon satisfactory inspection or review by Conservation Division personnel.

(D) The permit shall expire twelve (12) months from the issue date, unless operations are commenced.

(E) The Conservation Division shall approve or deny the application within thirty (30) days of receipt of the application. The Conservation Division may act upon an application or amended application on an expedited basis.

(F) During any activity subject to this subsection, the applicant shall maintain at the site a copy of the approved permit, Form 1000S, for inspection.

(G) All technical information, excluding the Form 1000S, but including any plats, relative to the permitted operation shall remain confidential or the Conservation Division shall destroy the records. The plats and any other technical data submitted, shall be filed in the Technical Services Department of the Conservation Division. Upon request of the Manager of Field Operations, the technical data may be reviewed by Field Operations to ensure compliance with Commission rules.

(3) The operator shall file with the Conservation Division a written notice of commencement of seismic operations within 14 days after commencement of such operations.

(4) No seismic shot hole blasting shall be conducted within 200 feet of any habitable dwelling, building, or water well without written permission from the owner of the property or within 500 feet of any superfund site or hazardous waste facility.

(5) **Plugging and post-plat.** Within 30 days after completing a seismic operation, the applicant receiving the permit shall submit a copy of: the approved Form 1000S certifying the plugging of all seismic shot holes in compliance with this Section; and a post-plat or acceptable form of survey showing the actual location of all seismic shot holes. Unless the applicant can demonstrate to the Conservation Division's District Office that another method will provide sufficient protection to groundwater supplies and long term land stability, the following guidelines shall be observed:

(A) Standard plugging method. All holes shall be filled to within four feet from the surface with bentonite, native cuttings, or an appropriate substitute. The remainder of the shot hole shall be filled and tamped with native cuttings or soil.

(B) Special methods. In areas where the standard plugging method has been shown to be inadequate for the prevention of groundwater contamination, the Conservation Division may designate the area as a special problem area. In such event, the Conservation Division will provide to the best of its ability, a clear geographical description of such area and the recommended, or required, hole plugging methods. Should the applicant encounter conditions such that the standard method appears inadequate for the prevention of groundwater contamination, the applicant shall inform the Conservation Division.

(i) Artesian flow. If the standard method is inadequate to stop artesian flow, alternate remedies must be employed to

do so.

(ii) Water well conversion. Applicants are prohibited from allowing the conversion of seismic shot holes to water wells.

(iii) Groundwater protection. Alternative plugging procedures and materials may be utilized when the applicant has demonstrated to the Conservation Division's satisfaction that the alternatives will protect usable quality water.

(iv) Timeliness. All seismic shot holes shall be plugged as soon as possible and shall not remain unplugged for a period of more than 30 days after the drilling of the hole.

(d) Stratigraphic test permitting.

(1) Before commencing any stratigraphic test hole operations, those companies hereinafter referred to as the applicant shall:

(A) Be duly registered with the Commission, including provision of a permanent address.

(B) Post a financial surety guarantee with the Commission in compliance with 165:10-1-10.

(C) Obtain a permit from the Conservation Division for each stratigraphic test operation.

(2) The applicant shall make application on the Commission's Form 1000.

(A) The permit shall be valid for only one operation as approved on Form 1000.

(B) The permit shall expire twelve (12) months from the issue date, unless operations are commenced.

(C) The Conservation Division shall approve or deny the application within 30 days of receipt of the application.

(D) Notice to surface owners shall be given according to OAC 165:10-3-1(g).

(E) During any activity subject to this subsection, the applicant shall maintain at the site a copy of the approved permit, Form 1000, for inspection.

(F) Any technical data submitted shall be filed in the Technical Services Department of the Conservation Division. Upon request of the Manager of Field Operations, the technical data may be reviewed by Field Operations to ensure compliance with Commission rules.

(G) The operator shall file with the Conservation Division a written notice of spudding of stratigraphic well within 14 days after spudding of the well.

(3) Unless the applicant can demonstrate to the Conservation Division's District Office that another method will provide sufficient protection to groundwater supplies and long term land stability, the following guidelines shall be observed:

(A) Surface casing requirements shall be met according to OAC 165:10-3-4.

(B) Storage and disposal of fluids associated with the drilling of stratigraphic test holes shall meet the requirements of OAC 165:10-7-16.

(C) Duty to plug and abandon shall be according to OAC 165:10-11-3.

(D) The Conservation Division shall be notified prior to commencement of plugging according to OAC 165:10-11-4.

(E) **Plugging.** Stratigraphic test holes shall be plugged according to OAC 165:10-11-6 and certification submitted on Form 1003 in compliance with OAC 165:10-11-7.

(e) Any person, firm, corporation or entity which conducts any seismic or stratigraphic test hole operations without a permit as provided in this Section, or in any other manner violates the rules of the Commission governing such operation shall be subject to a penalty up to One Thousand Dollars (\$1,000.00) per violation per day after completion of the informal complaints procedure provided in OAC 165:10-7-7 and notice and hearing pursuant to the Commission's contempt proceedings.

(f) **Complaints.** A complaint alleging violations of this Section may be filed with the Commission against any person, firm or corporation conducting seismic and stratigraphic operation(s). The Commission may determine if and when a complaint has been adequately resolved, pursuant to the informal complaints process of OAC 165:10-7-7, and, if an environmental complaint, pursuant to the citizen complaint procedure of OAC 165:5-1-25.

[Source: Added at 16 Ok Reg 842, eff 1-5-99 (emergency); Added at 16 Ok Reg 2190, eff 7-1-99; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 35 Ok Reg 973, eff 9-14-18]

165:10-7-32. Application to reclaim and/or recycle produced water for surface activities related to drilling, completion, workover, and production operations from oil and gas wells

(a) **Authority to reclaim and/or recycle produced water.** No person shall use produced water for any other purpose except as provided by this section. Any operator failing to obtain a permit may be fined up to \$500.00.

(b) **Scope.** This Section shall cover the reclaiming and/or recycling of produced water from oil and gas wells for a single well location for the purpose of water supply for surface activities used for a specific permitted use. This does not include the use of produced water for down-hole operations referred to as weighted water under OAC 165:10-7-24(b)(2).

(c) **Quality of produced water.** For the purposes of this rule shall be limited to Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) content not to exceed 5,000 mg/l and oil and grease content not to exceed 1,000 mg/l.

(d) **Storage of produced water.** If the produced water is stored in tanks, the tanks shall be legibly marked "recycle" water.

(e) **Log of load tickets.** The operator shall maintain copies of the load tickets from wells that the produced water was obtained. Such copies shall be made available to the OCC Inspector upon request.

(f) **Notification to OCC District Office.** The Operator shall orally notify the District Office when produced water is to be initially hauled to the permitted facility.

(g) **Application for permit.**

(1) The operator of the well must apply for the permit for the reclamation of produced water.

(2) Required Application. Each application for the reclaiming and/or recycling of produced water shall be submitted to the Field Operations District office on Form 1014D.

(3) A copy of written notice to the surface owner that the applicant intends to use produced water as per 165:10-7-32 to a specific portion of their real property as designated by legal description. For purposes of notice, a written waiver from the surface owner may also be submitted.

[Source: Added at 20 Ok Reg 1479, eff 4-24-03 (emergency); Added at 20 Ok Reg 1543, eff 7-1-03; Amended at 23 Ok Reg 2229, eff 7-1-06]

165:10-7-33. Use of truck wash pits

(a) **Scope.** This Section shall apply to truck wash pits. A truck wash pit is a pit used for the temporary storage of fluids generated from the washing or cleaning of a motor vehicle, trailer or container used to transport or store deleterious substances. Truck wash pit operators shall comply with all applicable Commission rules in OAC 165:30 Motor Carriers.

(b) **Permit required.** Any truck wash pit sought to be approved after the effective date of this Section will require a permit issued by the Conservation Division. For use of a truck wash pit without a permit, the operator may be fined up to \$2,000.00. The operator of the proposed pit shall submit Form 1014T to the Manager of the Pollution Abatement Department for the Conservation Division for review and approval. Documents required to be submitted with the Form 1014T include, but are not limited to, the following:

(1) A detailed drawing of the site, with complete construction plans drawn to scale for the proposed truck wash pit, any leachate collection system, and specific completion information for all monitor wells.

(2) A plat map with section, township, range and county showing the location of the proposed truck wash pit and the location of the monitor wells in relation to the pit they monitor.

(3) If the site on which the truck wash pit is to be located is not owned by the operator of the proposed pit, the operator must submit a copy of the written agreement between the operator and the surface owner authorizing use of the site for the pit. The agreement shall address the disposition of the pit (whether pit is to be buried on site, removed, etc.) at the termination or expiration of the agreement.

(c) **Surety requirements.**

(1) Any operator of a truck wash pit shall file with the Manager of the Pollution Abatement Department for the Conservation Division an agreement to properly close the pit upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(2) The Commission shall establish the amount of surety in the permit for the authority to operate a truck wash pit. The amount of surety shall be based on factors such as the dimensions of the pit, and costs of reclamation, monitoring, plugging of monitor wells, pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by the permit. Any type of surety that expires shall

be renewed prior to 30 days before the expiration date.

(d) **Site restriction.** No truck wash pit shall be constructed in any area that floods according to the Soil Conservation Service County Soil Survey (available for viewing at the Commission's Oklahoma City Office or appropriate Conservation Division District Offices).

(e) **Construction requirements.**

(1) **Splash pad/apron.** A splash pad/apron shall be constructed at the unloading area of any truck wash pit to the design and dimensions necessary to contain and direct all materials unloaded into the pit.

(2) **Pit specifications.** Any truck wash pit shall be constructed of concrete or steel or shall be lined with a geomembrane liner. The following specifications shall be met:

(A) Any concrete pit shall be steel-reinforced and have a minimum wall thickness of six inches.

(B) Any steel pit shall have a minimum wall thickness of three-sixteenths (3/16) inch. If a previously used steel pit is installed, it shall be free of corrosion or other damage.

(C) Any geomembrane liner shall meet these requirements:

(i) The geomembrane liner shall have a minimum thickness of 60-mils, shall be chemically compatible with the type of wastes to be contained, and shall have ultraviolet light protection.

(ii) The geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(iii) The geomembrane liner shall be continuous (may include welded or extruded seams) and shall cover the bottom and interior sides of the pit entirely. Sewing of seams is prohibited. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(3) **Certification of liner.** The operator of any truck wash pit that is constructed with a geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner, such as geomembrane liner specifications from the manufacturer, etc., and shall make them available to a representative of the Conservation Division upon request.

(4) **Monitor wells or leachate collection system.**

(A) Any truck wash pit shall be required to have a leachate collection system or a minimum of three monitor wells, one upgradient and two downgradient from the pit.

(B) No monitor well shall be installed more than 100 feet from a truck wash pit, nor shall any existing water well be used as a monitor well, unless written approval is given by the Manager of the Pollution Abatement Department.

(C) All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted prior to drilling the monitor well to

show that no free water will be encountered within a depth of 50 feet from the surface, the District Manager may require that monitor wells be drilled to a lesser depth.

(D) All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, a removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when a well is being sampled. A key to each well shall be made available to the appropriate District Manager or Field Inspector upon request. Within 30 days of installation, specific completion information, a diagram of the locations and numerical labeling for all monitor wells shall be submitted to the appropriate District Manager.

(f) Operation and maintenance requirements.

(1) **Exclusion of runoff water.** No truck wash pit shall be allowed to receive runoff water.

(2) **Freeboard.** The fluid level in any concrete or steel truck wash pit shall be maintained at all times at least 6 inches below the top of the pit wall, unless otherwise specified on Form 1014T. Any geomembrane lined pit shall have a minimum of 24 inches freeboard at all times.

(3) **Sampling of monitor wells or leachate collection systems.**

(A) Sampling of monitor wells or leachate collection systems shall occur once every six months, during the months of January and July.

(B) The appropriate District Manager shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(C) Samples shall be collected, preserved, and handled by the operator according to EPA-approved standards (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September, 1986, pp. 99-107) and analyzed for pH, chlorides, Total Dissolved Solids (TDS) and Total Petroleum Hydrocarbons (TPH) by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required, as determined by the Manager of the Pollution Abatement Department.

(D) If requested by the District Manager, each sample shall be split and an adequate portion (approximately one pint) properly labeled and delivered upon request or otherwise provided to the appropriate Conservation Division District Office or Field Inspector. A copy of each analysis and a statement as to the depth to groundwater encountered in each well or leachate collection system, or a written statement that no water was encountered, shall be forwarded to the appropriate Conservation Division District Office within 30 days of sampling.

(E) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(4) **Prevention of pollution.** All truck wash pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a truck wash pit, sufficient measures shall

be taken to stop or control the loss of materials and reporting procedures in 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division.

(5) **Oil film.** The operator of a truck wash pit shall be responsible for the protection of migratory birds. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil films, all pits containing fluid be kept free of hydrocarbons, or be protected from access to birds. [See Advisory Notice in 165:10-7-3(c).]

(g) **Closure requirements.**

(1) **Time limit.** Within 90 days of the cessation of operation of any truck wash pit, such pit shall be emptied of all contents and filled with soil, except as otherwise provided in the written agreement between the operator and surface owner regarding the disposition of the pit at the termination or expiration of the agreement. All monitor wells shall be plugged with bentonite or cement, unless exempt in writing by the Manager of the Pollution Abatement Department. The site shall be revegetated within 180 days.

(2) **Burial.** If any concrete, steel, geomembrane, or other materials associated with a truck wash pit are to be left on-site, they shall be buried under a minimum soil cover of three feet, pursuant to 165:10-3-17.

(3) **Penalty for failure to meet closure requirements.** An operator who fails to meet the closure requirements set out in this subsection may be fined up to \$2,000.00.

(h) **Additional requirements.** The requirements set forth in this Section are minimum requirements. Additional requirements may be imposed if the site has certain limitations or other conditions of risk exist.

(i) **Application to existing truck wash pits.** Operators of truck wash pits permitted prior to the effective date of this Section must either comply with subsections and paragraphs (c), (e)(1), (e)(4), (f), (g) and (h) of this Section or close such pits within one (1) year of the effective date of this Section. All truck wash pits permitted, but yet to be constructed as of the effective date of this Section, shall also be subject to the construction requirements in paragraphs (e)(2) and (e)(3) of this Section.

(j) **Variiances.** A variance from the time requirements of paragraph (g)(1) of this Section may be granted by the Manager of the Pollution Abatement Department for justifiable cause. A written request and supporting documentation is required.

[Source: Added at 31 Ok Reg 977, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-7-34. Use of reclaimed water in oil and gas operations

(a) **Scope.** This Section shall cover the permitting and use of reclaimed water from Department of Environmental Quality authorized facilities in oil and gas operations. Reclaimed water is wastewater from municipal wastewater treatment and/or public water supply treatment plants that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.

(b) **Permit required.** No person shall use reclaimed water in oil and gas operations without applying for and obtaining a permit issued under this Section. An operator using reclaimed water without a permit may be fined up to \$2,000.00.

(c) **Who may apply.** Only operators authorized to operate wells pursuant to OAC 165:10-1-10 may apply for this permit.

(d) **Required form and attachments.** Each application to use reclaimed water in oil and gas operations shall be submitted to the Manager of Field Operations on Form 1014RW. The form shall be properly completed and signed. Attached to the form shall be the following:

(1) Analysis of reclaimed water proposed to be used in oil and gas operations. Samples of reclaimed water shall be analyzed by a laboratory operated by the State of Oklahoma or accredited by the Department of Environmental Quality or in the North American Proficiency Testing System. Parameters for analysis of the reclaimed water shall include, but not be limited to, Total Dissolved Solids or Total Soluble Salts.

(2) Copies of all chain of custody forms related to sampling.

(3) A topographic map and the most recent aerial photograph (minimum scale 1:660) of the site where the reclaimed water is proposed to be used.

(4) Other information as required by this Section or requested by the Manager of Field Operations.

(e) **Review period.** The Manager of Field Operations shall review the application, either approve or disapprove it, and return a copy of Form 1014RW within five business days of submission of all required or requested information. If approved, a permit number shall be assigned to the Form 1014RW; if disapproved, the reason(s) shall be given. The applicant can apply for a hearing if the permit is not approved.

(f) **Violations.** If the operator violates the conditions of the permit or this Section, the use of reclaimed water in oil and gas operations shall be discontinued and the Field Operations Department shall be contacted immediately. The Field Operations Department may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, use of reclaimed water in oil and gas operations may resume with the Field Operations Department's approval. If the permit is revoked, the operator may file an application for a hearing to reinstate the permit.

[Source: Added at 32 Ok Reg 768, eff 8-27-15]

SUBCHAPTER 8. COMMERCIAL RECYCLING

PART 1. HYDROCARBON RECYCLING/RECLAIMING FACILITIES

165:10-8-1. Scope

This Part shall cover the permitting, construction, operation, and closure requirements for any recycling/reclaiming facility.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94]

165:10-8-2. Definitions

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

"Hydrocarbon recycling/reclaiming facility at a saltwater disposal site" means a recycling/reclaiming operation at a Class II saltwater disposal site which is authorized by the Commission to recycle and/or reclaim marketable crude oil or condensate produced or used in the exploration or production of oil and gas. The facility shall comply with OAC 710:45-15-3.

"Tank bottom hydrocarbon recycling/reclaiming facility" means a recycling/reclaiming operation at a tank bottom reclaiming facility which is

authorized by the Commission to recycle and/or reclaim marketable crude oil or condensate produced or used in the exploration or production of oil and gas. The facility shall comply with OAC 710:45-15-3.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00]

165:10-8-3. Permit required

- (a) **Who may apply.** The applicant for a recycling/reclaiming facility shall be the owner and/or lease holder of the site.
- (b) **Compliance with Part.** Before issuance of a permit, the applicant shall comply with this Part and if pits are to be used for storage, the applicant shall comply with 165:10-9-1, except at Class II saltwater disposals.
- (c) **OCC Form 1020A.** Application shall be filed on OCC Form 1020A.
- (d) **An Oklahoma Tax Commission Reclaimer License.** The applicant shall have obtained a reclaimer license number under OAC 710:45-15-2. This number will be used by the Corporation Commission for its permit number.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00]

165:10-8-4. Application requirements

- (a) **Permit required.** No recycling/reclaiming facility shall be constructed, enlarged, or used without approval on Form 1020A.
- (b) **Site limitations.** Recycling/reclaiming facilities shall not be restricted by site limitations unless pits are to be used.
 - (1) Tank bottom hydrocarbon recycling/reclaiming facilities with pits that are to be used for storage in the operation shall comply with OAC 165:10-9-1.
 - (2) Hydrocarbon recycling/reclaiming facilities at a saltwater disposal site with pits that are used for unloading saltwater shall comply with OAC 165:10-9-3.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00]

165:10-8-5. Surety requirements for reclaimers

- (a) **Agreement to close.** Any operator of a recycling/reclaiming facility shall file with the Surety Department for the Oil and Gas Conservation Division an agreement to properly close and reclaim the site in accordance with approved closure and reclamation procedures upon termination of recycling/reclaiming operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to close the facility or take remedial action as required by law and the rules of the Commission, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.
- (b) **New facilities.** Category A (165:10-1-11) or Category B (165:10-1-13) surety shall be required for coverage of the closure costs, including well pluggings and general site restoration. These costs shall be calculated upon the projected costs of closure for the facility, based on estimated costs of earth work, remediation, revegetation, plugging, etc. Such information shall be provided by the applicant and reviewed, adjusted and ordered by the Commission.
- (c) **Existing facilities.** For facilities in operation prior to the effective date of this Part, the Commission can require, by order, the establishment of an escrow account to cover the costs of closure, by using a per barrel fee to be deposited into the

account. Any interest the account earns until the total amount is collected shall be reinvested in the account. Any interest accrued after the account balance is full shall be returned to the operator.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-8-6. Design and construction requirements

(a) **Spill prevention.** Each facility shall be designed and constructed utilizing good engineering practices. Design and construction standards shall be determined on a case-by-case basis by the Commission. Each such facility shall be designed and constructed to prevent escape of deleterious substances.

(b) **Unloading pits or sumps.** All unloading areas at tank bottom hydrocarbon recycling/reclaiming facilities that use a pit to receive fluids and skimming pits shall be approved on OCC Form 1014.

(c) **Required exhibits.** Complete construction plans, drawings, and written specifications for the proposed facility shall be submitted to the Manager of Pollution Abatement for review and approval. Design and construction standards shall be determined on a case-by-case basis by the Commission. Applicants shall consult with the Commission prior to the construction of the proposed facility. The Commission may apply existing technological standards and/or establish new standards, as it deems appropriate to the proposed site and activities. All plans, drawings, and specifications shall be prepared by or under the supervision of a qualified expert.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00]

165:10-8-7. Operation and maintenance requirements

(a) **Fencing.** All recycling/reclaiming facilities shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence. Final construction is subject to approval by the Manager of Pollution Abatement.

(b) **Sign.** A waterproof sign bearing the name of the operator, legal description, permit number, and emergency phone number shall be posted within 25 feet of the entrance gate to the facility and shall be readily visible.

(c) **Site security.** Receiving of any recycling/reclaiming material shall occur only when there is an attendant on duty. All sites shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock shall be provided to the appropriate Field Inspector for the purpose of carrying out inspections.

(d) **Acceptable materials.** Operators of a recycling/reclaiming facility shall only receive substances as defined in 165:10-1-2 "Deleterious substances."

(e) **Oil film.** OPERATORS TAKE NOTE: Federal statutes, such as the Bald Eagle Protection Act (16 U.S.C. Sections 668-668d), the Migratory Bird Treaty Act (16 U.S.C. Sections 703-711), the Endangered Species Act (16 U.S.C. Sections 1531-1542), and the Lacey Act Amendments of 1981 (16 U.S.C. Sections 3371-3378), dictate substantial fines and penalties for persons who allow birds of certain species to become fatally injured due to incidental contact with oil or oil by-products. These fines may be levied upon persons allowing such fatalities to occur, whether accidental or not. Misdemeanor and felony convictions may include imprisonment. Information on affected bird species, regulations under these Acts, and measures which can be taken to prevent such occurrences, such as the netting or covering of open-topped tanks and pits which contain oil or oil by-products, can be obtained from the U.S. Fish and Wildlife Service Office in Oklahoma City or the nearest Oklahoma Department of Wildlife Office.

(f) Aesthetics.

(1) All surface trash, debris, junk and scrap or discarded material connected with the operations of the facility shall be removed from the premises. With written permission from the surface owner, the operator may, without applying for an exception to 165:10-3-17(b), bury all nonhazardous material at a minimum depth of three feet; cement bases are included.

(2) The appropriate Conservation Division District Office or field inspector may issue a Form 1085 for any alleged violation of this subsection. If the operator fails to conduct cleanup as directed, the Commission may fine the operator \$500.00 for a first offense. For a subsequent offense, the fine may be up to \$1,000.00, and the facility shall be shut down until completion for cleanup operations.

(g) Structural integrity. All recycling/reclaiming facilities shall be used, operated, and maintained at all times so as to prevent the escape of their contents. Any condition that threatens the structural stability of any diked portion or the storage facility shall be repaired in a timely manner.

(h) Prevention of pollution. All recycling/reclaiming facilities shall be used, operated, and maintained at all times so as to prevent pollution. In the event any non permitted discharge occurs, sufficient measures shall be taken to stop or control the loss of materials, and reporting procedures in accordance with 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division.

(i) Fines. For a willful non-permitted discharge from the facility, the operator may be fined up to \$5,000.00.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11]

165:10-8-8. Reporting

(a) Annual report on Form 1014A. The operator of any recycling/reclaiming facility shall submit an annual report on Form 1014A to the Manager of Pollution Abatement, by February 1 of each year. In lieu of Commission Form 1014A, operators may submit Oklahoma Tax Commission Form 323A for the twelve calendar months of the previous year by February 1st.

(b) Daily log for tank bottom at a hydrocarbon recycling/reclaiming facility. The operator shall maintain a daily log and at a minimum shall include the date, volume, source (generator) and type of material. In addition, copies of any chemical analysis of materials or material safety data sheets shall be maintained.

(c) Daily load tickets for hydrocarbon recycling/reclaiming facilities at salt water disposal facilities. The operator shall keep the load tickets for saltwater and other deleterious substances received at the saltwater disposal facilities for a minimum of three years at the operator's office.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 17 Ok Reg 1860, eff 7-1-00]

165:10-8-9. Closure requirements

(a) Notification. The Manager of Pollution Abatement Department shall be notified in writing whenever a recycling/reclaiming facility shall be closed, or portions thereof, or becomes inactive unless it is shut down by the Commission.

(b) Closed facility. A recycling/reclaiming facility may be considered closed or inactive if the operator closes the facility, the operator is unable to furnish documentation to show that there has been receipt of deleterious substances during the last twelve months, the facility has been shut down by the Commission, or

authority to operate has lapsed or is vacated by Commission order.

(c) **Closure plan.** An approved closure plan shall be submitted to the Pollution Abatement Department. Estimate of cost of closure shall be made part of the plan.

(d) **Monitor wells.** Monitor wells, if required, shall be plugged with bentonite or cement, upon approval in writing by the Manager of Pollution Abatement.

(e) **Pits.** When closing any pit with a geomembrane liner, extreme care shall be taken to preserve the integrity of the liner. All free liquids and sediments shall be removed.

(f) **Burial.** If any concrete, steel, geomembrane, or other materials associated with the site are to be left on-site, they shall be buried under a minimum soil cover of three (3) feet, pursuant to 165:10-3-7.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94]

165:10-8-10. Additional requirements

The requirements set forth in this Part are minimum requirements. Additional requirements may be made upon a showing of good cause.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94]

165:10-8-11. Variances

Except as otherwise provided in this Subchapter, variances from provisions of this Part may be granted by the Manager of Pollution Abatement or by order after application, notice, and hearing.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94]

PART 3. DRILLING WASTE RECYCLING/RECLAIMING FACILITIES [REVOKED]

165:10-8-25. Scope [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-26. Definitions [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-27. Pit requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-28. Application requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-29. Surety requirements for reclaimers [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-30. Design and construction requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-31. Operation and maintenance requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-32. Reporting [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-33. Closure requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-34. Additional requirements [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

165:10-8-35. Variances [REVOKED]

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Revoked at 27 Ok Reg 2128, eff 7-11-10]

SUBCHAPTER 9. COMMERCIAL DISPOSAL FACILITIES

165:10-9-1. Use of commercial pits

(a) **Scope.** This Section shall cover the permitting, construction, operation, and closure requirements for any commercial pit. A commercial pit is a disposal facility which is authorized by Commission order and used for the disposal, storage, and handling of deleterious substances or soils contaminated by deleterious substances produced, obtained, or used in connection with drilling, production and/or pipeline construction operations. This does not cover disposal well pits. (See 165:10-9-3 and 165:10-7-20.)

(b) Application requirements.

(1) **Who may apply.** The applicant for a commercial pit shall be the owner of the land (or person having a written firm option to purchase the land at the time the application is filed) on which the proposed pit is to be located: if leased, both the owner and lessee shall be joint applicants.

(2) **Compliance with rules.** Before issuance of an order, the applicant shall comply with Commission Rules of Practice 165:5-7-1, 165:5-7-35, 165:5-3-1, and this Section. Subsequent to issuance of an order authorizing commercial pit(s) and prior to commencing construction of such pit(s), the applicant is required to submit a recorded copy of a deed to the Conservation Division reflecting that the applicant owns the land which is to be used for the commercial pit facility.

(3) **Exhibits.** Two complete sets of all exhibits which shall be relied upon by the applicant shall be submitted to the Pollution Abatement Department of the Commission, pursuant to 165:5-7-35. Those exhibits shall include, but are not limited, to the following:

(A) A lithologic log of test borings, identifying the subsurface materials encountered and the depth at which groundwater was encountered pursuant to (c)(2)(D) of this Section.

(B) Results of permeability tests of the proposed liner materials, pursuant to (e)(7) of this Section.

(C) A topographic map of the commercial pit site.

(D) The appropriate Soil Conservation Service (SCS) soil survey aerial photo and legend.

(E) A detailed drawing of the site, with complete construction plans drawn to scale by or under the supervision of a registered professional engineer.

(F) A plan for closure of the pit(s) which shall provide for a minimum three feet of soil cover and shall specifically state how all aspects of closure shall be accomplished, including volume and fate of liquids and solids, earthwork to close the pit(s) (including placement of stockpiled topsoil), and revegetation of the site.

(G) An itemization of projected hauling, closure, reclamation, maintenance, and monitoring costs.

(H) A plan for post-closure maintenance and monitoring which shall address maintenance of the site as well as monitoring and plugging of wells. Exemption from the plugging of monitor wells may be obtained upon written request and approval of the Manager of Pollution Abatement.

(I) A plan for operation which shall address the method(s) by which excess water will be disposed.

(c)

(1) **Order required.** No commercial earthen pit shall be constructed, enlarged, reconstructed, or used without a Commission order.

(2) **Site limitations.**

(A) No commercial earthen pit shall be constructed or used unless an investigation of the soils, topography, geology, and hydrology conclusively shows that storage of water-based drilling fluids and/or cuttings at the site will not be harmful to groundwater, surface water, soils, plants, or animals in the surrounding area. No abandoned mine, strip pit, quarry, canyon, or streambed shall be used for disposal of oilfield wastes, nor shall a pit be constructed or used in such a setting.

(B) No commercial pit shall be constructed or used on any site that is located within a 100-year flood plain.

(C) No commercial pit shall be constructed or used within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act), or within one mile of a public water well for which the WPA has not been delineated.

(D) No commercial pit shall be constructed unless it can be shown that there will be a minimum of 25 feet between the bottom of the pit and the groundwater level. To ascertain this and to demonstrate the subsurface profile of the site, a minimum of three test borings (the exact number of locations to be determined by the Pollution Abatement Department) shall be drilled to a minimum depth of 25 feet below the proposed bottom of the pit and into the first free water encountered. Perched water tables are not considered for the purposes of this subparagraph. Test borings need not extend deeper than 50 feet below the bottom of the pit if free water has not been encountered before that depth. All boreholes converted to monitor wells shall conform to (e)(15) of this Section. All boreholes not converted to monitor wells shall be plugged from top to bottom with bentonite, cement, and/or other method approved by the Pollution Abatement Department within 30 days of drilling completion.

(E) No commercial pit shall be constructed or used within the following distances from the city limits of an incorporated

municipality unless previously authorized by Commission order:

(i) Three miles if population is 20,000 or less.

(ii) Five miles if population is greater than 20,000.

(F) The construction, enlargement, reconstruction or operation of any commercial pit in any area listed in OAC 165:10-29-3 is prohibited.

(3) **Means of water disposal.** No commercial pit shall be constructed or used unless the operator can show that there will be an ongoing means of disposal of excess water pursuant to (b)(3)(I) of this Section.

(d) **Surety requirements.**

(1) **Agreement with Commission.** Any operator of a commercial pit shall file with the Surety Department for the Conservation Division an agreement to properly close and reclaim the site in accordance with approved closure and reclamation procedures upon termination of disposal operations due to abandonment, shutdown, full pits, or other reason. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to close the pits or take remedial action as required by law and the rules of the Commission, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(2) **Surety amount and type.** The Commission shall establish the amount of surety in the order for the authority to construct, enlarge, or operate a commercial pit. The amount of surety shall be based on factors such as dimensions of the pit and costs of hauling, closure, reclamation, and monitoring. The amount may be subject to change for good cause. Upon approved closure of a pit, the Manager of Pollution Abatement may administratively reduce the surety requirement to an amount which would cover the cost of monitoring the site and plugging the monitor wells. Surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable letter of credit, or other type of surety approved for the pit by order of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(3) **Posting surety before permit is issued.** An operator shall post surety with the Commission before a construction permit is issued, pursuant to (e)(1) of this Section.

(e) **Construction requirements.**

(1) **Permit required.** Prior to constructing any pit, a commercial pit operator shall obtain a permit from the Manager of Pollution Abatement. Application shall be made on Form 1014N. For use of a commercial pit without a permit, the pit operator may be fined up to \$5,000.00.

(2) **Runoff water prohibited.** No runoff water from surrounding land surfaces shall be allowed to enter a pit.

(3) **Stockpiling of topsoil.** Prior to constructing a pit, all topsoil within the top twelve inches of soil on the site shall be stockpiled for use as the final cover at the time of closure. The topsoil may be stockpiled in the outside slopes of the berms, provided it is not used for structural purposes and can be readily distinguishable from other soil materials at the time of closure. In cases where topsoil is stockpiled in the berms, it shall be shown in the as-built drawings pursuant to (e)(16) of this Section.

(4) **Monitoring by engineer.** A registered professional engineer or an engineer-in-training working under the supervision of a registered professional engineer (RPE) shall monitor the construction of any commercial pit to assure that approved design specifications and Commission rules are adhered to. A minimum of six on-site visits to the site shall be made; two pre-construction, two during construction, and two post-construction. At least the post-construction on-site visit shall be made by the RPE.

(5) **Maximum fluid depth.** Any pit shall be constructed to contain a maximum fluid or sediment depth of seven feet, with a minimum freeboard of three feet.

(6) **Maximum dimensions.** Any pit shall not be constructed to dimensions greater than that approved in the order. Furthermore, the maximum width of a pit or pit cell shall not exceed 175 feet if closure must be accomplished from one side or two adjacent sides; 350 feet if closure can be accomplished from at least two opposite sides or three adjacent sides. Pit dimensions shall be measured at the maximum allowable fluid level.

(7) **Soil liners.**

(A) Soil materials to be used in a soil liner shall undergo permeability testing before construction. Pre-construction permeability testing shall consist of laboratory permeability tests on at least two specimens of representative soil liner materials compacted in the laboratory to approximately 95 percent of the material's Standard Proctor Density (ASTM D-698).

(B) Laboratory permeability test procedures must conform to one of the methods described for fine-grained soils in the Corps of Engineers Manual EM-1110-2-1906 Appendix VII. In no case shall the pressure differential across the specimen exceed five feet of water per inch of specimen length.

(C) If permeability testing shows that addition of bentonite or other approved material is needed to assist the native soils in meeting the permeability standard, it shall be applied at a minimum rate specified by the testing or engineering firm. Any bentonite used for liner material shall not have been previously used in drilling muds.

(D) Any soil liner shall be constructed by disturbing the soil to the depth of the bottom of the liner, applying fresh water as necessary to the soil materials to achieve a moisture content wet of optimum, then recompacting it with heavy construction equipment, such as a footed roller, until the required density is achieved, pursuant to (H) of this paragraph. The liner shall be constructed in maximum six inch lifts (after compaction), with each lift being scarified before placement of the next lift.

(E) Any soil liner shall cover the bottom and interior sides of the pit entirely.

(F) Any soil liner shall be installed on a slope no steeper than 3:1 (horizontal to vertical).

(G) Any soil liner shall have a minimum thickness of 18 inches (after compaction) and shall have a maximum coefficient of permeability of 1.0×10^{-7} cm/sec.

(H) Any soil liner shall be field tested for compaction, unless a post-construction permeability test is performed pursuant to (I) of

this paragraph.

(i) A minimum of six compaction tests shall be performed on any soil liner; a minimum of four widely spaced tests in the bottom of the pit and two tests on different slopes of the pit are required, unless otherwise directed by a Conservation Division representative. Particular emphasis shall be placed on selecting locations for compaction tests where nonuniformity in soil texture or color can be observed.

(ii) Compaction tests shall be conducted in accordance with ASTM methods D-2922 or D-1556.

(iii) The soil materials of any liner shall be compacted to at least 95 percent of the Standard Proctor Density.

(I) Post-construction permeability testing shall consist of at least two laboratory permeability tests on undisturbed samples of the completed soil liner.

(i) Particular emphasis shall be placed on selecting the location(s) for permeability tests or test samples where nonuniformity in soil texture or color can be observed.

(ii) Field permeability tests shall be conducted only by the double ring infiltrometer method as described in ASTM D-3385. Permeability tests may be discontinued prior to flow stabilization upon satisfactory evidence that the permeability rate is less than 1.0×10^{-7} cm/sec.

(8) Geomembrane liners.

(A) Any geomembrane liner that is installed in a commercial pit shall have a minimum thickness of 40 mil.

(B) Any geomembrane liner used in a commercial pit shall be chemically compatible with the type of substances to be contained and shall have ultraviolet light protection.

(C) Any geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(D) Any geomembrane liner shall be continuous, although it may include welded or extruded seams, and shall cover the bottom and interior sides of the pit entirely. Sewing of seams is prohibited. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(9) Width of the crown. The crown (top) of any berm shall be a minimum of eight feet in width.

(10) Slopes. The inside slope of any exterior berm (having fluid on one side) shall not be steeper than 3:1 (horizontal to vertical) and the outside slope 2.5:1. The slopes of any interior berm (having fluid on both sides) shall not be steeper than 3:1.

(11) Earthwork compaction. All earthwork, except as noted in (7)(H)(iii) of this subsection, shall be compacted to achieve a minimum 90% Standard Proctor Density and shall be applied in lifts where some method of bonding is achieved between lifts, with each lift not to exceed eight inches prior to compaction.

(12) Pipe installation. Any pipe, tinhorn, culvert, or conduit in the berm between two adjoining pits shall be placed so that there is a minimum of 36

inches between the top of the pipe, tinfoil, culvert, or conduit and the lowest point in the top of the berm separating the pits.

(13) **Splash pad.** All pits which receive fluids directly from a vacuum truck shall have a splash pad at the point where fluids are received unless a waiver is obtained from the Manager of Pollution Abatement by showing that erosion of the liner will not occur. The pad must be constructed of materials and to the dimensions necessary to effectively prevent the liner from eroding.

(14) **Fluid level marker.** A minimum of one stationary fluid level marker shall be erected in each pit or cell. The marker shall be erected in a location within the pit or cell where it can be easily observed. The marker shall be of such design that the maximum fluid level at any time may be clearly identified. Details of the proposed marker installation shall be approved by the Manager of Pollution Abatement prior to installation. Markers shall be installed under the supervision of a registered professional engineer, licensed land surveyor, or other person approved by the Manager of Pollution Abatement prior to installation.

(15) **Monitor wells.** All commercial pits shall have a minimum of three monitor wells installed- one upgradient and two downgradient from the pit. The exact number and location of wells shall be approved by the Pollution Abatement Department prior to installation. No monitor well shall be installed more than 250 feet from the toe of the outside berm of a commercial pit, nor shall any existing water well be used as a monitor well unless approved by the Manager of Pollution Abatement. Monitor wells installed prior to the effective date of this Section may be accepted by the Manager of Pollution Abatement if it can be shown that they adequately monitor a site. All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered, and all monitor wells shall be drilled to a depth of at least ten feet below the base of the pit. All new monitor wells shall be drilled and completed by a licensed monitor well driller. If documentation is submitted to the Manager of Pollution Abatement prior to drilling the monitor wells to show that no free water will be encountered within 50 feet below the bottom of the pit, the Manager of Pollution Abatement may require that monitor wells be drilled to a lesser depth. All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(A) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when the well is being sampled.

(B) Within 30 days of installation, specific completion information, a diagram of the locations and numerical labeling for all monitor wells shall be submitted to the Manager of Pollution Abatement.

(16) **As-built drawing.** A detailed, as-built drawing of the pit(s) and monitor wells by or under the supervision of a registered professional engineer shall be submitted to the Manager of Pollution Abatement before operation of the pit(s) commences.

(17) **Liner certification.** An affidavit signed by the person who was responsible for installing the pit liner, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules, shall be submitted to the Manager of Pollution Abatement before

operation of the pit commences. Supporting documentation shall also be submitted, such as post-construction permeability or compaction test results, bentonite receipts, and geomembrane liner specifications from the manufacturer.

(18) **Pit approval.** Acceptance of fluids into a pit shall not commence until a representative of the Conservation Division has inspected and approved the pit.

(19) **Hydrologically sensitive areas.** If the proposed site is known to be located over a hydrologically sensitive area, in addition to the foregoing construction requirements, the additional requirements shall apply:

(A) The total depth of a pit shall not exceed eight feet, and the total designed fluid or sediment depth shall not exceed five feet.

(B) A soil liner having a minimum thickness of three feet and a coefficient of permeability no greater than 1.0×10^{-8} cm/sec or a minimum 60-mil geomembrane liner shall be required.

(C) The Manager of Pollution Abatement shall determine the minimum depth of all monitor wells.

(f) Operation and maintenance requirements.

(1) **Vegetative cover.** Vegetative cover shall be established on all areas of earthfill immediately after pit construction or during the first planting season if pit construction is completed out of season. The cover shall be sufficient to protect those areas from soil erosion and shall be maintained.

(2) **Fencing.** All commercial facilities shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence.

(3) **Sign.** A waterproof sign bearing the name of the operator, legal description, most current order number, and emergency phone number shall be posted within 25 feet of the entrance gate to any commercial pit and shall be readily visible.

(4) **Site security.** Dumping into a commercial pit shall occur only when there is an attendant on duty. All sites shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock shall be provided to the appropriate Field Inspector for the purpose of carrying out inspections.

(5) **Fluid level.** Drilling fluids and/or cuttings shall not be accepted into a commercial pit unless the fluid level can be maintained at an elevation no higher than the maximum level of the fluid level marker.

(6) Acceptable materials.

(A) No operator of a commercial pit shall receive any substances other than water-based drilling fluids and/or cuttings or salt contaminated soils.

(B) No operator of a pit permitted prior to July 9, 1987, shall receive fluids and/or cuttings with a chloride content greater than 3500 mg/l. No operator of a pit permitted after July 9, 1987, shall receive fluids and/or cuttings with a chloride content greater than 5000 mg/l.

(C) A sample from each incoming load shall be collected, filtered using a standard API filter press, and tested for chlorides.

(D) The date, volume, source, and chloride level of each load received shall be entered into a log book. The log book shall be available for inspection by a representative of the Conservation

Division of the Commission at all times. Log books shall be kept for a minimum of five years after closure is completed.

(7) **Pit contents.** No pit permitted prior to July 9, 1987, shall contain fluids and/or cuttings with a chloride content greater than 5,000 mg/l. No pit permitted after July 9, 1987, shall contain fluids and/or cuttings with a chloride content greater than 10,000 mg/l. The contents of each pit or pit cell shall be sampled and analyzed by the operator at least once every six months (during January and July) after operations commence. More frequent sampling may be required by the Manager of Pollution Abatement. The following procedures shall be used:

(A) The appropriate Field Inspector shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(B) Samples shall be collected and handled by the operator according to EPA-approved standards. (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September 1986, pp. 99-107.)

(C) A minimum of five samples per 50,000 bbls., or part thereof, is required for each pit or pit cell. Samples must be taken from different horizontally and vertically distributed locations in each pit or pit cell.

(D) The samples shall be combined and thoroughly mixed, then a minimum two pint composite sample taken for analysis.

(E) If requested by a representative of the Conservation Division, each composite sample shall be split and an adequate portion (approximately one pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(F) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(G) All composite samples must be analyzed for chlorides, pH and TDS by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required, as determined by the Manager of Pollution Abatement.

(H) A copy of each analysis shall be forwarded to the Pollution Abatement Department within 30 days of sampling.

(8) **Oil film.**

(A) No commercial pit shall contain an oil film covering more than one percent of the surface area of the pit.

(B) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil films be removed, or the surface area covered by the film be protected from access to birds. (See Advisory Notice in 165:10-7-3(c).)

(9) **Aesthetics.** All commercial pit sites shall be maintained so that there is no junk iron or cable, oil or chemical drums, paint cans, domestic trash, or debris on the premises.

(10) **Structural integrity.** All commercial pits shall be used, operated, and maintained at all times so as to prevent the escape of their contents. All

erosion, cracking, sloughing, settling, animal burrows, or other condition that threatens the structural stability of any earthfill shall be repaired immediately upon discovery.

(11) **Monitor wells.** Sampling of monitor wells shall begin prior to accepting any drilling fluids and/or cuttings into a new facility and within 30 days of drilling completion on existing facilities, and shall be done at least once every six months (during January and July) after operations commence until three years after closure is completed. Sampling of greater frequency of duration may be required by the Manager of Pollution Abatement. The following procedures shall be used:

(A) The appropriate Field Inspector shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(B) Samples shall be collected and handled by the operator according to EPA-approved standards. (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September 1986, pp. 99-107.)

(C) If requested by a representative of the Conservation Division, an adequate portion of each sample (approximately one pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(D) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(E) All samples must be analyzed for pH, chlorides and TDS by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required based on the operation of the facility as determined by the Manager of Pollution Abatement.

(F) A copy of each analysis and a statement as to the depth to groundwater encountered in each well, or a written statement that no water was encountered, shall be forwarded to the Pollution Abatement Department within 30 days of sampling.

(12) **Prevention of pollution.** All commercial pits shall be used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a commercial pit, sufficient measures shall be taken to stop or control the loss of materials, and reporting procedures in 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division. For a willful non-permitted discharge, the pit operator may be fined up to \$5,000.00.

(g) **Semiannual report.** The operator of any commercial pit shall submit a semiannual report on Form 1014A to the Manager of Pollution Abatement by February 1 and August 1 of each year.

(h) **Closure requirements.**

(1) **Notification.** The Manager of Pollution Abatement shall be notified in writing whenever a commercial pit becomes inactive, is abandoned, full of sediment, or operation of the pit ceases for any reason. A commercial pit may be considered to be inactive by the Commission if:

(A) The pit has been shut down by the Commission because of a violation which results in the filing of an application for an order to vacate the operator's authority.

(B) The authority to operate has been terminated by failure to comply with (j) of this Section.

(C) The operator is unable to furnish documentation to show that there has been receipt of drilling fluids and/or cuttings into the pit during the previous twelve months.

(2) **Time limit.** Closure of all commercial pits shall be commenced within 60 days and completed within one year of cessation of pit operations, pursuant to (1) of this subsection. In cases where extenuating circumstances arise, one extension of six months may be administratively approved in writing by the Manager of Pollution Abatement. Closure shall be in accordance with an approved closure plan. A progress report shall be submitted to the Manager of Pollution Abatement, every three months (during January, April, July, and October) after cessation of pit operations until closure is completed.

(3) **Restrictive covenant.** A restrictive covenant shall be filed with the County Clerk of the county in which a commercial pit is located. The document shall accurately describe the pit location and shall specifically restrict the current or future landowners of the pit site from puncturing the final cover of the pit or otherwise disturbing the site to the extent that pollution could occur.

(4) **Penalty for failure to meet closure requirements.** An operator failing to meet the closure requirements set out in this subsection may be fined up to \$1,000.00.

(i) **Additional requirements.** The requirements set forth in this Section are minimum requirements. Additional requirements may be made upon a showing of good cause that an operator has a history of complaints for failure to comply with Commission rules and regulations, the site has certain limitations, or other conditions of risk exist.

(j) **Application to existing pits.** Subsections (a), (c)(1), (d), (e), (f), (g), (h), and (i) of this Section shall apply to all commercial pits permitted or ordered prior to the adoption of this Section. All pits permitted, but yet to be constructed as of the effective date of this Section, shall be subject to all of the construction requirements under (e) of this Section.

(k) **Variances.** Except as otherwise provided in this Section, variances from provisions of this Section may be granted for good cause by order after application, notice, and hearing.

(l) **Compliance history.** In the event the Commission has evidence that an applicant for a commercial disposal pit may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the applicant should be authorized to operate such a facility.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-9-2. Commercial soil farming

(a) **Order required.** No person shall conduct commercial soil farming without an order of the Commission.

(b) **Site suitability restrictions.** Commercial soil farming shall only occur on a tract of land having all of the following characteristics [paragraphs (1) through (5) shall be determined by the appropriate Soil Conservation District or a qualified soils expert]:

(1) A maximum slope of five percent.

(2) Depth to bedrock no less than 20 inches.

(3) A soil profile containing at least twelve inches of one of the following U.S.D.A. soil textures:

(A) loam

(B) silt loam

(C) silt

(D) sandy clay loam

(E) clay loam

(F) silty clay loam

(G) sandy clay

(H) silty clay or clay

(4) No commercial soil farming operations shall be conducted on any site that is located within a 100-year flood plain.

(5) Slight salinity (defined as electrical conductivity less than 4,000 micromhos/cm) in the topsoil or upper six inches of the soil.

(6) An Exchangeable Sodium Percentage (ESP) less than 15.

(7) A water table deeper than 25 feet from the soil surface, excluding perched water tables (submit basis for this determination).

(8) A minimum distance of 100 feet from any stream designated by Oklahoma Water Quality Standards or any fresh water pond, lake, or wetland (available for viewing at the Commission's Oklahoma City or appropriate Conservation Division District Offices).

(9) The site shall not be located within three (3) miles upstream within the watershed for any lake used for public water supply.

(10) No commercial soil farming operations shall be conducted within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act), or within one mile of a public water well for which the WPA has not been delineated.

(11) No commercial soil farming operations shall be conducted within the following distances from the city limits of an incorporated municipality unless previously authorized by Commission order:

(A) Three miles if population is 20,000 or less.

(B) Five miles if population is greater than 20,000.

(c) **Application requirements.**

(1) **Who may apply.** The applicant or joint applicant for commercial soil farming shall be the owner of the land (or person having a firm option, in writing, to purchase the land) which is to be used for soil farming.

(2) **Order required.** The Commission may issue an order upon compliance with Commission Rules of Practice 165:5-7-1, 165:5-7-35, 165:5-3-1, and this Section. Subsequent to issuance of an order authorizing commercial soil farming and prior to commencing soil farming operations, the applicant is required to submit to the Conservation Division a recorded copy of a deed reflecting that the applicant owns the land which is to be used for commercial soil farming.

(3) **Required exhibits.** All exhibits intended to support an application shall be filed pursuant to 165:5-7-35. The exhibits shall include the following:

(A) A site suitability report, pursuant to (b) of this Section, provided by the appropriate Soil Conservation District or a qualified soils expert (include qualifications). The report must contain a U.S.D.A. Soil Survey map, or when Soil Survey map does not have adequate detail, a map prepared by a qualified soils expert. A legend and soil type description shall be attached.

(B) Plan of conservation management practices covering needs of storm water disposal and erosion control.

(C) A well-prepared map or diagram, drawn to scale, showing the size and configuration of the individual soil farming plots. Latitude and longitude coordinates designating the corners of the individual soil farming plots must be supplied. The map or diagram must also include filter strips, receiving pit(s), and staging area(s).

(D) A topographic map of the subject area.

(E) Initial soil analysis with a map indicating the location of soil samples.

(F) A detailed discussion of the method of application and use of filter strips and provisions for preventing runoff from the application area.

(G) A detailed description of how the receiving pit(s) and staging area(s) are to be constructed, including, but not limited to, designation of the materials to be used for construction of the receiving pit(s) and staging area(s).

(d) **Sampling requirements.**

(1) **Contact with appropriate Conservation Division District Office.** The appropriate Conservation Division District Office shall be contacted at least two business days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil.

(2) **Receiving soil.** Subsequent to the preparation of a conservation plan or site suitability report, soil samples shall be taken from the proposed soil farming plot and analyzed. Analysis shall be submitted pursuant to (c)(3) (E) of this Section. Soil sampling shall follow this procedure:

(A) If the site contains soil types from different parent material, separate areas shall be established for soil sampling and loading calculations.

(B) A sample area shall not exceed 40 acres.

(C) A minimum of 20 representative surface core samples (0-6 inches) and 20 representative subsurface core samples (18-30 inches) must be taken from each sample area. The samples shall be composited for analysis of a single surface core sample and a single subsurface core sample.

(3) **Sampling incoming loads of mud and/or cuttings.** A sample from each incoming load of mud and/or cuttings shall be collected, filtered using a standard API filter press, and tested for Total Dissolved Solids (TDS). The date, volume, source, and TDS level of each incoming load of mud and/or cuttings received shall be entered into a log book. The log book shall be available for inspection by a representative of the Conservation Division. Log books shall be kept for a minimum of five years.

(4) **Sampling of mud and/or cuttings to be soil farmed.** The mud and/or cuttings to be soil farmed shall be sampled using the following procedures:

(A) A minimum of five samples per 50,000 bbls., or part thereof, each representative of the materials to be soil farmed, is required for each pit or pit cell. Samples must be taken from different horizontally and vertically distributed locations in each pit or pit cell.

(B) The samples shall be combined and thoroughly mixed, then a minimum two pint composite sample shall be taken for TDS and percent of solids analysis, a minimum three pint composite sample taken for oil and grease analysis, and a minimum two pint composite sample taken for arsenic and chrome analysis.

(C) If requested by a representative of the Conservation Division, each composite sample for TDS and percent of solids analysis shall be split and an adequate portion (approximately one pint) properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(D) After samples have been taken for analysis from a pit or pit cell, the operator shall not allow the addition of fluids or other materials, except natural precipitation or fresh water, to decrease the viscosity of the fluid.

(e) **Analysis requirements.**

(1) **Approved laboratory.** Soil and mud and/or cuttings samples shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality.

(2) **Soil.** Parameters for analysis of soil shall include, but are not limited to pH, Total Soluble Salts (TSS) or Electrical Conductivity, and Exchangeable Sodium Percentage (ESP).

(3) **Mud and/or cuttings contents.** Parameters for analysis of mud and/or cuttings contents shall include, but are not limited to, the following: pH, TDS, Electrical Conductivity, Arsenic, Chromium and Oil and Grease. Arsenic and Chromium may be analyzed by either Nitric Acid Extraction or Acetic Acid Extraction ("Test Methods for Evaluating Solid Waste," SW846, second edition, U.S. EPA). The analysis shall specify which method of extraction was used.

(f) **Maximum application rate.**

(1) **Loading limits.**

(A) The maximum application rate (loading limit) shall be calculated by the operator using the calculations in (g) of this Section and the following soil loading standards:

(i) Total Soluble Salts: 6,000 lbs/acre (less TSS in soil).

(ii) Arsenic: 80 lbs/acre.

(iii) Chromium: 80 lbs/acre.

(iv) Oil and Grease: 40,000 lbs/acre.

(v) Total Dry Weight: 200,000 lbs/acre.

(B) Limitations in (A) of this paragraph are based upon standards set forth in the following publications:

(i) "Diagnosis and Improvement of Saline and Alkaline Soils," U.S. Agriculture Handbook, No. 60, U.S. Salinity Laboratory, Riverdale, California, 1954

(ii) "Critical Concentrations for Irrigation Water Supplies,"
Water Quality Criteria, 1972 Ecological Research Series,
EPA-R2-73-033, March, 1973

(iii) H.R. Moseley, "Summary and Analysis of API Onshore
Drilling Mud and Produced Water Environmental Studies,"
American Petroleum Institute Bulletin, No. D-19, 1983

(2) **Determination of most limiting parameter.** The maximum application rate shall be restricted by the most limiting parameter. It may require more than one application to achieve the maximum application rate while avoiding runoff. Determination of the most limiting parameter is based upon concentrations found in the 0"-6" soil profile at the soil farming site.

(3) **Records required.** Accurate records shall be kept as to when, where (which application area), and how much is applied. The operator shall make such records available at all times for inspection by a representative of the Conservation Division. Additionally, a semiannual report shall be submitted to the Manager of Pollution Abatement, pursuant to (k) of this Section.

(4) **Additional soil sampling required when sixty percent of the maximum application rate is obtained.** Additional soil sampling and analysis of a plot shall be done prior to each soil farming application when records show that 60 percent of the maximum application rate in (1) of this subsection of any parameter except total weight is reached. Requirements of (d) and (e) of this Section shall be met. Soil farming shall not be permitted on a plot if the analysis indicates that more than 95 percent of the maximum application rate of any parameter has been reached or if the ESP is greater than 15.

(g) **Calculations.** The procedures described in Appendix H of this Chapter shall be used in calculating the maximum application rate.

(h) **Operation requirements.**

(1) **Surety required.**

(A) Any operator of a commercial soil farming site shall file with the Surety Department for the Conservation Division an agreement to clean up pollution, restore the site, and/or plug monitor wells upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with the rules or take remedial action as required by law and this Section, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(B) The Commission shall establish the amount of surety in the order for the authority to operate a commercial soil farming site. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable letter of credit, or other type of surety approved by order of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(2) **Sign required.** A waterproof sign bearing the name of the operator, legal description, order number, and emergency phone number shall be posted within 25 feet of the entrance to any commercial soil farming site and shall be readily visible.

(3) Monitor wells.

(A) Any commercial soil farming operation shall be required to have a minimum of three (3) monitor wells installed- one upgradient and two (2) downgradient. The exact number and location of wells shall be established by the Pollution Abatement Department.

(B) No monitor well shall be installed more than 250 feet from a commercial soil farming operation, nor shall any existing water well be used as a monitor well, unless approved by the Manager of Pollution Abatement. Monitor wells installed prior to the effective date of this Section may be accepted by the Manager of Pollution Abatement if it can be shown that they adequately monitor a site.

(C) All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered, and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted to the Manager of Pollution Abatement prior to drilling the monitor wells to show that no free water will be encountered within a depth of 50 feet from the surface, then the Manager of Pollution Abatement may require that monitor wells be drilled to a lesser depth.

(D) All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when the well is being sampled.

(ii) Within 30 days after installation, specific completion information, a diagram of the locations of all monitor wells in relation to the soil farming site, and numerical labeling of such monitor wells shall be submitted to the Manager of Pollution Abatement.

(4) Sampling of monitor wells. Sampling of monitor wells shall begin prior to the first soil farming application and shall be done once every six months (during January and July) after operations commence until one year after the last application is made, then once every year for three years according to the following:

(A) The appropriate District Manager shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(B) Samples shall be collected and handled by the operator according to EPA-approved standards ("RCRA Groundwater Monitoring Technical Enforcement Guidance Document," EPA, OSWER-9950.1, September, 1986, pp.99-107.)

(C) If requested by a representative of the Conservation Division, an adequate portion of each sample (approximately one pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(D) All samples must be analyzed for pH, chlorides and TDS by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of

additional parameters may be required based on the operations as determined by the Manager of Pollution Abatement.

(E) A copy of each analysis and a statement as to the depth to groundwater encountered in each well, or a written statement that no water was encountered, shall be forwarded to the Pollution Abatement Department within 30 days of sampling.

(F) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(5) **Representative soil analysis.** A representative soil analysis of the active soil farming plot (or plots) shall be submitted to the Manager of Pollution Abatement with the semiannual report on Form 1014A. The analysis shall include TSS, oil and grease, ESP, arsenic and chrome.

(6) **Site Security.** Soil farming shall only occur when there is an attendant on duty. All sites shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock shall be provided to the appropriate Field Inspector for the purpose of carrying out inspections.

(i) **Conditions of operation.**

(1) **Required form.** A completed Form 1014CS shall be submitted to the Manager of Pollution Abatement for approval prior to commencement of soil farming.

(2) **Notice to Commission.** The applicant, by agreement with the Conservation Division, shall schedule the commencement of soil farming no less than 24 hours prior thereto, to allow a Commission representative to be present to witness the work.

(3) **Presence of representative.** A representative of the applicant shall be on the soil farming site at all times during application of the pit materials to the land.

(4) **Type muds to be soil farmed.** Commercial soil farming is limited to water-based type muds and/or cuttings. At the time of land application, soil farming of water-based type muds and/or cuttings with a chloride content greater than 5,000 mg/l shall be prohibited. Soil farming of mud containing asphalt based oil, or oil-based muds and/or cuttings shall be prohibited.

(5) **Weather restrictions.** Commercial soil farming shall not be done:

(A) During precipitation events.

(B) When the soil moisture content is at a level such that the soil would not readily take the addition of drilling fluids.

(C) When the ground is frozen.

(D) By spray irrigation when the wind velocity is such that even distribution of materials cannot be accomplished or the buffer zones, pursuant to (6) of this subsection, or filter strips, pursuant to (7) of this subsection, cannot be maintained.

(6) **Buffer zones:** No commercial soil farming shall be done within the following buffer zones:

(A) One hundred feet of a property line boundary.

(B) Fifty feet of any stream not designated by Oklahoma Water Quality Standards.

(C) Three hundred feet of any actively-producing water well used for domestic, irrigation or industrial purposes.

(D) One thousand three hundred feet of any public water well.

(7) **Filter strips.** No commercial soil farming shall be done on filter strips. Filter strips must have a minimum width of 100 feet, and vegetation must be maintained on filter strips.

(8) **Application rate.** The maximum application rate of drilling fluids and/or cuttings stipulated by the permit shall not be exceeded. Furthermore, the minimum required acreage within the approved soil farming plot, as designated by the permit, shall be fully utilized. Application of drilling fluids and/or cuttings outside the approved plot shall be prohibited.

(9) **Soil farming method.**

(A) Application of mud and/or cuttings shall be uniform over the soil farming plot and shall be made by injection, spray irrigation, or other method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(B) An application of more than 50,000 lbs/acre of dry weight materials or more than 500 lbs/acre of oil and grease shall be incorporated into the soil by injection, disking, or other method approved by the Commission. If the injection method is not used, incorporation must be made within a reasonable time period after completion of application, not to exceed 14 days unless extended by the Pollution Abatement Department pursuant to a written request.

(C) When the spray irrigation method is used and solids eventually accumulate on the soil surface to a one-eighth (1/8) inch depth, then the materials shall be incorporated prior to subsequent soil farming.

(D) All soil farming vehicles shall be either a single or double axle vehicle with a permanently attached tank that shall not exceed 100 barrels, and the vehicle shall be equipped so as to minimize pooling and ruts caused by tire tracks. It shall have a diffuser mechanism to spread the mud/fluids in a fan pattern. Spreader bars shall not be used. The mud/fluids shall be forced from the tank with air pressure or a mechanical pump. Gravity application is prohibited.

Transport/tanker trucks (18 wheel vehicles) shall not be used for soil farming at any time. Use of an unauthorized vehicle or equipment may result in the revocation of authority to soil farm. A fine of up to \$2,000.00 may be assessed for each violation of this paragraph.

(E) Drill cuttings shall be spread with an industrial mechanical spreader capable of broadcasting and/or fanning out the cuttings. Dozers, backhoes, motor blades or scrapers shall not be used to spread drill cuttings or drill solids during soil farming at any time. Any other equipment must be approved by the Manager of Pollution Abatement prior to commencement of operations.

(10) **Runoff or ponding prohibited.** No runoff or ponding of soil farmed materials shall be allowed during application.

(11) **Suspension of soil farming authority.** If the applicant violates the order authorizing soil farming, or this Section, soil farming shall be discontinued and the Pollution Abatement Department shall be contacted immediately. The Pollution Abatement Department may shut down the facility until the operator completes any remedial work. Soil farming may resume with the approval of the Pollution Abatement Department.

(12) **Prevention of pollution.** All commercial soil farming facilities shall be operated and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a commercial soil farming facility, sufficient measures shall be taken to stop or control the loss of materials and reporting procedures in 165:10-7-5 (c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division.

(13) **Vegetative cover.** If the vegetative cover of the area which has been soil farmed is destroyed or significantly damaged by disking, injection, or other practice associated with soil farming, the vegetative cover shall be reestablished within one year after the last soil farming application.

(14) **Fencing.** All commercial soil farming sites shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence.

(j) **Additional requirements.** The requirements set forth in this Section are minimum requirements. Additional requirements may be made upon a showing of good cause that an operator has a history of complaints for failure to comply with Commission rules, or the site has certain limitations, or other conditions of risk exist.

(k) **Semiannual report.** The operator of any commercial soil farming facility shall submit a semiannual report on Form 1014A to the Manager of Pollution Abatement by February 1 and August 1 of each year.

(l) **Prospective application to existing operations.** Subsections (d), (e), (f), (g), (h), (i), (j), (k) and (m) of this Section shall apply to all commercial soil farming operations for which an order or permit was obtained prior to the adoption of this Section. All affected operators shall have their facility in compliance with all of the noted subsections by December 31, 1988. Failure to be in compliance by that date shall result in termination of the authority to operate.

(m) **Variations.** Except as provided in this Section, variations from provisions of this Section may be granted for good cause by order after application, notice, and hearing.

(n) **Compliance history.** In the event the Commission has evidence that an applicant for a commercial soil farming operation may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the applicant should be authorized to conduct such commercial soil farming operation.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-9-3. Commercial disposal well surface facilities

(a) **Scope.** This Section shall apply to the surface facilities of any commercial disposal well. Any pit sought to be approved pursuant to this Section will require a permit. The operator of the proposed pit shall submit Form 1014 to the appropriate Conservation Division District Office for review and approval.

(b) **Notice.**

(1) **Notice of application.** Notice of the application for a permit for a pit with a capacity in excess of 50,000 barrels shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the

subject lands are located. The notice shall include the following information:

(A) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(B) The location of the proposed pit to the nearest 40 acre tract.

(C) The capacity of the proposed pit.

(D) The type of fluids to be stored in the proposed pit.

(E) The notice must also include the following language:

(i) Written protests to the relief sought must be submitted to the applicant or its representative and to the Manager of the Field Operations Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days after publication of the notice. Written protests must specify the name of the applicant, location of the proposed pit, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).

(ii) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Field Operations Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(2) **Proof of notice.** The applicant shall submit affidavit(s) of publication to the Field Operations Department to show compliance with the requirements of paragraph (b)(1) above.

(3) **Procedure.**

(A) If a written protest to the application is submitted to the Field Operations Department within fifteen (15) days after the date the notice of application is published, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.

(B) If no written protest is submitted to the Field Operations Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Field Operations Department for administrative review.

(c) No commercial disposal well pit shall be constructed in any area that floods according to the Soil Conservation Service County Soil Survey (available for viewing at the Commission's Oklahoma City Office or appropriate Conservation Division District Offices).

(d) **Construction requirements.**

(1) **Dikes.** A dike shall be constructed and maintained around any storage tank or group of tanks. The diked area shall be capable of totally containing at least one and one-half (1 1/2) times the volume held by the largest storage tank.

(2) **Leak containment.** A means for containing leaks shall be provided at all pumps and connections.

(3) **Splash pad/apron.** A splash pad/apron shall be constructed at the unloading area of any pit to the design and dimensions necessary to contain and direct all materials unloaded into the pit. If a pit is not used, an apron shall be constructed at the unloading area to the design and dimensions necessary to direct any spills into containment.

(4) **Pit specifications.** Any commercial disposal well pit shall be constructed of concrete or steel or shall be lined with a geomembrane liner. The following specifications shall be met:

(A) Any concrete pit shall be steel-reinforced and have a minimum wall thickness of six inches. A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the concrete pit.

(B) Any steel pit shall have a minimum wall thickness of three-sixteenths (3/16) inch. If a previously used steel pit is installed, it shall be free of corrosion or other damage. A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the steel pit.

(C) Any geomembrane liner shall meet these requirements:

(i) The geomembrane liner shall have a minimum thickness of 40 mils, shall be chemically compatible with the type of wastes to be contained, and shall have ultraviolet light protection.

(ii) The geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(iii) The geomembrane liner shall be continuous (may include seams) and shall cover the bottom and interior sides of the pit entirely. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(iv) A leachate collection system approved by the Manager of the Pollution Abatement Department must be installed underneath the geomembrane lined pit.

(5) **Certification of liner.** The operator of any commercial disposal well pit that is constructed with a geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner, such as geomembrane liner specifications from the manufacturer, etc., and shall make them available to a representative of the Conservation Division upon request.

(6) **Monitor wells or leachate collection system.**

(A) Any commercial disposal well pit permitted, but yet to be constructed after the effective date of this Section, shall be required to have a leachate collection system and a minimum of three monitor wells, one upgradient and two downgradient from the pit.

(B) No monitor well shall be installed more than 100 feet from a commercial disposal well pit, nor shall any existing water well be used as a monitor well, unless written approval is given by the

Manager of Pollution Abatement.

(C) All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted prior to drilling the monitor well to show that no free water will be encountered within a depth of 50 feet from the surface, the Manager of Pollution Abatement may require that monitor wells be drilled to a lesser depth.

(D) All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when a well is being sampled. A key to each well shall be made available to the appropriate District Manager or Field Inspector upon request.

(ii) Within 30 days of installation, construction details for any leachate collection system or specific completion information for all monitor wells, a diagram of their locations in relation to the pit they monitor, and the numerical labeling of such monitor wells shall be submitted to the Manager of the Underground Injection Control Department.

(e) Operation and maintenance requirements.

(1) **Sign.** A waterproof sign shall be erected and maintained within 25 feet of the entrance road to any commercial disposal well, shall be readily visible, and shall contain the name of the operator, order or permit number, legal description, and emergency phone number.

(2) **Fencing.** All commercial disposal well surface facilities that have a pit shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence.

(3) **Site maintenance.** The normal access surface of any commercial disposal well site, including the access road(s), shall be maintained in a condition that will safely and easily accommodate a passenger car during all weather conditions.

(4) **Exclusion of runoff water.** No commercial disposal well pit shall be allowed to receive runoff water.

(5) **Freeboard.** The fluid level in any concrete or steel commercial disposal well pit shall be maintained at all times at least 6 inches below the top of the pit wall, unless otherwise specified on Form 1014. Any geomembrane lined pit shall have a minimum of 24 inches freeboard at all times.

(6) **Temporary storage only.** No pit shall be used as permanent storage for salt water.

(7) Sampling of monitor wells and leachate collection systems.

(A) Sampling of monitor wells and leachate collection systems shall occur once every six months, during the months of January and July.

(B) The appropriate District Manager or field inspector for the area shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(C) Samples shall be collected, preserved, and handled by the operator according to EPA-approved standards (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September, 1986, pp. 99-107) and analyzed for pH, chlorides and Total Dissolved Solids (TDS) by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required, as determined by the Manager of Field Operations or Manager of Pollution Abatement.

(D) If requested by the District Manager, each sample shall be split and an adequate portion (approximately one pint) properly labeled and delivered upon request or otherwise provided to the appropriate Conservation Division District Office or Field Inspector. A copy of each analysis and a statement as to the depth to groundwater encountered in each well or leachate collection system, or a written statement that no water was encountered, shall be forwarded to the Manager of the Underground Injection Control Department, within 30 days of sampling.

(E) All samples delivered to the laboratory shall be accompanied by a chain of custody form. The chain of custody form and sample analyses must be submitted to the Conservation Division.

(8) **Prevention of pollution.** All commercial disposal well pits shall be used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from surface facilities of a commercial disposal well, sufficient measures shall be taken to stop or control the loss of materials and reporting procedures in 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division.

(9) **Oil film.** The operator of a saltwater disposal system shall be responsible for the protection of migratory birds. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil films, all open top tanks and pits containing fluid be kept free of hydrocarbons, or be protected from access to birds. [See Advisory Notice 165:10-7-3(c).]

(10) **Site security.** Commercial disposal well facilities must be secured at all times so as to prevent unauthorized access. If an electronic system is used to secure the facility or if fluids to be disposed in the well are transported to the facility by pipe, an automatic shut-off or alarm system must be installed to ensure that disposal operations cease if a well mechanical failure or downhole problem occurs. If an electronic system is not used to secure the facility, fluids shall be received for placement in a commercial disposal well only when there is an attendant on duty if fluids are hauled in by truck. All sites not protected by an electronic system shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock or electronic security system access code shall be provided to the appropriate Field Inspector for the purpose of carrying out inspections.

(f) **Closure requirements.**

(1) **Time limit.** Within 90 days of the cessation of operation of any commercial disposal well, all associated pits shall be emptied of all

contents and filled with soil. All monitor wells shall be plugged with bentonite or cement, unless exempt in writing by the District Manager or Manager of Field Operations. The site shall be revegetated within 180 days.

(2) **Geomembrane-lined pits.** When closing any commercial disposal well pit with a geomembrane liner, extreme care shall be taken to preserve the integrity of the liner. All free liquids shall be removed or chemically solidified. A geomembrane cap shall be placed over the top of any remaining contents to completely encapsulate them. Any geomembrane cap shall have a minimum thickness of twelve mils and shall be chemically compatible with the type of substances to be encapsulated. Burial, pursuant to (3) of this subsection, shall follow.

(3) **Burial.** If any concrete, steel, geomembrane, or other materials associated with a commercial disposal well site are to be left on-site, they shall be buried under a minimum soil cover of three feet, pursuant to 165:10-3-17.

(g) **Prospective application to existing facilities.** All provisions of this Section except (4) and (5) of subsection (d) shall apply to all existing commercial disposal well pits which are, or have been, in operation prior to the effective date of this Section. Operators shall have 180 days from the effective date of this Section in which to bring their facilities into compliance with the applicable provisions of this Section. Failure to comply with any applicable provision may result in revocation of the authority to operate.

(h) **Variiances.** A variance from the time requirements of (e)(7) or (f)(1) of this Section may be granted by the District Manager or Manager of Field Operations for justifiable cause. A written request and supporting documentation is required. The District Manager or Manager of Field Operations shall respond in writing within five business days, either approving or disapproving the request.

[Source: Added at 11 Ok Reg 3691, eff 7-11-94; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

165:10-9-4. Commercial recycling facilities

(a) **Scope.** This Section shall cover the permitting, construction, operation, and closure requirements for commercial recycling activities that come within this Section. Commercial recycling operations are authorized by approval of a permit application and issuance of a Commission order granting authority to operate, and a construction permit. Stationary commercial recycling facilities and temporary commercial recycling operations recycle materials defined as "deleterious substances" in OAC 165:10-1-2. Such substances must undergo at least one treatment process and must be recycled into a marketable product for resale or possess some beneficial properties and uses. This does not include the reuse of drilling mud (plug mud) which was previously utilized in drilling or plugging operations. This Section does not cover hydrocarbon recycling/reclaiming facilities (see OAC 165:10-8-1 through 165:10-8-11). This Section applies to stationary commercial recycling facilities and temporary commercial recycling operations. Applicants shall comply with OAC 165:5-7-1, OAC 165:5-7-35, OAC 165:5-3-1, and this Section.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) **"Partially treated waste"** means a deleterious substance that has been treated or processed with the intent of being recycled, but which has not

been determined to meet the environmental and engineering standards for a recyclable product established in the approved permit or order issued pursuant to this Section.

(2) "**Recyclable product**" means a reusable material that has been created from the treatment and/or processing of deleterious substances from recycling operations as authorized by the approved permit and Commission order, and that meets the environmental and engineering standards established in the permit and order for the intended use. A recyclable product is not a deleterious substance(s), but may become a deleterious substance(s) if it is abandoned or disposed of rather than recycled as authorized by the permit or order.

(3) "**Stationary commercial recycling facility**" means a facility whose operator receives compensation from others for recycling deleterious substances, with the primary business purpose of the facility being to provide such services for compensation in a fixed location that recycles solid or liquid deleterious substances.

(4) "**Temporary commercial recycling operation**" means an operation whose operator receives compensation from others for the recycling of deleterious substances that occurs at a permitted well site, drilling pad, production pad, tank battery pad, access road, or other approved location so long as the recycling operator has surface owner permission for the recycling operation. Temporary commercial recycling operations at such locations shall not exceed a time period of 120 days, and such operations utilize equipment that is transported from one location to another, at which locations all materials are stored in authorized pits, storage cells, containments, and/or tanks.

(c) **Stationary commercial recycling facilities.** This subsection addresses the approval, surety, construction, operation, and closure of stationary commercial recycling facilities.

(1) **Permit application.**

(A) **Who may apply.** The applicant for a permit for a facility shall be the owner of the land or person having a written firm option to purchase the land at the time the permit application is filed with the Pollution Abatement Department on which the proposed facility is to be located.

(B) **Permit application approval.** Prior to any construction or use of a facility, applicants must have approval for their permit. Approval may be granted in the form of a letter from the Pollution Abatement Department after review of the permit application. Permits for facilities shall be issued for a term of not more than five years.

(C) **Administrative review.** Applications shall contain required information and any additional information requested for review by the Pollution Abatement Department. The Pollution Abatement Department shall not administratively approve a permit application unless the Department has determined that the application is administratively complete. If the Pollution Abatement Department determines that an application is incomplete, the Department shall notify the applicant in writing and shall describe the specific information required to complete the application. Subsequent to issuance of a permit and order granting authority to operate a

facility and prior to commencing construction of such facility, the applicant is required to submit to the Department a recorded copy of a deed reflecting that the applicant owns the land which is to be used for the facility.

(2) **Required information.** Applicants are required to submit information to the Pollution Abatement Department which shall include, but not be limited to, the following:

- (A) Applicant's name.
- (B) Physical office address and, if different, mailing address.
- (C) Legal description of proposed facility.
- (D) Name, telephone number and email address of contact person.
- (E) A lithologic log of test borings identifying the subsurface materials encountered and the depth at which groundwater was encountered. No facility shall be constructed unless it can be shown that there will be a minimum of 25 feet between the base of the facility and the groundwater level. To ascertain this and to demonstrate the subsurface profile of the site, a minimum of three test borings (the exact number of locations to be determined by the Pollution Abatement Department) shall be drilled to a minimum depth of 25 feet below the proposed base of the facility and into the first free water encountered. Perched water tables are not considered for the purposes of this subparagraph. Test borings need not extend deeper than 50 feet below the base of the facility if free water has not been encountered before that depth. All boreholes converted to monitor wells shall conform to (6) of this subsection. All boreholes not converted to monitor wells shall be plugged from top to bottom with bentonite, cement, and/or other method approved by the Pollution Abatement Department within 30 days of drilling completion.
- (F) A topographic map of the proposed facility site.
- (G) The appropriate Soil Conservation Service (SCS) soil survey aerial photo and legend.
- (H) A detailed drawing of the proposed facility, with complete construction plans, which shall include, but not be limited to, mixing areas, staging areas and storm water retention structures.
- (I) For areas where deleterious substances are to be placed outside of pits or other unlined areas, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water.
- (J) A detailed drawing of all pits to be constructed, showing the bottom, sides, and dikes, reflecting the dimensions of each pit.
- (K) A plan to control and manage storm water runoff and to retain incoming deleterious substances during and after precipitation events, including the locations and dimensions of all berms, dikes and/or storage basins that will collect storm water from the facility.
- (L) A plan for the installation and location of monitoring wells at the facility.
- (M) A brief description of the recycling process, which shall also include the following:
 - (i) Description of the types of deleterious substances that will be recycled.

- (ii) Estimated maximum potential daily volume capable of being recycled.
 - (iii) Description of any chemicals and/or processes where harmful byproducts could potentially be yielded.
 - (iv) Description of any material to be used as aggregates in the recycling process, and the source of aggregates.
- (N) A brief description of the planned end use of a recyclable product, which shall also include the following:
- (i) Description of the end use of the product.
 - (ii) Plan for any chemical and engineering testing protocol to insure a quality recycled product.
 - (iii) Description of any chemicals and/or processes used in the recycling process where harmful byproducts could potentially be yielded.
- (O) A plan for closure of the facility which shall specifically state how all aspects of closure shall be accomplished, including volume and fate of all deleterious solids and liquids, earthwork to close the facility (including placement of stockpiled topsoil), and revegetation of the site. The plan shall include, but not be limited to, the following:
- (i) An itemization of projected hauling, closure, reclamation, maintenance, and monitoring costs, and
 - (ii) A plan for post-closure maintenance and monitoring which shall address maintenance of the site as well as monitoring and plugging of wells. Exemption from the plugging of monitor wells may be obtained upon written request and approval of the Manager of the Pollution Abatement Department.
- (P) A plan for operation which shall address the method(s) by which excess water will be disposed.
- (Q) The Pollution Abatement Department may require the applicant for a permit to provide the Commission with engineering, geological, or other information which the Department deems necessary to show that the approval of the permit application and resulting commercial recycling operations will not result in the waste of oil, gas, or water resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(3) Site limitations.

- (A) No facility shall be constructed or used unless an investigation of the soils, topography, geology, and hydrology conclusively shows that storage of deleterious substances and the recycling of such substances at the site will not be harmful to groundwater, surface water, soils, plants, or animals in the surrounding area.
- (B) No facility shall be constructed or used on or in an abandoned mine, strip pit, quarry, canyon, or streambed.
- (C) No facility shall be constructed or used on any site that is located within a 100-year flood plain.
- (D) No facility shall be constructed or used within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act), or within one mile of a public water well for which the WPA has not

been delineated.

(E) Pits shall not be constructed or used at facilities unless it can be shown that there will be a minimum of 25 feet between the base of the pit(s) and the groundwater level. To ascertain this and to demonstrate the subsurface profile of the site, a minimum of three test borings (the exact number of locations to be determined by the Pollution Abatement Department) shall be drilled to a minimum depth of 25 feet below the proposed base(s) of the pit(s) and into the first free water encountered. Perched water tables are not considered for the purposes of this subparagraph. Test borings need not extend deeper than 50 feet below the base(s) of the pit(s) if free water has not been encountered before that depth. All boreholes converted to monitor wells shall conform to (6) of this subsection. All boreholes not converted to monitor wells shall be plugged from top to bottom with bentonite, cement, and/or other method approved by the Pollution Abatement Department within 30 days of drilling completion.

(F) No facility shall be constructed or used within the following distances from the city limits of an incorporated municipality unless previously authorized by Commission order:

(i) Three miles if population is 20,000 or less.

(ii) Five miles if population is greater than 20,000.

(4) Surety requirements.

(A) **Agreement with Commission.** Any operator of a facility shall file with the Surety Department for the Conservation Division an agreement to properly close and reclaim the site in accordance with approved closure and reclamation procedures upon termination of recycling operations due to abandonment, shutdown, full pits, or other reason. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to close the facility or take remedial action as required by law and the rules of the Commission, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(B) **Surety amount and type.** The Commission shall establish the amount of surety in the permit approval letter and Commission order for the facility. The amount of surety shall be based on factors such as dimensions of the facility and costs of closure, reclamation, monitoring, plugging of monitor wells, any pit closure, volume of deleterious substances stored on site, final disposal of deleterious substances, remediation, earth work, revegetation, etc. The amount may be subject to change for good cause. Upon approved closure of a facility, the Manager of Pollution Abatement may administratively reduce the surety requirement to an amount which would cover the cost of monitoring the site and plugging the monitor wells. Surety shall be maintained for as long as monitoring is required. The type of surety shall be a cashier's check, corporate surety bond, certificate of deposit, or irrevocable letter of credit. Any type of surety that expires shall be renewed prior to 90 days before the expiration date.

(C) **Posting surety before permit issues.** An operator shall post surety with the Commission on forms provided by the Surety Department before a construction permit (Form 1014CR) is issued, pursuant to (c)(5) of this Section.

(5) **Construction requirements.**

(A) **Construction permit required.** Prior to constructing any facility, the facility operator shall obtain a permit from the Pollution Abatement Department. Application shall be made on Form 1014CR.

(B) **Runoff water prohibited.** No runoff water from surrounding land surfaces shall be allowed to enter a facility.

(C) **Pit construction.** All pits located within the facility shall adhere to construction requirements in OAC 165:10-7-16(c), OAC 165:10-7-16(f)(5), or OAC 165:10-7-33(e), in addition to the following:

(i) All pits utilized in a facility shall have a minimum freeboard of three feet.

(ii) Any pit utilized in a facility shall not be constructed to dimensions greater than that approved in the permit and order and in the application for a permit to use an earthen pit (Form 1014). Pit dimensions shall be measured at the maximum allowable fluid level.

(iii) Any pit utilized in a facility must be constructed of concrete or contain a geomembrane liner.

(I) If a pit is constructed of concrete, a leachate collection system shall be installed under each pit.

(II) Concrete pits must be steel reinforced and have a minimum wall and base thickness of six inches.

(III) If a geomembrane liner is used, the minimum thickness shall be 40 mil.

(IV) Any geomembrane liner used in such pits shall be chemically compatible with the type of substances to be contained in the pit and shall have ultraviolet light protection.

(V) Any geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(VI) Any geomembrane liner shall be continuous, although it may include welded or extruded seams, and the liner must cover the bottom and interior sides of the pit entirely. Sewing of seams is prohibited. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(VII) Any pipe, tinhorn, culvert, or conduit in the berm between two adjoining pits shall be placed so that there is a minimum of 36 inches between the top of the pipe, tinhorn, culvert, or conduit and the lowest point in the top of the berm separating the pits.

(VIII) All pits utilized within facilities which receive deleterious substances directly from a truck shall have a splash pad at the point where fluids and semi solids are received. The pad must be constructed of materials and to the dimensions necessary to effectively prevent the liner from eroding and to not cause runoff of deleterious substances.

(6) Monitor wells.

(A) Monitor wells must be installed in conjunction with every facility as required by the Pollution Abatement Department.

(B) All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted prior to drilling the monitor well to show that no free water will be encountered within a depth of 50 feet from the surface, the Manager of Pollution Abatement may require that monitor wells be drilled to a lesser depth.

(C) When pits are utilized in a facility the exact number and location of monitor wells shall be approved by the Pollution Abatement Department prior to installation. No monitor well shall be installed more than 250 feet from the toe of the outside berm of a pit, nor shall any existing water well be used as a monitor well unless approved by the Pollution Abatement Department. Monitor wells installed prior to the effective date of this Section may be accepted by the Manager of the Pollution Abatement Department if it can be shown that they adequately monitor a site. All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered, and all monitor wells shall be drilled to a depth of at least ten feet below the base of any pit. All new monitor wells shall be drilled and completed by a licensed monitor well driller. If documentation is submitted to the Manager of the Pollution Abatement Department prior to drilling the monitor wells to show that no free water will be encountered within 50 feet below the base of any pit, the Manager of the Pollution Abatement Department may require that monitor wells be drilled to a lesser depth.

(D) All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when the well is being sampled.

(ii) Within 30 days of installation, specific completion information, a diagram of the locations and numerical labeling for all monitor wells shall be submitted to the Pollution Abatement Department.

(7) Leachate collection system. A facility operator may elect to install a leachate collection system in lieu of monitor wells if such system will adequately detect any leak from a pit. The plan for the leachate collection system must be approved by the Pollution Abatement Department prior to

installation of the leachate collection system.

(8) **Hydrologically sensitive areas.** If the proposed facility is known to be located over a hydrologically sensitive area, in addition to the foregoing construction requirements, the following additional requirements shall apply:

(A) For all pits utilized within a facility, in addition to monitoring wells, a leachate collection system shall be installed for each pit.

(B) A minimum 60-mil geomembrane liner shall be required for each pit.

(C) The Manager of the Pollution Abatement Department shall determine the minimum depth of all monitor wells.

(9) **Facility approval.** Acceptance of materials by a facility shall not commence until a representative of the Conservation Division has inspected and approved the facility.

(10) **Operation and maintenance requirements.**

(A) **Vegetative cover.** Vegetative cover shall be established on all areas of earthfill immediately after any pit construction or during the first planting season if pit construction is completed out of season. The cover shall be sufficient to protect those areas from soil erosion and shall be maintained.

(B) **Fencing.** All facilities shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence.

(C) **Sign.** A waterproof sign bearing the name of the facility operator, legal description, most current permit and order number, and emergency phone number shall be posted within 25 feet of the entrance gate to any facility and the sign shall be readily visible.

(D) **Site security.** Only acceptable materials shall be received by a facility. All facilities shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock shall be provided to the Pollution Abatement Department for the purpose of carrying out inspections.

(E) **Fluid level.** Deleterious substances shall not be accepted into any pit unless the fluid level can be maintained at an elevation no higher than the maximum level of the fluid level marker.

(F) **Sampling.** The contents of each pit, cell or surface storage area at a facility shall be sampled and analyzed by the operator at least once every six months (during January and July) after operations commence. More frequent sampling may be required by the Pollution Abatement Department. The following procedures shall be used:

(i) The Pollution Abatement Department shall be notified at least 48 hours in advance of sampling to allow a representative an opportunity to witness the sampling.

(ii) Samples shall be collected and handled by the operator according to procedures and protocol detailed in the submitted permit application and approved by the Pollution Abatement Department.

(iii) If requested by a representative of the Pollution Abatement Department, each composite sample shall be split and a sufficient portion (approximately one pint) shall

be properly labeled and delivered or otherwise provided to the Pollution Abatement Department.

(iv) All samples delivered to the laboratory shall be accompanied by a chain of custody form.

(v) All samples must be analyzed by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required, as determined by the Pollution Abatement Department.

(vi) A copy of each analysis and the chain of custody form shall be forwarded to the Pollution Abatement Department within 30 days of sampling.

(G) Oil film.

(i) No pit utilized in a facility shall contain an oil film covering more than one percent of the surface area of the pit.

(ii) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil films be removed, or the surface area of any pit be protected from access to birds. [See Advisory Notice in OAC 165:10-7-3(c)].

(H) Aesthetics. All facilities shall be maintained so that there is no junk iron or cable, oil or chemical drums, paint cans, domestic trash, or debris on the premises.

(I) Structural integrity. All pits utilized in facilities shall be used, operated, and maintained at all times so as to prevent the escape of their contents. All erosion, cracking, sloughing, settling, animal burrows, or other condition that threatens the structural stability of any earth fill shall be repaired immediately upon discovery.

(11) Monitor well and leachate collection system sampling. Sampling of monitor wells or leachate collection systems shall begin prior to accepting any deleterious substances into a new facility and within 30 days of completing the drilling of monitor wells or installation of leachate collection systems on existing facilities, and sampling shall be done at least once every six months (during January and July) after operations commence until three years after closure is completed. Sampling of greater frequency or duration may be required by the Pollution Abatement Department. The following procedures shall be used:

(A) The Pollution Abatement Department shall be notified at least 48 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(B) Samples shall be collected and handled by the operator according to EPA-approved standards. (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September 1986, pp. 99-107.)

(C) If requested by a representative of the Pollution Abatement Department, a sufficient portion of each sample (approximately one pint) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office.

(D) All samples delivered to the laboratory shall be accompanied by a chain of custody form.

(E) All samples must be analyzed for pH, TDS, TPH and chlorides by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required based on the operation of the facility as determined by the Pollution Abatement Department.

(F) A copy of each analysis and a statement as to the depth to groundwater encountered in each well, or a written statement that no water was encountered in a monitoring well or leachate collection system, shall be forwarded to the Pollution Abatement Department within 30 days of sampling.

(12) **Record keeping requirements.** The date, volume, source (generator, well name, API number, and legal description), and type of material shall be entered into a log book. The log book and supporting documentation shall be available for inspection by a representative of the Conservation Division of the Commission at all times. Log books and supporting documentation shall be kept for a minimum of five years after treatment is completed.

(13) **Prevention of pollution.** All facilities shall be used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge at or from a facility, the facility can be shut down until completion of cleanup operations. Sufficient measures shall be taken to stop or control the loss of materials, and reporting procedures in 165:10-7-5(c) shall be followed.

(14) **Semiannual report.** The operator of any facility shall submit a report on Form 1014A to the Pollution Abatement Department by February 1 and August 1 of each year.

(15) **Closure requirements.**

(A) **Notification.** The Manager of the Pollution Abatement Department shall be notified in writing whenever a facility becomes inactive, is abandoned, or operations cease for any reason. A facility may be considered inactive if:

- (i) The facility has been shut down by the Commission because of a violation.
- (ii) The operator is unable to furnish documentation to show that there has been receipt of deleterious substances to be recycled at the facility during the previous twelve months.
- (iii) The authority to operate the facility has been terminated by failure to comply with (c)(17) of this Section.

(B) **Plugging of monitor wells.** Monitor wells shall be plugged in accordance with Oklahoma Water Resources Board rules.

(C) **Time limit.** Closure of all facilities shall be commenced within 60 days and completed within one year of cessation of operations, pursuant to (A) of this paragraph. In cases where extenuating circumstances arise, one extension of six months may be administratively approved in writing by the Pollution Abatement Department. Closure shall be in accordance with an approved closure plan. A progress report shall be submitted to the Pollution Abatement Department at the end of each calendar month after

cessation of operations until closure is completed.

(D) **Restrictive covenant.** The Pollution Abatement Department may require a restrictive covenant to be filed with the County Clerk of the county in which a facility is located. The document shall accurately describe the facility location and shall specifically restrict the current or future landowners of the site from puncturing the final cover of any pit utilized in a facility or otherwise disturbing the site to the extent that pollution could occur.

(16) **Additional requirements.** The requirements set forth in this subsection are minimum requirements. Additional requirements may be made upon a showing of good cause that an operator has a history of complaints for failure to comply with Commission rules and regulations, the site has certain limitations, or other conditions of risk exist.

(17) **Application to existing facilities.** Operators of all types of commercial recycling facilities permitted or ordered prior to the effective date of this Section must either comply with subsections (a), (c)(4), (c)(5)(B), (c)(5)(C)(iii)(VII), (c)(5)(C)(iii)(VIII), (c)(6), (c)(7), (c)(10), (c)(14), (c)(15), (c)(16) and (c)(19) of this Section or close such facilities within one (1) year of the effective date of this Section. All facilities permitted, but yet to be constructed as of the effective date of this Section, shall also be subject to all of the construction requirements in (c)(5) of this Section.

(18) **Variances.** Except as otherwise provided in this subsection, variances from provisions of this subsection may be granted for good cause by order after application, notice, and hearing.

(19) **Compliance history.** In the event the Commission has evidence that an applicant for a facility may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing to vacate the authority to operate.

(d) **Temporary commercial recycling operations.** This subsection addresses the approval, construction, operation and closure for temporary commercial recycling operations.

(1) **Permit application.**

(A) **Who may apply.** The applicant for a permit for an operation shall be the owner of the recycling process.

(B) **Permit application approval.** Prior to any operations, applicants must have approval for their permit. Approval may be granted by Commission order or in the form of a letter from the Pollution Abatement Department after review of the permit application. Orders and permits for operations shall be issued for terms of not more than five years.

(C) **Administrative review.** Applications shall contain required information and any additional information requested for review by the Pollution Abatement Department. The Pollution Abatement Department shall not administratively approve a permit unless the Department has determined that the application is administratively complete. If the Pollution Abatement Department determines that an application is incomplete, the Manager of the Department shall notify the applicant in writing and shall describe the specific information required to complete the application.

(2) **Required information.** Applicants are required to submit information to the Pollution Abatement Department which shall include, but not be limited, to the following:

- (A) Applicant's name.
- (B) Physical office address and, if different, mailing address.
- (C) Legal description of the proposed area of operation.
- (D) Name, telephone number and email address of contact person.
- (E) A drawing of a proposed site, which shall include, but not be limited to, mixing areas, location of any pits, staging areas and storm water retention structures.
- (F) A brief description of the recycling process, which shall also include the following:
 - (i) Description of the types of deleterious substances that will be recycled.
 - (ii) Estimated maximum potential daily volume capable of being recycled.
 - (iii) Description of any chemicals and/or processes where harmful byproducts could potentially be yielded.
 - (iv) Description of any material to be used as aggregates in the recycling process, and the source of aggregates.
- (G) A brief description of the planned end use of a recyclable product, which shall also include the following:
 - (i) Description of the end use of the product.
 - (ii) Plan for any chemical and engineering testing protocol to insure a quality recycled product.
 - (iii) Description of any chemicals and/or processes used in the recycling process where harmful byproducts could potentially be yielded.
- (H) A plan which shall address the method(s) by which excess water will be disposed.
- (I) A plan for closure of a site which shall address the following:
 - (i) Removal and/or disposal of aggregate, waste, partially treated waste and/or unused recycled product.
 - (ii) Closure and removal of all storage areas, cells, pits, tanks, equipment and other debris used in the recycling process.
- (J) The Pollution Abatement Department may require the applicant for a permit or order to provide the Commission with engineering, geological, environmental or other information which the Department deems necessary to show that the approval of the permit application or order and resulting commercial recycling operations will not result in the waste of oil, gas, or water resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(3) **Site limitations.**

- (A) No operations shall be conducted or used unless an investigation of the soils, topography, geology, and hydrology conclusively shows that storage of deleterious substances and the recycling of such substances at the site will not be harmful to groundwater, surface water, soils, plants, or animals in the surrounding area.

(B) No operations can be conducted on or in an abandoned mine, strip pit, quarry, canyon, or streambed.

(C) No operations can be conducted on any site that is located within a 100-year flood plain.

(D) No operations shall be conducted within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act), or within one mile of a public water well for which the WPA has not been delineated.

(4) Surety requirements.

(A) **Agreement with Commission.** An operator shall file with the Surety Department for the Conservation Division an agreement to properly close and reclaim the site in accordance with approved closure and reclamation procedures upon termination of recycling operations due to abandonment, shutdown, full pits, or other reason. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to close a site or take remedial action as required by law and the rules of the Commission, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(B) **Surety amount and type.** The Commission shall establish the amount of surety in the permit approval letter or order for the site. The amount of surety shall be based on factors such as dimensions of the site and costs of closure, reclamation, monitoring, plugging of monitor wells, any pit closure, volume of deleterious substances stored on site, final disposal of deleterious substances, remediation, earth work, revegetation, etc. The amount may be subject to change for good cause. Upon approved closure of a site, the Manager of the Pollution Abatement Department may administratively reduce the surety requirement to an amount which would cover the cost of monitoring the site and plugging the monitor wells. Surety shall be maintained for as long as monitoring is required. The type of surety shall be a cashier's check, corporate surety bond, certificate of deposit, or irrevocable letter of credit. Any type of surety that expires shall be renewed prior to 90 days before the expiration date.

(C) **Posting surety before construction permit is issued.** An operator shall post surety with the Commission on forms provided by the Surety Department before a construction permit (Form 1014CR) is issued, pursuant to (d)(5) of this subsection.

(5) Construction requirements.

(A) **Permit required.** Prior to construction of any site, the operator shall obtain a construction permit from the Pollution Abatement Department. Application shall be made on Form 1014CR.

(B) **Runoff water prohibited.** No runoff water from surrounding land surfaces shall be allowed to enter the site during operations.

(6) Operation and maintenance requirements.

(A) **Fencing.** All operations shall be completely enclosed by a fence at least four feet in height. No livestock shall be allowed inside the fence while operations are occurring.

(B) **Sign.** A waterproof sign bearing the name of the operator, legal description, most current permit or order number, and emergency phone number shall be posted within 25 feet of the entrance gate while any aspect of operations are being conducted and the sign shall be readily visible.

(C) **Site security.** Only acceptable materials shall be received by an operation. All sites shall be secured by a locked gate when an attendant is not on duty. A key or combination to the lock shall be provided to the Pollution Abatement Department for the purpose of carrying out inspections.

(D) **Fluid level.** Deleterious substances shall not be accepted into any pit unless the appropriate freeboard can be maintained.

(E) **Oil film.**

(i) No pit utilized in operations shall contain an oil film covering more than one percent of the surface area of the pit.

(ii) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil films be removed, or the surface area of any pit be protected from access to birds. [See Advisory Notice in OAC 165:10-7-3(c)].

(F) **Aesthetics.** All operation sites shall be maintained so that there is no junk iron or cable, oil or chemical drums, paint cans, domestic trash, or debris on the premises.

(G) **Structural integrity.** All pits, storage areas, and tanks utilized during operations shall be used, operated, and maintained at all times so as to prevent the escape of their contents. All erosion, cracking, sloughing, settling, animal burrows, or other condition that threatens the structural stability of any earth fill shall be repaired immediately upon discovery.

(7) **Record keeping requirements.** The date, volume, source (generator, well name, API number, and legal description), and type of material shall be entered into a log book. The log book and supporting documentation shall be available for inspection by a representative of the Conservation Division of the Commission at all times. Log books and supporting documentation shall be kept for a minimum of three years after treatment is completed.

(8) **Prevention of pollution.** All sites shall be used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge at or from a site, the site can be shut down until completion of cleanup operations. Sufficient measures shall be taken to stop or control the loss of materials, and reporting procedures in 165:10-7-5(c) shall be followed.

(9) **Semiannual report.** The operator of any site shall submit a report on Form 1014A to the Pollution Abatement Department by February 1 and August 1 of each year.

(10) **Closure requirements.** The Manager of the Pollution Abatement Department shall be notified in writing whenever a site becomes inactive, is abandoned, or operations cease for any reason. A site may be considered to be inactive if:

(A) The operation has been shut down by the Commission because of a violation.

(B) The operator is unable to furnish documentation to show that there has been receipt of deleterious substances to be recycled at any site during the previous twelve months.

(C) The authority to operate the site has been terminated by failure to comply with (d)(12) of this Section.

(11) **Additional requirements.** The requirements set forth in this subsection are minimum requirements. Additional requirements may be made upon a showing of good cause that an operator has a history of complaints for failure to comply with Commission rules and regulations, the site has certain limitations, or other conditions of risk exist.

(12) **Application to existing operations.** Operators of facilities permitted or ordered prior to the effective date of this Section must either comply with (a), (d)(4), (d)(6), (d)(9), (d)(10), (d)(11), and (d)(14), of this Section or close such facilities within one (1) year of the effective date of this Section. All sites permitted, but yet to be constructed as of the effective date of this Section, shall also be subject to all of the construction requirements in (d)(5) of this subsection.

(13) **Variances.** Except as otherwise provided in this subsection, variances from provisions of this subsection may be granted for good cause by order after application, notice, and hearing.

(14) **Compliance history.** In the event the Commission has evidence that an applicant for operations may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing to vacate the authority to operate.

[Source: Added at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 1-1-20]

SUBCHAPTER 10. BROWNFIELD PROGRAM

165:10-10-1. 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 Brownfield Program implemented under Okla. Stat. Tit. 27A §§1-3-101(E)(1)(j), 1-3-101 (E)(2) and 1-3-101 (E)(5); Okla. Stat. Tit. 17 §§52(A)(1)(j), 52(A)(2) and 52(A)(5) and Okla. Stat. Tit. 52 §§139(B)(1)(j), 139(B)(2) and 139(B)(5), as authorized and funded by the federal Environmental Protection Agency (EPA).

(c) **Applicability.** Any person who qualifies under OAC 165:10-10-2 and 165:10-10-4 may participate in the Brownfield program and receive a Certificate of Completion or a Certificate of No Action Necessary upon successful completion of the Brownfield process.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-2. Brownfield defined

(a) A "Brownfield" is a real property (site) where expansion, redevelopment, normal use or reuse may be complicated by the presence or potential presence of a

deleterious substance, pollutant, or contaminant. This includes land that is contaminated by petroleum, petroleum products, and related wastes, including crude, condensate, gasoline and diesel fuel, produced water/brine, glycol and/or drilling mud. A proposed Brownfield site is a defined area; it does not need to be the entire property or lease.

(b) Sites excluded from program participation are:

- (1) Sites controlled by responsible parties (RPs);
- (2) Sites listed on the National Priorities List (NPL) maintained by EPA;
- (3) Sites subject to order or consent decree under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund;
- (4) Sites permitted under certain federal programs including the Resource Conservation and Recovery Act (RCRA), CERCLA, the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA);
- (5) Lands where closure of the remediation process has been approved by or where a closure plan concerning remediation has already been submitted to the Commission;
- (6) Sites owned or under the control of the federal government;
- (7) Portions of sites with PCB (polychlorinated biphenyls) pollution subject to remediation under TSCA;
- (8) Portions of facilities with an approved or ongoing federal Leaking Underground Storage Tank (LUST) Fund remediation; however the Oklahoma LUST fund and the Oklahoma Petroleum Storage Tank (PST) Indemnity fund are potentially available for assessing and cleaning up newly listed PST Brownfield sites in Oklahoma.

(c) Responsible party (RP) and other ineligible parties defined. A person, corporation, company, non-profit organization, or any other entity that:

- (1) Caused the pollution at the proposed Brownfield site or knew about the pollution and allowed it to occur; or
- (2) Contributed to already existing pollution at the site; or
- (3) Hindered or otherwise knowingly attempted to obstruct efforts to perform environmental assessments of or to remediate pollution caused by an RP at the site; or
- (4) Is not in compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency for any of the responsible party's actions at the site which could have led to a leak, spill, and/or other cause of the pollution in violation of agency rules, or
- (5) Has demonstrated a pattern of uncorrected noncompliance with state or federal environmental laws or rules; or
- (6) Has past operations at the site and/or at other sites that indicate a reckless disregard for the protection of human health and safety or the environment.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-3. Administration and enforcement of rules

(a) The Manager of Pollution Abatement and the Brownfield program staff shall supervise and coordinate the administration and enforcement of the rules of this Subchapter under the direction of the Director of Oil and Gas Conservation and the Commission.

(b) The primary goal of the implementation of Brownfield site assessments and remediation projects shall be the protection and/or restoration of the beneficial use

of the land, the soil and any surface or subsurface waters of the State adversely impacted or impaired by pollution from a Commission regulated Brownfield site.

(c) Site assessments and remediation projects conducted under the supervision and coordination of the Manager of Pollution Abatement and/or Pollution Abatement/UIC/Brownfield staff shall adhere to the general practices appearing in the Oil and Gas Conservation Division's Guardian Guidance document for petroleum and produced water site assessment and remediation oversight, enforcement, approval and verification including the Guidelines and Numerical Criteria for New or Historic Produced Water/Brine Spills.

(d) Applicant may request in writing, and the Manager of Pollution Abatement may grant, an administrative exception to a Commission Brownfield rule if applicant can demonstrate that:

- (1) Requirements in pertinent state laws and federal Brownfield rules and laws are still met, and
- (2) The exception will protect human health, safety and the environment and the beneficial use of the land at least as well as strict adherence to the Commission Brownfield rule.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-4. Determination of Brownfield eligibility

(a) **Applicant eligibility.** An applicant may be any non-responsible party (non-RP) including:

- (1) The legal owner in fee simple, the tenant or lessee of the property, or a person who has a written firm option to purchase or operate the property at the time the application is filed and who has the ability to implement a redevelopment proposal, if needed, once site assessment and/or remediation is complete;
- (2) Any person who acquired the ownership, operation, management, or control of the site through foreclosure or under the terms of a bona fide security interest in a mortgage or lien on, or an extension of credit for the property, or foreclosed on the property, or received an assignment or deed instead of foreclosure or some other indicia of ownership and thereby becomes the owner of the property;
- (3) An agency, non-profit organization or other entity who chooses to clean up or otherwise rehabilitate a property for the owner or tenant in order for it to be returned to productive use or become green space;
- (4) The Oklahoma Energy Resources Board (OERB), regarding sites in its surface restoration program which meet the definition of a Brownfield property appearing in OAC 165:10-10-2. There is no requirement that OERB sites be designated as Brownfield sites, or
- (5) A non-RP who wishes to restore property for a potential or known RP. If an entity that is not the RP wants to apply to the Brownfield program and is accepted and completes the process, such a site would be granted limited liability protection.

(b) **Eligibility of site.** The following conditions must be met and information provided to be considered for eligibility as a Brownfield site:

- (1) Any facility or real property where normal use, reuse, expansion or redevelopment is hindered by pollution or suspected pollution of a substance or substances caused by releases from activities regulated by the Commission may qualify as a Brownfield site.

(2) The applicant will need to provide an Applicant Eligibility form with the following information included on the form:

- (A) A physical address for the land or property;
- (B) A legal description of the land or property;
- (C) Driving directions from nearest major intersection.

(3) A site survey by a surveyor, or a site plan containing global positioning system (GPS) coordinates made under the supervision of a qualified environmental professional defining the area to be addressed must be submitted for each Brownfield site once it is accepted into the program.

(c) **Determination of eligibility.** The Commission's Brownfield staff will determine the initial eligibility for any allegedly contaminated portion of a Brownfield project. Brownfield staff will determine to the extent possible:

- (1) If any funds have already been spent on the site, and the source of any such funds;
- (2) If there are any viable responsible parties. Commission records will be checked by Commission staff for all Brownfield sites; and
- (3) Whether the current or immediate past owner and/or operator of the site caused or made the pollution worse and whether such parties took reasonable corrective steps with regard to any pollution.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-10-5. The Commission's Brownfield program process

(a) **Pre-application informational exchange.** The applicant may want to consider a pre-application conference by telephone, e-mail, mail, or in person with Brownfield staff. During the pre-application conference the applicant will be advised about what information is necessary in order for Brownfield staff to determine whether the applicant and the applicant's site are eligible for the Brownfield program.

(b) **Brownfield eligibility determination.** All applicants and properties must meet federal and state Brownfield eligibility requirements. Commission standards and practices in effect at the time the application is filed will also be considered in determining whether eligibility requirements have been satisfied.

(c) **Brownfield program application.**

(1) Applicants for the Brownfield program, except for sites submitted by Commission field inspectors, will be required to submit an Application for Brownfield Program Eligibility form, an Application for Brownfield Site Eligibility and Assessment form and any required documentation to show they are eligible.

(2) The OERB Voluntary Environmental Program has sole discretion in determining whether it is to apply to the Commission's Brownfield program regarding abandoned exploration and production (E & P) sites which have been submitted to the OERB for consideration under its program which is limited to surface restoration. The site must meet the definition of a Brownfield property in OAC 165:10-10-2.

(3) When a non-RP wants to apply to remediate a property under the Brownfield program, the applicant must certify by affidavit that it owns the property or has a current lease or easement which is given to accomplish the remediation, or if it does not, has provided legal notice to the property owner of applicant's desire to remediate the site.

(4) Applicant must notify the Brownfield staff in writing of any litigation the Applicant has knowledge of concerning the site which has concluded or is pending, and any information concerning outstanding judgments, liens, tax levies, etc. filed of record at the time the application is filed or which is filed after applicant submits its application to the Commission and prior to final Commission action regarding the site.

(5) Completed applications must be sent to the following address:
Oklahoma Corporation Commission, Oil and Gas Conservation Division,
Brownfield Program, P.O. Box 52000, Oklahoma City, OK 73152-2000.

(d) **Notification of application status.** Subsequent to acceptance of an application, Brownfield staff will issue a letter to the applicant adding the site to the Brownfield site list (requirements for this list are in 165:10-10-7). If an application is denied by Brownfield staff, staff will promptly provide applicant with a written statement of the reasons for such denial.

(e) **Site assessments and/or remediation.** Refer to 165:10-10-9.

(f) **Public participation.** Refer to 165:10-10-10 through 165:10-10-11.

(g) **Brownfield site closure.** Refer to 165:10-10-12 and 165:10-10-14.

(h) **Brownfield Certificates.** Refer to 165:10-10-13.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-6. Eligibility of site [REVOKED]

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Revoked at 33 Ok Reg 593, eff 8-25-16]

165:10-10-7. The Commission's Brownfield site list

(a) The Commission is required by federal statutes to maintain a current list of every site which has qualified as a Brownfield site, including those sites on which work has been completed. The list shall be made available to the public upon request.

(b) Each site on the Brownfield sites list will include:

- (1) Site name;
- (2) Address or legal description of the site;
- (3) Town, city, and county of the site.

(c) Brownfield staff will be responsible for maintaining and updating the list of sites that have qualified for the Commission's Brownfield Program.

(d) Brownfield staff will also be responsible for maintaining and updating a separate public record that shall include only those sites that are enrolled in and/or completed the Commission's Brownfield Program. This public record shall be made available to the public on the Commission's website. Each site on this public record will include:

- (1) Site name;
- (2) Address or legal description of the site;
- (3) Town, city, and county of the site;
- (4) Site level of progress;
- (5) Allowable use of revitalized land.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-10-8. Processing of Brownfields application [REVOKED]

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Revoked at 33 Ok Reg 593, eff 8-25-16]

165:10-10-9. Assessment and remediation of site

(a) **Qualifications.** All Brownfield assessment and remediation projects will be overseen by a qualified environmental professional, defined by EPA as someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases of deleterious substances on, at, in, or to a property, sufficient to meet the objectives and performance factors of the EPA's All Appropriate Inquiries rule (40 CFR Part 312) and ASTM E1527-05.

Qualified environmental professionals must have one of the following:

- (1) A state or tribal issued certification or license (including Professional Engineer, Professional Geologist, and PST Division of the Corporation Commission licensed Remediation Consultant) and three years of relevant full-time work experience; or
- (2) A Baccalaureate or higher degree in science or engineering, including geologists as defined in 25 O.S. § 35 and engineers as defined in 59 O.S. § 475.1 et seq., and five years of relevant full-time work experience; or
- (3) Ten years of relevant full-time work experience.
- (4) Individuals who do not meet the above requirements must work under the supervision or responsible charge of an individual who meets the requirements for an environmental professional.

(b) Assessments.

- (1) The appropriate Commission staff may conduct initial site inspections to evaluate and recommend those sites that qualify for the Brownfield program; Brownfield staff will approve inspections and assessments and list each approved site in the database.
- (2) Qualified environmental professionals will perform an assessment (Phase I and/or Phase II) of each property.
- (3) Governmental entities, quasi-governmental entities, and non-profit organizations may be eligible for a Targeted Brownfield Assessment (TBA) conducted by either the Commission or EPA.
- (4) OERB's qualified staff or contractor may perform assessments on abandoned exploration and production (E&P) sites.
- (5) Assessments of former retail petroleum storage tank sites will be overseen by and coordinated with the Commission's PST Division staff.
- (6) EPA's All Appropriate Inquiry (AAI) Rule appearing in 40 CFR Part 312 shall be complied with as per the Commission's guidance.
- (7) If during an initial investigation or Phase I or Phase II assessment pollution is discovered and immediately removed from the site, as confirmed with sample analytical results, the site may qualify for No Further Action (NFA) status.

(c) **Phase I.** Basic site and assessment information is necessary for exploration, production, and/or pipeline sites known or suspected to be contaminated by substances defined in OAC 165:10-10-2(a), and for PST sites. Initial site assessment information includes, but is not limited to:

- (1) Analyses from one or more soil and water background samples;
- (2) A certified survey or the results of a GPS survey defining the area of pollution,
- (3) The present and proposed uses of the site;
- (4) The operational history of the site and current use of areas contiguous to the site; and

(5) Detailed historical and records reviews as per AAI, which may be waived by Brownfield staff until after the basic physical environmental/pollution assessment is completed and Commission staff concludes its review of sample data pertaining to the site.

(6) A Category Index Table must be submitted for all oil and gas and pipeline sites likely or definitely polluted above action levels. The Category Index Table appears in the Commission's Guardian Guidance document, which is available on the Commission's website or by request.

(7) Sites that are determined by the Brownfield staff to need no remediation following an acceptable Phase I assessment can be issued no action necessary certification once the Brownfield staff receives appropriate documentation.

(d) **Phase II.** Phase II sites are those sites where the Phase I assessment demonstrates the need for additional assessment, action level determination, and (often) remediation guidance.

(1) Phase II oil and gas sites and pipeline (crude and refined product and produced water) sites will be overseen by the Oil and Gas Conservation Division's Brownfield staff;

(2) Phase II retail petroleum storage tank sites will be referred to the Commission's PST Division and will adhere to the Oklahoma Risk-Based Corrective Action guidelines for assessment and remediation;

(3) Necessary information generally includes but is not limited to concentrations of pollutants in the soils, surface water or groundwater at the site; the vertical and horizontal extent of pollution in the soils, surface water or groundwater at the site; a determination that risk based criteria to protect human health and the environment at and around the site are or are not being met; and recommendations on how to meet risk based criteria, including remediation as needed;

(4) Sites that are determined by the Brownfield staff to need no remediation following appropriate environmental and risk assessment can be issued no action necessary certificates once the Brownfield staff receives appropriate documentation.

(e) **Status of site when no action is necessary.**

(1) A no action necessary determination is appropriate for a site if at the conclusion of the initial inspection, TBA, Phase I or Phase II investigation, or subsequent to the immediate removal of pollution from a site, the Brownfield staff or other appropriate Commission staff finds or concurs that the site poses no significant risk to human health or safety or the environment according to the proposed use of the site.

(2) Brownfield staff will issue a no action necessary certificate when the site is restored for beneficial use and other required program elements, if any, are completed.

(f) **When pollution is likely present or is present above action levels.** If pollution is likely present or is present above action levels at a site, further assessment and remediation will adhere to one of the following regimens:

(1) The Oil and Gas Conservation Division's Guardian Guidance document and rules for petroleum and produced water site assessment and remediation oversight, enforcement, approval and verification; or

(2) The PST Division's guidance document and rules for site assessment and cleanup oversight, enforcement, approvals and verification; or

(3) For E&P sites where there is no RP, the OERB Voluntary Environmental Program may, in its sole discretion, submit to the Commission's Brownfield program those abandoned E & P sites which have qualified for the OERB's program, which is limited to surface restoration in order that such sites may be assessed and remediated by OERB in accordance with the Commission's Brownfield rules; and

(4) The Commission's Brownfield staff will act as the regulator for the Brownfield program and ensure that applicable Brownfield laws and rules are followed.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-10. Notice

(a) **Public notice.** Public notice is necessary for remediation sites (Phase II sites requiring remediation or cleanup). The applicant must provide public notice that its proposal regarding the site is ready for public review. The notice must be published one time in newspapers of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county where the lands that are the subject of the application are located. The applicant shall also submit the notice to the Brownfield staff for posting on the Commission's website. The notice must contain the:

- (1) Name and address of the location where the application and related documentation, including any proposed remediation plan, may be reviewed, in addition to the days of the week and hours during which such information may be reviewed;
- (2) Applicant's name, mailing address, telephone number, email address and contact person, as well as the Commission's mailing address and a telephone number and email address of a contact person at the Commission;
- (3) Name, address and legal description of the Brownfield site;
- (4) Purpose of the notice;
- (5) Description of the proposed cleanup, monitored natural attenuation, institutional control, and/or other remedial action being sought;
- (6) Other pertinent information required by Brownfield staff and rules;
- (7) Other information the applicant may deem relevant; and
- (8) Time period of at least thirty (30) days after the notice is published for the submission of written public comments and written requests for a public meeting regarding the site, in addition to the mailing address and e-mail address to which public comments and requests for public meetings can be sent, the name of a contact person and any facsimile numbers, if available. The notice must also provide that any written public comments and requests for a public meeting are to be sent to the Oklahoma Corporation Commission, Oil and Gas Conservation Division, Brownfield Program, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Public meeting.**

- (1) If the Commission receives a timely written request for a public meeting, if the Commission determines there is a significant degree of public interest in the site remediation proposal and the action being sought, or if the applicant chooses to have a public meeting, then the applicant must publish notice of the date, time and address of a public meeting at least thirty (30) days prior to the meeting in the manner described in paragraph (a), above, and include in the notice the information appearing in

paragraphs (a)(1) through (a) (8), above.

(2) The notice must provide for a time period of at least thirty (30) days after the notice is published for the submission of written public comments, and that verbal comments may be made at the meeting. The mailing address and e-mail address to which public comments can be sent, the name of a contact person and any facsimile numbers, if available, must also be included in the notice. The notice must also provide that any written public comments are to be sent to the Oklahoma Corporation Commission, Oil and Gas Conservation Division, Brownfield Program, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(3) The public meeting will be held in a convenient location near the proposed Brownfield site.

(c) **Publisher's affidavits.** The applicant is required to provide to the Brownfield staff the publisher's affidavits regarding the public notice for comments and/or a public meeting within twenty (20) days after the date(s) of publication;

(d) **When public notice is not required.** Applicant is not required to publish a notice regarding those sites Brownfield staff or other appropriate Commission staff find or concurs need no further action after staff's review of applicant's site assessment information or which are remediated for the applicant by a responsible party.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-11. Public meetings and public comments

(a) The format for each public meeting will be established by the Commission's Brownfield staff or its Public Information Staff, and the Commission's Brownfield staff or its Public Information Staff will moderate each public meeting;

(b) The moderator may set reasonable time limits for speakers, and the moderator may extend the time for public comment at the conclusion of the public meeting;

(c) Anyone may provide public comments or submit a written statement and data regarding the remediation proposal at any public meeting;

(d) The applicant or its representative must be available at each public meeting in order to answer questions;

(e) If the Commission receives no request for a public meeting, and the Commission deems no public meeting necessary, and no public comments are received, then the Commission will proceed with the applicable determination; and

(f) If the Commission receives public comments, the appropriate Brownfield staff will prepare a written response to such comments within sixty (60) days after the close of the comment period.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-12. Closures of Brownfield sites

(a) **Final surface remediation confirmation.**

(1) A qualified environmental professional for the applicant and/or the Brownfield, other Oil & Gas, or PST staff of the Commission, or the OERB, if such entity is involved with the site, will perform a closure survey, which may include but is not limited to visual observations and sampling the soil, surface water and/or groundwater at the site to confirm the project is completed and the property is ready for its proposed use; and

(2) The results of the closure survey, including any soil, surface water and/or groundwater sample results, must be submitted to appropriate Commission and Brownfield staff, and the appropriate regulatory program

will confirm if cleanup standards have been met.

(b) Final documentation.

(1) The applicant is required to submit all necessary documentation regarding the site to Brownfield staff.

(2) The Brownfield staff will review, as required by applicable laws and rules, the work performed on the site as reflected in the documentation filed by Applicant.

(3) The applicant shall submit to Brownfield staff recorded copies of documents confirming that any deed restrictions or other institutional controls have been filed with the appropriate authorities.

(c) Request for closure. The applicant shall request closure of the site after all reviews have been completed by applicable Commission staff members and the site is found by Commission staff to be in compliance with all the Brownfield and regulatory laws and rules.

(d) Records of sites. The Brownfield staff will maintain a public record of each site that has qualified for the Brownfield program for a period of three (3) years. After the three (3) year period has expired the records will be archived.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-13. Commission Brownfield certificates issued

(a) A "No Action Necessary" Certificate shall be issued to applicant by the Commission when the Commission has made such determination.

(b) A "Certificate of Completion" will be issued by the Commission for remediated sites after the closure survey of the site and review of the project has been approved by the Commission.

(c) The Certificates will state whether or not any continuing care of structural institutional controls, or any long term monitoring of the site, is to occur after issuance of any Certificate.

(d) All Brownfield Certificates issued by the Commission must be filed by the applicant in the office of the county clerk in the county where the Brownfield site is located. The Applicant is required to provide a copy of the Certificate reflecting that it has been recorded with the county clerk's office both to the landowner of the subject site and to the Brownfield staff within thirty (30) days after the Certificate has been filed.

(e) Applicant's submission of any false or materially misleading information to the Commission in conjunction with its application shall render voidable any of the Certificates discussed above.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-10-14. Responsible party closures (for remedial actions)

An RP that is legally responsible for the remediation of the pollution at a site is not eligible for the Commission's Brownfield Program, but can request that a standard case closed letter be issued by the appropriate Commission Department reflecting that the necessary work at the site has been completed and that the case has been closed by such Department.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 593, eff 8-25-16]

SUBCHAPTER 11. PLUGGING AND ABANDONMENT

165:10-11-1. License for pulling pipe and plugging wells

(a) No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission.

(1) The application for such license shall state:

(A) The name of the applicant.

(B) The names and addresses of all partners, chief officers, and directors.

(C) The experience of applicant.

(D) Evidence of financial responsibility of the applicant.

(E) The counties in which the applicant will operate.

(2) Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma County and in the county where the applicant's principal place of business is located. The applicant shall file proof of publication prior to the hearing or administrative approval. The notice shall include:

(A) The name of the applicant.

(B) Generally what operations the applicant intends to conduct for which applicant is financially responsible.

(C) The counties in which applicant will operate.

(3) If a written objection to the application is filed within 15 days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Field Operations who shall file a report and make recommendations to the Commission.

(b) The license shall not be transferable and may at any time be revoked by the Commission upon complaint, notice, and hearing.

(c) Any person violating this Section may be fined up to \$2,500.00. Any operation in violation of this Section shall be shut down pending compliance with this Section.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 14 Ok Reg 2198, eff 7-1-97]

165:10-11-2. Operating requirements for licensees

(a) This Section shall apply to each licensee under 165:10-11-1.

(b) If a licensee prepares the Notice of Intent to Plug (Form 1001 and/or the Plugging Report (Form 1003), then the licensee shall:

(1) Include the following on any submitted form:

(A) The name and address of the well operator if the licensee is serving as a contractor for the operator of the well.

(B) The name and address of the person or entity hiring the licensee if the licensee is serving as the contractor for any person who is not an operator of the well.

(C) That he is acting independently if the licensee either purchased the well for salvage or contracted with the landowner to plug the well in exchange for casing and/or other well equipment.

(2) Mail a copy of Form 1001 to the last known operator of the well to be plugged, as shown by the records of the Conservation Division.

(c) For purposes of this subsection, the term "plugged well" shall refer to a well for which the Conservation Division has a plugging record. A licensee shall comply

with the requirements of 165:10-1-10 and 165:10-3-1 before entering a plugged well if:

- (1) The licensee is not hired by the operator of the well to conduct the re-entry operation.
 - (2) The owner of the well is either the licensee or the surface owner of the tract on which the well was drilled.
 - (3) The Commission has not contracted with the licensee to replug the well.
- (d) A licensee shall be responsible for the plugging of a well if:
- (1) The licensee is the owner of the well or the licensee is the operator of the well.
 - (2) The licensee enters a well without having contracted with the operator or with a party other than the operator who has authority to authorize the licensee to enter the well on behalf of such party.
- (e) Any violation of this Section will subject licensee to a fine, to suspension or revocation of licensee's license issued pursuant to 165:10-11-1, and to proceedings as authorized by statute in the district court.

[Source: Amended at 14 Ok Reg 2198, eff 7-1-97]

165:10-11-3. Duty to plug and abandon

(a) **Scope.** This Section applies to:

- (1) Liability of the well owners and operator or other responsible person(s) to plug a well.
- (2) Time periods for plugging wells:
 - (A) Without casing.
 - (B) With only surface casing and cement.
 - (C) With production casing.
- (3) Wells exempted from plugging.
- (4) Notice of Temporary Exemption from Plugging granting permission to postpone plugging of a well.

(b) **Liability of owners and operators or other responsible persons(s).** Any working interest owner and operator of any oil, gas, disposal, injection, or other service well or any seismic, core, or other exploratory hole, whether cased or uncased, shall be jointly and severally liable and responsible for the plugging thereof in accordance with this Subchapter unless other responsible person(s) become liable for such plugging. "Other responsible person(s)" means person(s) exercising dominion and control over any oil, gas, disposal, injection, or other service well or any seismic, core, or other exploratory hole, whether cased or uncased, without the authority or permission of the working interest owners or operator thereof. In such instances the other responsible person(s) shall be jointly and severally liable with the owners and operator for the plugging of the well. The owner of the surface estate shall not be considered an "other responsible person" solely as a result of:

- (1) the reversion of the ownership of an abandoned wellbore and associated equipment to the surface owner, as a matter of law, unless the surface owner engages in activities that potentially compromise the integrity of the wellbore; or
- (2) the removal of abandoned surface equipment, trash and debris from the surface estate, or remediation activities regarding the surface estate.

(c) **Time period for plugging well without casing.** Each well in which neither production casing nor surface casing has been run shall be properly plugged within 72 hours after drilling or testing is completed. However, should the lack of

production and surface casing create a fire hazard or a risk of contaminating the environment or formations containing oil, gas, or known treatable water, said well shall be properly plugged within 24 hours after drilling and testing is completed. The well marker requirement described in 165:10-3-4 (e) shall be followed.

(d) **Time period for plugging well with only surface casing and cement.** Each well in which only surface casing has been run and cemented in conformance with 165:10-3-4 shall be properly plugged within 90 days after drilling or testing is completed unless the lack of production or intermediate casing creates a fire hazard or risk of contaminating the environment or formations containing oil, gas, or known treatable water, in which case or cases the well shall be plugged within 24 hours.

(e) **Time period for plugging well with production casing.** Unless exempted under provisions contained elsewhere in this Section, any well which has production casing in place shall be plugged within one year after the latter of:

- (1) Cessation of drilling if the well was not completed or tested; or
- (2) Cessation of the latter of completion or testing if the well has not produced; or
- (3) Cessation of production.

(f) **Operators failing to commence timely plugging operations.** An operator who fails to commence plugging operations as required in (c), (d), and (e) of this Section after due notice from the District Office or the appropriate field inspector may be fined up to \$1,000.00.

(g) **Wells exempted from plugging.** The following wells which have production casing in place shall be exempt from (e) of this Section:

- (1) Shut-in gas wells, for the purpose of this Section, shall be considered producing wells in operation.
- (2) Any well for which a written order of the Commission granting a specific exception to plugging is in full force and effect.
- (3) Supply wells or wells authorized by order of the Commission for injection or disposal purposes and are in compliance with the rules of the Commission.
- (4) Any well for which a temporary exemption from the plugging rules has been approved.
- (5) Any oil or gas well which is exempt from plugging pursuant to 17 O.S. § 53.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 9 Ok Reg 2295, eff 6-25-92; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 15 Ok Reg 2942, eff 3-30-98 (emergency); Amended at 16 Ok Reg 2230, eff 7-1-99; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 34 Ok Reg 921, eff 9-11-17]

165:10-11-4. Notification and witnessing of plugging

(a) **Wells without production casing.** The appropriate Conservation Division District Office shall be notified at least 12 hours prior to commencement of plugging operations and a plugging procedure agreed upon for any well without production casing. Each plugging operation may be witnessed by an authorized representative of the Conservation Division.

(b) **Wells with production casing.** A separate Notification of Intention to Plug (Form 1001) for each well with production casing shall be filed with the appropriate Conservation Division District Office at least five days prior to the commencement of plugging operations. The five day notice requirement may be reduced or waived:

- (1) If a qualified representative of the Conservation Division is available to witness the plugging operation.
- (2) At the discretion of the District Manager of the District in which the well is located or his supervisor.

(c) Expiration.

(1) **Ninety-day period.** The Notification of Intention to Plug (Form 1001) shall expire ninety days after it is filed with the appropriate Conservation Division District Office, unless plugging operations are commenced and thereafter continued with due diligence to completion.

(2) **Thirty-day extension.** A thirty day extension of the Notification of Intention to Plug may be granted providing the Conservation Division staff determines that no material change of condition has occurred, if written request for the extension is received prior to the expiration date of the original Notification of Intention to Plug. Only one extension may be granted.

(d) **Penalty.** An operator or licensed plugger plugging a well without notifying and agreeing on a plugging procedure with the District Office may be fined up to \$1,000.00 and may be required by the appropriate District Manager to reenter and replug the well.

[Source: Amended at 11 Ok Reg 3691, eff 7-11-94; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-11-5. Supervision and witnessing [REVOKED]

[Source: Amended at 9 Ok Reg 2295, eff 6-25-92; Revoked at 14 Ok Reg 2198, eff 7-1-97]

165:10-11-6. Plugging and plugging back procedures

(a) **Scope.** This Section establishes minimum standards for plugging and plugging back wells. The standards apply to:

- (1) Wells drilled for the production of oil or gas.
- (2) Wells drilled or used for disposal or enhanced recovery injection.
- (3) Wells used in subsurface gas storage units.
- (4) Monitoring wells in enhanced recovery projects or subsurface gas storage units.
- (5) Wells plugged back for:
 - (A) Oil or gas production.
 - (B) Disposal or injection.
 - (C) Conversion to a water well.
- (6) "Rat hole" or "mouse holes" used in rotary drilling of wells.
- (7) Wells used for geophysical or geological exploration.
- (8) Wells used for other service operations.

(b) Alternate plugging materials and procedures.

(1) The Manager of Field Operations, or other designated Conservation Division staff member, may approve the use of an alternate material other than cement or in combination with cement for wells listed in subsection (a), provided alternate plugging materials shall not be used to plug or plug back wells listed in subsection (a)(2), wells drilled or used for disposal or enhanced recovery injection, subsection (a)(3), wells used in subsurface gas storage units, subsection (a)(5)(B), wells plugged back for disposal or injection, and underground injection wells authorized under the Oklahoma Brine Development Act, 17 O.S. Section 500 *et seq.*

(2) The Director of Oil and Gas Conservation, in consultation with the Conservation Division's Field Operations staff and the public, shall develop specific plugging criteria for any type of alternate plugging material authorized for use instead of cement or in combination with cement. The plugging criteria for approved alternate material shall be available to the public for review and copying at the Conservation Division's offices and on the Commission's Internet website.

(3) A District Manager may approve alternate plugging procedures for the use of alternate plugging materials.

(4) A detailed description of the alternate plugging operation shall be included with the Plugging Report (Form 1003).

(5) The District Manager shall note his approval of the alternate plugging procedure on the well's Plugging Report (Form 1003).

(6) Any alternate plugging material or procedure shall conform to the minimum plugging standards relating to formations or depths set forth in the Sections below. Provided, based upon the type of alternate plugging material being utilized, the District Manager approving the alternate procedure may authorize variances to the plugging standards delineated in this Section otherwise applicable to the use of cement, where such variances are necessary to ensure an effective well plugging.

(c) Application and cross references:

(1) Subsection (o) of this Section provides for administrative approval of alternative plugging procedures if downhole problems in a wellbore prevent an operator from complying with the minimum standards established by this Section.

(2) Subsection (p) of this Section applies to plugging of "rat holes" and "mouse holes" used at the surface during rotary drilling.

(3) OAC 165:10-11-8 establishes additional procedures for identification and control of wellbores in which certain logging tools have been abandoned.

(4) OAC 165:10-7-31 establishes the minimum standards for plugging wellbores used in seismic exploration.

(5) Subsections (d) through (q) of this Section establish plugging and plug back standards for all other wellbores subject to this Section.

(d) Formations to be plugged.

(1) Except as provided in (2) of this subsection, for cased formations, if the operator plugs or plugs back a well, the operator shall plug any formation or formations in communication with a formation that:

(A) Bears H₂S;

(B) Bears oil or gas;

(C) Bears treatable water;

(D) Was used in the wellbore for injection as part of a saltwater disposal well or enhanced recovery injection well; or

(E) Is open in the wellbore below either the shoe of the casing or the base of the liner to be left in the well after plugging.

(2) Paragraph (1) of this subsection shall not apply to any formation behind the pipe left in the hole, unless a formation endangers a treatable water formation or any oil and gas bearing formation.

(e) Mud requirements. Before or after running a plug, the operator shall remove or displace all oil and saltwater in the wellbore, and the operator shall fill the wellbore and/or casing with drilling (plug) mud. The minimum mud weight shall be

nine pounds per gallon. The minimum viscosity for the drilling mud shall be 36 (API Full Funnel Method). If the operator removes casing from the wellbore, the operator shall keep the wellbore filled with drilling mud meeting or exceeding the weight and viscosity requirements of this subsection.

(f) Cement requirements.

(1) **Quality of cement.** All cement and/or alternative materials used in plugging wells shall meet or exceed the following specifications:

(A) Minimum compressive strength: 500 psi;

(B) Maximum Young's modulus: $< 1.2 \times 10^6$ psi;

(C) Permeability: < 0.1 mD; and

(D) Minimum concentration of Portland cement: approximately 20%.

(2) **Required information.**

(A) The plugger shall provide quality control data sheets regarding the cement to the appropriate Conservation Division District Office, which data shall include, but not be limited to, the most recent laboratory test results for the cement. Laboratory test results for the cement must be no more than 12 months old.

(B) If requested by a representative of the Conservation Division, a sample of the cement shall be split and an adequate portion (approximately one gallon) shall be properly labeled and delivered or otherwise provided to the appropriate Conservation Division District Office or Field Inspector.

(g) Approved cementing methods.

(1) **Cement plugs.**

(A) To plug or plug back a well, either the tubing and pump method or the pump and plug method shall be used and a continuous flow of cement shall be pumped for each stage.

(B) Surface pumping and shut in pressures shall be of sufficient pressure to:

(i) Squeeze off perforations in the casing.

(ii) Prevent the plug from floating upward in the wellbore.

(2) **Bridge plugs.** The operator may run by the bailer method cement required in the casing above a bridge plug as provided by (g) of this Section.

(h) Use of bridge plugs.

(1) **Permitted use.** Except as provided in (2) of this subsection for top plugs, a bridge plug may be used to permanently plug off a formation if:

(A) The only openings from the formation into the wellbore are perforations in the casing.

(B) The annulus between the casing and the formation is filled with cement from a depth 50 feet below the base of the formation to a depth 50 feet above the top of the formation.

(C) The bridge plug is set above the top of the perforations in the cemented interval described in (B) of this paragraph.

(D) Sufficient cement is placed on top of the bridge plug to fill the casing from the top of the bridge plug to a depth ten feet above the top of the bridge plug.

(2) **Prohibited use for top plug.** A bridge plug may not be used for a top plug described in (k) of this Section.

(i) **Cement plug for uncased hole below the casing or liner.** If any production casing or liner is to be left in the wellbore, then any uncased hole below the casing or liner shall:

(1) Be filled with cement:

(A) **From** a depth which is the lesser of total depth of the well or 50 feet below the lower of shoe of the casing or base of the liner.

(B) **To** a depth of 50 feet above the lower of the casing shoe or the base of the liner; or

(2) Have a cast iron bridge plug set above the top of the liner with cement.

(j) **Intermediate cement plugs.** If a bridge plug and cement are not used, a cement plug shall be run over any other formation required to be plugged off by this Section. To plug off a formation, the wellbore shall be filled with cement from a depth at least 50 feet below the base of the formation to a depth at least 50 feet above the top of the formation.

(k) **Cement top plug.**

(1) **No treatable water exists.** If no treatable water exists, the wellbore shall be filled with cement from a depth of at least 30 feet to a depth of three feet from the surface.

(2) **Treatable water exists.** Except as provided in (q) of this Section for converting a well to a water well, the wellbore shall be filled with cement as follows:

(A) If there is no surface casing or the base of the surface casing is 25 feet or further above the base of the treatable water, the wellbore shall be filled with cement from a depth of at least 50 feet below the base of the treatable water to a depth the lesser of:

(i) Fifty feet above the base of treatable water; or

(ii) Three feet below surface.

(B) If the surface casing is set at or below the base of the treatable water, when requested in the plugging plan by the District Manager, the production casing shall be cut off a minimum of 50 feet below the base of the surface casing, the production casing must be removed from the wellbore and the wellbore shall be filled with cement from a depth of at least 50 feet below the base of the surface casing to a depth the lesser of:

(i) Fifty feet above the base of the surface casing; or

(ii) Three feet below surface.

(C) If the cement plug prescribed by (2) of this subsection is not sufficient to bring the level of cement to within three feet from the surface, then the wellbore shall be filled with cement from a depth of at least 30 feet to a depth of three feet from the surface.

(l) **Cutting off surface pipe and identification of the abandoned wellbore.**

(1) This subsection applies to a wellbore plugged for abandonment. It does not apply to a wellbore plugged back for conversion to a water well under (q) of this Section.

(2) After setting the top plugs in a well, the operator shall cut off the casing left in the wellbore three feet below surface, and the operator shall cap the casing in the wellbore with a steel plate.

(3) The operator shall inscribe or embed the well number and date of plugging on the steel plate.

(m) **Tagging the top of the plug.** The Field Inspector for the Conservation Division may require the operator to determine the depth of the top of a plug by

running a wireline or tubing string.

(n) **Fall back of cement.** If the cement for a plug falls back during setting below the top depth required by this Section, the operator shall run additional cement until the plug meets the minimum requirements of this Section.

(o) **Alternative plugging procedure for down-hole problems.**

(1) In plugging a well, if the operator encounters a downhole problem which prevents the operator from complying with the standards of this Section, the District Manager may prescribe an alternative plugging procedure provided that the alternative plugging procedure prevents the vertical migration in the wellbore of oil, gas, saltwater, H₂S, and other deleterious substances into a formation bearing oil, gas, or treatable water.

(2) The District Manager shall note his approval of the alternative plugging procedure on the well's Plugging Report (Form 1003).

(p) **Plugging of rat holes and mouse holes.** If a rat hole or mouse hole was used at the surface for drilling the well, it shall be plugged within 90 days after drilling operations are complete as follows:

(1) The hole shall be filled with drilling mud from bottom to a depth eight feet below the surface.

(2) The operator shall fill the hole with cement from a depth of eight feet to a depth of three feet below the surface.

(3) The operator shall fill the hole with dirt from a depth of three feet to surface.

(q) **Plug back for conversion to a water well.** The District Manager may permit a well operator to plug back a well for permanent use as a water well by:

(1) Setting any bottom hole and intermediate plugs required by this Section.

(2) Setting a top cement plug from the base of treatable water to 50 feet below the base of treatable water.

(3) Obtaining written permission from the owner of the ground water rights for conversion of the well to a water well.

(4) Submitting under 165:10-11-7, a Plugging Report (Form 1003) noting the conversion of the well with a copy of the written permission from the owner of the ground water rights for conversion of the well to a water well.

(5) A determination must be made by the Oklahoma Water Resources Board as to whether the well is to be permitted as a water well.

[Source: Amended at 13 Ok Reg 2395, eff 7-1-96; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 15 Ok Reg 2989, eff 7-15-98; Amended at 16 Ok Reg 842, eff 1-5-99 (emergency); Amended at 16 Ok Reg 2190, eff 7-1-99; Amended at 19 Ok Reg 1947, eff 7-1-02; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 34 Ok Reg 921, eff 9-11-17; Amended at 35 Ok Reg 973, eff 9-14-18; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-11-7. Plugging record

(a) Within 30 days after plugging a well, the owner or operator of the well shall submit for the well to the appropriate Conservation Division District Office:

(1) Plugging Record (Form 1003).

(2) Form 1003 shall be completed and signed by employees of both the operator and the cementer.

(3) If a Completion Report (Form 1002A) has not been submitted for the well, Form 1002A shall be attached to the Form 1003.

(b) Any operator failing to comply with this Section may be fined up to \$500.00.

[Source: Amended at 9 Ok Reg 2295, eff 6-25-95; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-11-8. Procedures for identification and control of wellbores in which radioactive sources have been abandoned

(a) Notice and permission to abandon.

(1) When a radioactive source has been lost and abandoned in a well bore, the operator shall immediately notify the appropriate District Office and request permission to plug or plug-back and/or bypass to conform to the conditions set out in this Section. The District Manager or his designee may exercise the option of witnessing the procedure.

(2) A radioactive source shall not be considered abandoned until all reasonable efforts have been expended to retrieve the source.

(b) Method of plugging.

(1) Wells in which radioactive sources have been abandoned shall be mechanically equipped and plugged in such a manner so as to prevent either accidental or intentional mechanical disintegration of the radioactive source.

(2) When a radioactive source has been lost in a well bore and cannot be recovered, the tool shall be covered with a 100 foot plug consisting of standard oil field cement with an approved deflection tool cemented in place at the top of the plug. An additional 100 foot plug colored by red iron oxide shall be run on top of the deflection tool.

(c) Approval for alternate plugging method. When an operator, after expending all reasonable efforts, finds that it is not possible to abandon the source as prescribed in (d) of this Section, an alternate plugging procedure must be approved by the Commission prior to use.

(d) Markers for wells in which a radioactive source has been abandoned. Upon abandonment of a well in which a radioactive source has been abandoned, and the abandonment procedure has been approved by the Commission, the operator shall cause a permanent plaque to be attached to casing remaining in the well within thirty (30) days of such abandonment. The plaque shall be attached in such a manner that reentry could not be accomplished without disturbing it. The plaque shall be constructed of a long lasting material and shall contain the following information:

(1) Well name and well number.

(2) Name of operator.

(3) The source material abandoned.

(4) Total depth of the well.

(5) The latitude and longitude and the true vertical depth of the location of the abandoned radioactive source in the well bore. For purposes of this Section, true vertical depth is measured at the surface location of the well bore in which the radioactive source has been abandoned.

(6) The date of abandonment.

(7) The activity of the source.

(8) Trefoil radiation symbol with a radioactive warning.

(e) Completion reports and plugging records of wells with lost radioactive sources. When a radioactive source has been lost and abandoned in a well bore, both the Form 1002A Completion Report and Form 1003 Plugging Record submitted by the well operator to the Commission pursuant to OAC 165:10-3-25 and OAC 165:10-11-7, respectively, shall contain all of the information required in (d) of this Section. The well operator shall also forward copies of the Form 1002A Completion Report and Form 1003 Plugging Record to the Radiation Management

Section of the Oklahoma Department of Environmental Quality.

(f) **Record of abandoned radioactive sources.** The Commission will maintain a current listing of all wells in which radioactive sources have been abandoned.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 28 Ok Reg 1949, eff 7-11-11]

165:10-11-9. Temporary exemption from plugging requirements

(a) **Scope.** The Commission may permit any well which is required to be properly abandoned pursuant to OAC 165:10-11-3, at the request of an operator, to be temporarily abandoned.

(b) **Application.** An application for a permit to temporarily exempt a well from the plugging requirement shall be made on Form 1003A completed in its entirety, and submitted to the address indicated on the Form 1003A.

(c) **Permit.**

(1) Any operator seeking approval for temporary abandonment shall submit a notice of intent to temporarily abandon the well, Form 1003A, to the address indicated on the Form 1003A describing the temporary abandonment procedure used.

(2) The permit will be valid for a period of five (5) years if the well passes a pressure test. The permit will be valid for a period of one (1) year if the well passes a fluid level test. At least 30 days prior to the expiration of any approved temporary abandonment permit, the operator shall return the well to beneficial use in accordance with Commission rules, permanently plug and abandon said well, or apply for a new permit to temporarily abandon the well.

(3) No temporary abandonment will be approved that does not prevent the contamination of treatable water and/or other natural resources and the leakage of any substance at the surface.

(4) If the well fails the tests required herein the problem shall be found, corrected and a new test successfully conducted within 30 days or the well shall be plugged and abandoned in accordance with Commission rules.

(5) Upon successful completion of the work on the well, the operator will submit a new request for temporary abandonment to the address indicated on the Form 1003A.

(d) **Protection of treatable water.** The treatable water shall be protected by one or more of the following:

(1) A drillable, retrievable or temporary bridging plug set above the producing interval and below the top of the cement. The surface shall be capped with a valve in operational condition. A pressure test will be required by the appropriate District Office.

(2) A packer run on tubing and set above the producing interval and below the top of the cement. The well shall be equipped with suitable wellhead packoff equipment and be closed to the atmosphere. A pressure test will be required by the appropriate Conservation Division District Office.

(3) A fluid level test determined by use of equipment approved by the Conservation Division's Field Operations Department. The fluid level must be no higher than 150 feet below the base of the treatable water. The Field Inspector shall be notified at least 48 hours beforehand to be afforded the opportunity of witnessing the procedure. Additional tests may be required at any time at the request of the Conservation Division's Field Operations Department. The wellhead shall be closed to the atmosphere.

- (4) A casing inspection log confirming the mechanical integrity of the production casing submitted to the appropriate Conservation Division's District Office.
- (5) Alternate methods of testing may be approved by the Conservation Division's Field Operations Department by written application and upon showing that such a test will provide information sufficient to determine that the well does not pose a threat to natural resources.
- (e) **Surface facilities.** The well site of a well with temporary exemption from the plugging requirements shall be kept in a neat and orderly manner, including lease roads, with a legible sign showing the name of the operator, operator telephone number, well name, number, and the legal location.
- (f) **Termination of permit.** The permit for a temporary exemption from plugging shall terminate and plugging operations shall commence within 30 days after:
- (1) The time interval set has lapsed and a renewal has not been granted.
 - (2) The lease or unit on which the exempted well was located has become nonproductive.
 - (3) The fluid level has risen to a point less than 150 feet below the base of the treatable water.
 - (4) The Conservation Division's Field Operations Department has determined that the surface area or wellhead equipment requirement does not meet the standards required by the Commission.
- (g) **Exception to termination of permit.** An exception to the termination of an exemption from the plugging requirements shall be allowed if:
- (1) An application to convert the well to a disposal, injection, or supply well has been filed with the Commission, and proper notice, according to OAC 165:5, has been met.
 - (2) An application requesting an exception to the plugging rules has been filed with the Commission and an exception has been granted by an order of the Commission.

[Source: Added at 9 Ok Reg 2337, eff 6-25-92; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 37 Ok Reg 1121, eff 1-1-20]

SUBCHAPTER 12. PROCEDURES FOR THE SEEPING NATURAL GAS PROGRAM

165:10-12-1. Purpose

The purpose of this Subchapter is to provide the Oklahoma Corporation Commission ("Commission") rules to govern responses to occurrences concerning the Seeping Natural Gas Program. All procedural rules necessary to initiate, regulate and administer the Seeping Natural Gas Program are contained in this Subchapter.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

165:10-12-2. Coordination of Seeping Natural Gas Program

The Commission shall coordinate response efforts when notified of an occurrence of seeping natural gas. The Commission shall enlist private industry, state, county, municipal, and local government official entities as needed. These entities will aid the Commission with investigating, identifying and abating the hazard. If the Commission has determined that the applicable utility may be responsible for the problem, even though the utility initially advised the Commission it was not, the Commission can require the utility to run further tests

to re-evaluate the occurrence as to the utility's lines and equipment. These rules do not supersede OAC 165:45-11-11 (a)(9).

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

165:10-12-3. Jurisdiction and scope

Pursuant to 52 O.S. Section 317.1, the Commission is directed to promulgate and enforce rules, and issue and enforce orders relating to seeping natural gas. The rules of this Subchapter shall be known as the Commission Procedures for the Seeping Natural Gas Program, and shall be cited as OAC 165:10-12-1 *et seq.*

- (1) The rules of this Subchapter shall govern all proceedings concerning the Seeping Natural Gas Program.
- (2) The Commission retains the authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.
- (3) The rules of this Subchapter establish procedures for the investigation of seeping natural gas and the administration of the Seeping Natural Gas Fund for the purpose of providing funding to eligible property owners for the mitigation of seeping natural gas on their property, in those cases in which the Commission is unable to abate the hazard of a seeping natural gas occurrence by issuing an order to a responsible person or by plugging a well.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-12-4. Administration of the fund

- (a) The Commission will appoint the Director of Administration of the Commission as the Seeping Natural Gas Fund Administrator.
- (b) The Administrator is expressly authorized to bring actions before the Commission to enforce provisions of this Subchapter.
- (c) The Administrator shall act under the supervision of the Commission, to administer the Seeping Natural Gas Fund in accordance with the rules and procedures approved by the Commission and consistent with this Subchapter. The Administrator is authorized to enforce, implement, and administer applicable rules and orders of the Commission.
- (d) The Administrator's general duties shall include but not be limited to:
 - (1) Providing disbursements from the Fund;
 - (2) Managing the daily operations and affairs of the Fund;
 - (3) Engaging annual audits of the expenditures of the Fund and of the distribution from the Fund to property owners who receive payment from the Fund;
 - (4) Resolving disputes related to issues addressed in this Subchapter;
 - (5) Reviewing all applications for assistance from property owners;
 - (6) Performing any other duties as directed by the Commission.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

165:10-12-5. Definitions

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

"Hazardous gas concentration" means a concentration that presents or causes a risk of accident or fire.

"Natural gas" means a highly compressible, highly expansible mixture of hydrocarbons having a low specific gravity and occurring naturally in gaseous form. Besides hydrocarbon gases, natural gas may contain appreciable quantities of nitrogen, helium, carbon dioxide, hydrogen sulfide, and water vapor.

"Person" means any individual, business association or corporation, partnership, governmental or political subdivision, public corporation, body politic and corporate public authority, trust or any other legal entity.

"Responsible party" means any person or persons responsible for a facility which is found to be causing a seeping natural gas occurrence.

"Seeping natural gas" means natural gas which has migrated into, under or around a structure at hazardous concentrations.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

165:10-12-6. Notice requirements for seeping natural gas occurrences

(a) Upon identification of a possible occurrence of seeping natural gas, a utility shall notify the Pipeline Safety Department of the Commission. If the Pipeline Safety Department determines that the seeping gas occurrence is not caused by a pipeline under its jurisdiction, Pipeline Safety will contact the Public Utility Division and the Oil and Gas Conservation Division.

(b) Upon a utility's initial determination that hazardous gas seepage is not from its system, the utility shall provide the property owner with a brochure explaining the situation and providing the impacted property owner with information about available assistance, including pertinent Commission telephone numbers. For assistance, the property owner or an authorized representative of the property owner shall contact the Commission.

(c) The appropriate District office of the Oil and Gas Conservation Division will contact the local Fire Marshall/Fire Chief and the utility to inform them that the Rapid Action Assessment Team has been activated.

(d) The Field Operations Department of the Oil and Gas Conservation Division will assess and evaluate the situation and act accordingly.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-12-7. Commission Rapid Action Assessment Team

(a) The Oil and Gas Conservation Division shall form a Rapid Action Assessment Team to handle any seeping natural gas occurrence that occurs within the State after determining that it is not caused by a pipeline regulated by the Pipeline Safety Act or a utility.

(b) The Rapid Action Assessment Team will be equipped with qualified personnel and the proper and necessary equipment to handle investigations of seeping natural gas occurrences.

(c) Each Commission District Office will have access to designated trained personnel and equipment prepared for investigating a seeping natural gas occurrence.

(d) No person entering upon the land to investigate or abate the hazards pursuant to the authority of the Commission will be held responsible for future abatement work on the land or be liable for damages or otherwise for conditions subsequently arising or in connection with the land.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

165:10-12-8. Standard procedure for the Rapid Action Assessment Team

As soon as the Oil and Gas Conservation Division is notified of an unknown gas surface seep in or around a structure that the utility has determined is not leaking from its lines, except in situations where the Oklahoma Emergency Management Plan is activated, appropriate Commission personnel will respond as follows:

- (1) The Field Inspector from the Oil and Gas Conservation Division will respond with gas detection equipment and notify the Field Supervisor and District Manager.
- (2) The District Manager will activate the local Rapid Action Assessment Team and notify local officials and the following Commission offices in Oklahoma City: Public Utility Division, Field Operations and Public Information.
- (3) The District Office will research well data, aerial photos and maps on file with the Oil and Gas Conservation Division.
- (4) The Oil and Gas Field Supervisor and Field Inspector will coordinate with any responsible party in the locality and will research any available maps and records.
- (5) If no known oil or gas wells are present, the Rapid Action Assessment Team will number and set soil gas monitoring probes at strategic locations in the area and initiate a gas monitoring program to measure the concentration and sample the composition of gas and log results at monitored locations.
- (6) If the source of gas can be identified and there is a responsible party, the Rapid Action Assessment Team will request a Commission order directing the responsible party to abate the hazard.
- (7) If no known responsible party is located, the Rapid Action Assessment Team will position the monitoring system to allow for measurement of concentration and dissipation of the gas.
- (8) Upon the completion of the mitigation process, the Commission shall notify the utilities in writing.
- (9) Upon notification by the Commission that the mitigation process has been completed, the utility shall verify that the hazard has been abated prior to establishing or resuming gas service.
- (10) If the utility believes it should not establish or resume service, it shall file an emergency application with the Commission to show cause why service should not be established or resumed. The Commission shall hear such application with or without notice. At the time of the hearing, the Commission shall receive exhibits and recommendations as required by OAC 165:5-9-3. The Commission shall rule on the request as it deems appropriate.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-12-9. Assistance to owners of property

(a) An owner of property which has a seeping natural gas occurrence as defined by 165:10-12-5 shall file an application (Form 3000NGS) with the Commission for the investigation and/or abatement of seeping natural gas, to receive assistance with installing a system to divert seeping natural gas away from the structure or to otherwise abate the hazard.

(b) After the Oil and Gas Conservation Division and the Public Utility Division have completed their review of the property owner's application, they will forward it to the Director of Administration of the Commission, and the Director of Administration will consider the application for Commission action.

(c) The Commission shall determine the eligibility of the owner of a structure for assistance based on the nature and extent of the hazard, whether the owner is unable to inhabit the structure, the financial need of the owner of the structure and other relevant factors dependent upon the Oklahoma Legislature's current and future approval of and appropriation for the Natural Gas Seep Program.

(d) If the property owner's application is approved, the Commission may expend funds, pursuant to 17 O.S. Section 180.10, to engage the services of a contractor to install a system to divert natural gas away from a structure or to otherwise abate the hazard.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-12-10. Reimbursement of expenditures

(a) The Commission may seek reimbursement of expenditures made by the Commission from a responsible party. Any monies received as reimbursement shall be deposited to the credit of the Commission Gas Seep Fund.

(b) The Rule shall not relieve any person or persons otherwise legally responsible from any obligation to properly abate hazards associated with seeping natural gas.

[Source: Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Added at 24 Ok Reg 1784, eff 7-1-07]

SUBCHAPTER 13. DETERMINATION OF ALLOWABLES - OIL AND GAS WELLS

165:10-13-1. Oil and gas production [RESERVED]

165:10-13-2. Classification of wells for allowable purposes

(a) For purposes of this Subchapter the terms gas, oil, and gas-oil ratio are defined in 165:10-1-2.

(b) Any well having a gas-oil ratio of 15,000 to one or more shall be classified as a gas well for allowable purposes.

(c) Any well having a gas-oil ratio of less than 15,000 to one shall be classified as an oil well for allowable purposes.

(d) If a well is a multiply completed well under 165:10-3-35, then each zone of the completion shall be classified separately for allowable purposes.

(e) If a well is commingled under 165:10-3-39, the classification of the well for allowable purposes shall be determined by the gas-oil ratio of the commingled production.

165:10-13-3. Production tests on new, re-entered, and recompleted wells

(a) On all new wells, re-entered wells, and recompleted wells classified as oil wells for allowable purposes, in any regular spacing unit(s) and reservoir dewatering oil spacing unit(s), initial production tests shall be performed and reported to the Commission on Form 1029A for discovery oil wells, Form 1002A for other oil wells, unless otherwise specified by order of the Commission. The test shall not commence until after recovery of a volume of oil equivalent to or greater than the amount of load oil or other liquids introduced into the well.

(b) On all new wells, re-entered wells, and recompleted wells classified as gas wells for allowable purposes, initial production tests shall be performed and reported to the Commission on Form 1016 unless otherwise specified by order of the Commission or by OAC 165:10-17-7(b)(1)..

(c) If special pool rules prescribe, by order of the Commission, the manner in which production tests are to be performed in any separate common source of supply, the production or gas-oil ratio test shall be performed and reported to the Commission in accordance with such special pool rules.

[Source: Amended at 19 Ok Reg 639, eff 1-14-02 (emergency); Amended at 19 Ok Reg 966, eff 7-1-02; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-13-4. Reservoir performance tests

The Commission may require, from time to time, the presentation of such data and facts as may be necessary to indicate reservoir performance and conditions in any oil or gas pool. The Commission may witness or supervise the taking of such reservoir performance tests and keep such records as it deems necessary to properly regulate the operation of any oil or gas pool. Any test requested by the Commission may be witnessed by any operator in the pool. When special pool rules require bottom hole pressure tests, the tests shall be reported to the Conservation Division on Form 1027.

165:10-13-5. Most efficient rate

Subject to the procedural requirements of 165:5-7-12, the Commission may issue an order increasing or decreasing the rate of oil and gas production in an oil pool to correspond to the most efficient rate of production which is consistent with sound engineering and conservation practices as may be justified by the circumstances and evidence submitted.

165:10-13-6. Load oil

Load oil used in well completions which is not produced from the same lease or spacing unit shall not be charged against the well, lease, or unit. The well shall be allowed to produce such load oil in addition to the current monthly allowable. Operators claiming credit for load oil for allowable purposes may file Oklahoma Tax Commission Form 317 not more than 6 months after treating the well.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-13-7. Production from different pools

(a) In the event there are two or more common sources of supply produced through a well or wells on the same lease or drilling and spacing unit and which are not commingled under 165:10-3-39, the production from each common source of supply shall be separately produced, measured, and/or accounted for to the Commission.

(b) If one or more of the zones produced are classified as oil for allowable purposes, the operator of the well shall submit to the Conservation Division a multi-zone report on Form 1011 showing the production from each oil-bearing common source of supply on or before the last day of the succeeding proration period.

165:10-13-8. Transfer of allowables

Subject to the procedural requirement of 165:5-7-12, the Commission may issue an order transferring, after proper adjustment, all or part of an allowable from a well with a high gas-oil ratio or high water-oil ratio to a well having a lower gas-oil ratio or water-oil ratio, if:

- (1) The wells produce from the same common source of supply.
- (2) The wells are located on the same lease or in the same drilling and spacing unit.

165:10-13-9. Allowable for increased density well

(a) **Allowable production.** Except as otherwise provided by rule or order of the Commission, the allowable production for permitted wells within a drilling and spacing unit producing from the same common source(s) of supply shall be determined as follows:

- (1) Each individual well shall be classified for allowable purposes by gas-oil ratio under 165:10-13-2.
- (2) Permitted wells of the same classification for allowable purposes shall share a single well allowable.
- (3) Permitted wells of different classifications for allowable purposes shall receive allowables as provided by the order of the Commission authorizing the additional well(s).

(b) **Shared single allowable.** If two or more wells in a single drilling and spacing unit are classified as gas wells for allowable purposes, the shared single allowable for the unit shall be determined by the greater of:

- (1) A minimum allowable; or
- (2) A normal allowable based on the wellhead absolute open flow potential of the best well in the drilling and spacing unit producing from the same common source of supply.

(c) **Additional well.** If an additional well is not of the same classification as any prior permitted well, it shall receive an allowable as provided by the order permitting the well.

(d) **Effect of penalties.** If the allowable for a well in a drilling and spacing unit is subject to a percentage penalty or lid on production, the penalty or lid on production shall apply to the ratable share of production of the shared single allowable for the penalized well as opposed to the entire shared single allowable for the unit.

- (1) The ratable share of production of the shared single allowable for an unallocated gas well is that volume of gas which bears the same ratio to the shared single allowable as the wellhead absolute open flow potential for the well bears to the sum of the wellhead absolute open flow potentials for all wells in the drilling and spacing unit of the same classification for allowable purposes.
- (2) The ratable share of production of the shared single allowable for a special allocated gas well is that volume of gas which bears the same ratio to the shared single allowable as the unpenalized monthly allowable the well would receive if it were the only well in the unit bears to the sum of such allowables for all the wells in the drilling and spacing unit of the same classification for allowable purposes.
- (3) No special allocated well shall receive an allowable less than the defined minimum unit allowable divided by the number of wells in the drilling and spacing unit of the same classification for allowable purposes.

(4) The ratable share of production of the shared single allowable for an oil well is that volume of oil which bears the same ratio to the shared single allowable as the potential for the well bears to the sum of the potentials for all wells in the drilling and spacing unit of the same classification for allowable purposes. If the oil well was assigned a separate allowable under (c) of this Section, the penalty shall apply to the allowable assigned to the well.

(5) The portion of the shared single allowable representing the reduction in the allowable for the penalized well is not allocable to other wells in the drilling and spacing unit.

(e) **Which operator shall file required tests.** If the operators of the wells in a drilling and spacing unit cannot agree as to which operator shall file the required tests and production reports for the unit or as to what proportion of a shared single allowable shall be attributable to each well of the same classification for allowable purposes, the Commission may, after application, notice, and hearing, issue an order determining which operator shall file the tests and reports or what the proportional share of the shared single allowable is attributable to each well or the maximum rate of allowable production for each well.

(f) **Wellhead absolute open flow potential.** For the purpose of this Section, the wellhead absolute open flow potential for a test exempt gas well shall be presumed to equal:

(1) The average daily production for the previous calendar year (or that portion of the previous calendar year if the first sales date was after January 1 of that year), or the minimum allowable that would otherwise be assigned to an unallocated gas well under applicable rules of the Commission as if such well were the only well in the unit, whichever is less, for an unallocated well; or

(2) The product of two multiplied by the monthly allowable for the well under 165:10-17-9 for a special allocated well.

(g) **Testing or reporting requirements.** This Section shall not exempt any well from any testing or reporting requirement imposed by rule or order of the Commission.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-13-10. Applications for reinstatement of cancelled underage for oil wells and for unallocated gas wells

(a) Oil well.

(1) With respect to an oil well, all underage for the proration period in excess of 15 percent of the allowable shall be automatically cancelled at the end of the proration period, except underage accrued under (4) of this subsection because of the failure to split a tank.

(2) A producer may apply to reinstate cancelled underage if the well is capable of producing in excess of its allowable. The procedure for applying for reinstatement of cancelled underage is described in (c) of this Section.

(3) Except in situations where the operator has failed to comply with applicable well testing and reporting requirements of the Commission, failure or refusal of the purchaser to take the allowable shall be grounds for reinstatement of any underage accumulated because of such failure or refusal. Underage of this nature may be accumulated until balanced by future runs.

(4) The operator shall not be required to sell less than a full stock tank of oil by the end of the proration period to avoid cancellation of underage. Instead, such underage may be accrued until the operator accumulates and sells a volume of oil from the tank amounting to a full tank, and the sale of oil representing such underage shall not be considered as overage.

(b) Unallocated gas well.

(1) With respect to any unallocated gas well, of the total underage for the well or unit existing at the end of the proration period, 75% shall be automatically cancelled and 25% shall be automatically carried forward to the next prorationing period.

(2) Said underage carried forward to the next balancing period must be utilized in said balancing period, with that amount of underage carried forward but not used, to be cancelled at the end of the prorationing period.

(c) Procedure for reinstatement of cancelled underage.

(1) The operator of an oil well may apply for reinstatement of cancelled underage by application for administrative approval on Form 1010 within 90 days after cancellation of the underage.

(2) If the Conservation Division declines to approve the Form 1010 application, the applicant shall be notified in writing that application, notice, and hearing under 165:5-7-1 are necessary to obtain reinstatement of cancelled underage.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

SUBCHAPTER 15. OIL WELL PRODUCTION AND ALLOWABLES

165:10-15-1. Classification of oil pools and projects

(a) Types of oil pools. Each producing oil pool shall be classified by the Commission into one of the following categories:

- (1) Discovery oil pool (165:10-15-5).
- (2) Allocated oil pool (165:10-15-9).
- (3) Unallocated oil pool (165:10-15-12).
- (4) Enhanced oil recovery project (165:10-15-14).
- (5) Excessive water exempt oil project (165:10-15-16).
- (6) Reservoir dewatering oil spacing unit (165:10-15-18).

(b) Treatment of an oil well located in a gas pool. An oil well located in a gas pool shall be treated as an unallocated oil well, unless the oil well is subject to one of the following:

- (1) Pool rules controlled by volumetric withdrawal.
- (2) Discovery oil pool rules.
- (3) Allocated oil pool rules.
- (4) Some other order of the Commission.

(c) Discovery oil pools.

(1) A new oil pool which has complied with the provision of 165:10-15-5 may be granted discovery allowable production rates, administratively, subject to either:

- (A) Spacing requirements.
- (B) Order of the Commission.

(2) Each permitted discovery oil well shall be subject to discovery oil pool rules until either:

- (A) Expiration of the discovery allowable period.
- (B) Reclassification of the well or pool.

(d) Allocated oil pool.

- (1) The Commission shall classify an oil pool as an allocated oil pool when:
 - (A) At any market demand hearing the total production from an oil pool or from any well within the pool needs to be regulated; or
 - (B) For good cause shown, upon application, notice, and hearing.
- (2) A gas well located in an allocated oil pool that is reclassified as an oil well for allowable purposes shall be subject to allocated oil pool rules.
- (3) Each allocated oil well shall be subject to the allocated oil pool rules until the Commission reclassifies the well or pool.

(e) Unallocated oil pools.

- (1) Classification of unallocated oil pool:
 - (A) Any pool or area which does not require specific regulation and control by the Commission to restrict production to the market demand, aid in the prevention of waste, assure the maximum ultimate recovery of oil and gas from the pool, or protect correlative rights shall be classified as an unallocated pool.
 - (B) The Commission shall determine which discovery and allocated pools will be placed in the unallocated classification at each market demand hearing.
- (2) Each unallocated oil well shall be subject to unallocated oil pool rules until the Commission reclassifies the well or pool.

(f) Enhanced oil recovery projects.

- (1) **Authorized pressure maintenance.** The Commission may, upon application, notice, and hearing, authorize the pressure maintenance of a pool or the production of oil by the injection of fluid, fluids, gas, gases, or other material into a common source of supply or a portion thereof, whether unitized or not, where substantial quantities of additional oil may be recovered which could not be recovered under ordinary primary depletion methods. When so authorized, the project will be classified as an Enhanced Oil Recovery Project with one of the following classifications:
 - (A) Pressure Maintenance Project
 - (B) Gas Repressuring Project
 - (C) Waterflood Project
 - (D) Other Enhanced Recovery Projects
- (2) **Status of a gas well reclassified as an oil well.** If a well classified as a gas well in an enhanced oil recovery project is reclassified as an oil well for allowable purposes, the well shall be subject to the appropriate enhanced oil recovery project rules.
- (3) **Termination of enhanced oil recovery status.** Each enhanced oil recovery well shall be subject to enhanced oil recovery project rules until one of the following occurs:
 - (A) Termination of the enhanced oil recovery project.
 - (B) The well is reclassified as a gas well for allowable purposes.
 - (C) The Commission issues an order reclassifying the well or project.
 - (D) The well is abandoned.

(g) Excessive water exempt oil projects.

- (1) **Oil production rates.** The Director of Conservation may administratively authorize the production of oil at rates greater than the normal allowable provided the water-oil ratio of the well and/or pool is greater than or equal to 3:1. All applications shall comply with 165:5-7-12.

(2) **Status of a gas well reclassified as an oil well.** If a well classified as a gas well in an excessive water exempt oil project is reclassified as an oil well for allowable purposes, the well shall be subject to excessive water exempt oil project rules.

(3) **Termination of excessive water exempt status.** Each excessive water exempt well shall be subject to excessive water exempt oil project rules until at least one of the following occurs:

(A) The water-oil ratio declines below 3:1.

(B) Termination of the excessive water exempt oil project.

(C) The well is reclassified as a gas well.

(D) The Commission issues an order reclassifying the well or project.

(h) **Allowable for reservoir dewatering oil spacing unit.**

(1) **Oil production rates.** To set an allowable for a well in a reservoir dewatering oil spacing unit, the operator shall refer to Appendix J and submit the appropriate forms and/or application as provided in OAC 165:10-15-18.

(2) **Reclassification of oil well as gas well.** If a well in a reservoir dewatering oil spacing unit is later subject to reclassification as a gas well for allowable purposes, such reclassification will be determined according to general classification procedures based on its gas/oil ratio pursuant to OAC 165:10-1-6(d) and (e) and 165:10-13-2. If the subject well is designated an excessive water exempt oil project pursuant to OAC 165:10-15-1(g) and 165:10-15-16, reclassification shall be determined by OAC 165:10-15-1(g)(2). If the subject well is assigned an allowable based upon its most efficient rate pursuant to OAC 165:10-13-5, such allowable shall remain in effect under the order establishing the production rate, so that the well will not be reclassified, until its status is modified or terminated by the terms of the instant or a subsequent Commission order.

(3) **Termination of reservoir dewatering oil spacing unit allowable.** The oil allowable assigned a reservoir dewatering oil spacing unit shall remain in effect until one of the following occurs:

(A) The subject well is reclassified as a gas well pursuant to OAC 165:10-1-6 and 165:10-13-2.

(B) The subject well's status as an excessive water exempt oil project is terminated pursuant to OAC 165:10-15-1(g)(3).

(C) The subject well's status under a most efficient rate order is modified or terminated by the terms of the instant or a subsequent Commission order.

[Source: Amended at 19 Ok Reg 639, eff 1-14-02 (emergency); Amended at 19 Ok Reg 966, eff 7-1-02]

165:10-15-2. Overage adjustments for oil wells

No well, lease, unit, or project shall be overproduced in excess of 15 percent of the allowable for the proration period. All overage accrued at the end of the proration period shall be deducted from the allowable for the second succeeding proration period.

165:10-15-3. Effect of percentage penalty on oil wells

If a percentage penalty has been assigned to an oil well, the penalty shall, depending on the status of the well, be subtracted from:

(1) **Discovery status.** The applicable allowable from the Discovery Allowable Table (Appendix B to this Chapter) or the capacity of the well to produce as reported, whichever is less.

(2) **If allocated or unallocated per-well status.** The applicable allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor or the capacity of the well to produce as reported, whichever is less.

(3) **If unallocated per-lease status.** The shallowest ten acre or less allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor for the penalized well only. The penalty shall be subtracted from the lease allowable.

[Source: Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-15-4. Discovery oil pools [RESERVED]

165:10-15-5. Discovery oil allowables

(a) **Number of barrels of oil per day and duration of the discovery allowable period.** The maximum number of barrels of oil per day and the duration of the discovery allowable period shall be determined from the Discovery Allowable Table (Appendix B to this Chapter) or the Allocated Well Allowable (Appendix A to this Chapter), whichever is greater, provided that the well is in compliance with the other provisions of this Section and other rules pertaining to allowables. If the well is not capable of producing at the discovery rate without causing preventable waste, the temporary discovery allowable shall be the capacity of the well to produce as reported, unless otherwise limited by the Commission.

(b) **Effective date of discovery allowable.**

(1) The discovery allowable period for the pool shall begin with the date of first completion of the discovery well of the pool and extend as provided in the Discovery Well Allowable Table (Appendix B to this Chapter).

(2) The discovery allowable period for each well in the pool shall run from the date specified under 165:10-15-7 for each well to the date of termination of the pool, if granted administratively.

(3) If application, notice, and hearing are required, the effective date of the discovery allowable period shall be specified by an order of the Commission, provided that such date shall not precede the date of filing of the application. The date of expiration of the discovery allowable shall still be determined as set forth in (1) of this subsection.

(c) **Gross allowable production.** The gross allowable production for any proration period from a well in a discovery pool may, at the option of the operator, be produced at any time during the proration period; however, in no event shall the production exceed the maximum efficient rate of flow.

[Source: Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-15-6. Production tests and reports for discovery oil pools

(a) **Initial test requirements.** The operator of each well in each discovery pool shall perform an initial potential test and furnish the Conservation Division the results of such test not later than 30 days after completion of each well. Each individual well shall be tested for not less than six hours and not more than 24 hours with the production calculated and reported at a daily rate (24 hours).

(b) **Witnessing of tests.**

(1) With respect to initial test, the operator shall give twenty-four (24) hour notice of the opportunity to witness said test to the Conservation Division and the offset operator(s) producing from the same pool, but no waiver or signature of Conservation Division personnel is required.

(2) Any operator in the pool may witness any official test for any well in the pool. However, any person other than a Commission employee witnesses a test at their sole risk and expense.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-15-7. Procedure for obtaining discovery allowable

(a) Any operator desiring a discovery allowable shall file Form 1028 with the material and information specified below:

(1) A resistivity and a porosity type wireline survey of the well in question, if run.

(2) A Completion Report (Form 1002A) and Cementing Report (Form 1002C), completed in detail.

(3) A Potential Test (Form 1029A), completed in detail.

(4) A plat of the area showing all of the following information for each well within one and one-half (1 1/2) miles of the subject well:

(A) Operator.

(B) Well name and number.

(C) Total depth.

(D) Current status of the well (dry, oil, gas, injection, disposal, temporarily abandoned).

(E) Name of interval open, if any.

(F) Perforations, top and bottom, if any.

(G) Average daily production.

(5) An isopach contour map of the productive interval and/or a structural contour map of a nearby marker bed or formation, not separated from the producing interval by an unconformity, which is commonly used in the area. The Conservation Division may require either or both types of maps to determine the discovery status. The commission may also require additional geological and/or engineering data, such as: stratigraphic cross-sections, structural cross-sections, production, and pressure information.

(b) The Conservation Division may administratively designate a discovery allowable for a well when the operator furnishes the Technical Department with the information specified in (a) of this Section. If the information is provided within 30 days of the date of first production and the application is approved, the effective date of the discovery allowable shall be the date of first production. If the information is provided more than 30 days after the date of first production and the application is approved, the discovery allowable shall be effective the date of filing.

(c) If a gas well in a discovery oil pool is reclassified as an oil well for allowable purposes, the operator must file the appropriate form, information and material specified in (a) of this Section within 30 days of reclassifying the well to obtain a discovery allowable. The allowable shall be effective the date the well was reclassified as an oil well as indicated on Form 1002A. If the application is not received within the specified time period, the application will be processed in accordance with (b) of this Section.

165:10-15-8. Allocated oil pools [RESERVED]

165:10-15-9. Allocated oil allowables.

(a) **Effective date of allowables.** The allowable for an allocated well completed or recompleted on or after the first day of the proration period shall become effective the date of completion of the well, provided the operator has complied with the provisions of this Section and other rules governing allowables. In situations where the operator fails to comply, the allowable shall become effective the date the operator complies with this Section and other rules governing allowables.

(b) **Allowables in allocated pools.** Allowables in allocated pools shall be granted on an individual well basis, subject to appropriate spacing requirements, unless otherwise specified by order of the Commission. The allowable for each allocated well shall be determined as if the well was an unallocated well operating under 165:10-15-12(b) or 165:10-15-12(c)(1), whichever is appropriate, unless adjusted by order of the Commission. The operator shall produce the allowable on each well from that well and no part thereof from any other well.

(c) **Application.** Upon application by the Director of Conservation or any interested party, and after notice and hearing, the Commission may order the wells in a common source of supply to be produced under allowables established by special pool rules in lieu of the provisions of this Section. All requirements as to production tests and allowables shall be set forth by the order of the Commission establishing such special pool rules.

165:10-15-10. Production tests and reports for allocated oil wells

All production tests and reports shall be filed as if the allocated well were an unallocated well operating on a per-well basis allowable under 165:10-15-13(a).

165:10-15-11. Unallocated oil pools [RESERVED]

165:10-15-12. Unallocated oil allowables

(a) **Effective date of allowable.** The allowable for a well completed or recompleted on or after the first day of a proration period shall become effective the date of completion of the well, provided the operator has complied with the provisions of this Section and other rules governing allowables. In situations where the operator fails to comply, the allowable shall become effective the date the operator complies with this Section and other rules governing allowables.

(b) **Well in an unallocated pool.** Each well in an unallocated pool in which drilling and spacing units have been established shall be assigned the applicable allowable on a per-well basis from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor unless adjusted by order of the Commission. The production from each well shall be separately accounted for to the Commission.

(c) **Lease in an unallocated pool.** Each individual lease in an unallocated pool in which drilling and spacing units have not been established shall be assigned allowables, at the option of the operator, on either of the following basis:

(1) **A per-well basis.** If the operator elects to accept the per-well basis allowable, each well on the lease shall be assigned an allowable applicable to a ten-acre or less allowable at the appropriate depth from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor unless adjusted by order of the Commission. The production from each well shall be separately accounted for to the Commission.

(2) **A per-lease basis.** If the operator elects to accept the per-lease basis allowable, the allowable for the lease shall be the shallowest ten-acre or less allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor multiplied by the number of wells on the lease unless adjusted by order of the Commission. The production from each lease shall be separately measured and accounted for to the Commission.

165:10-15-13. Production tests and reports for unallocated oil wells

(a) Per-well basis allowable.

(1) If the well is an allocated well, or an unallocated well located on lands in which drilling and spacing units have not been established and the operator elected to accept allowables on a per-well basis, or an unallocated well located on lands in which drilling and spacing units have been established, the operator shall file a production test no later than 30 days after the earlier of:

- (A) Making the election,
- (B) Completion of the well, or
- (C) Recompletion of the well.

(2) Each new well shall be given an allowable equal to the allowable for an unallocated per-well basis well until the production test has been performed with the results reported to the Conservation Division. The allowable shall be effective for a period not longer than 30 days from completion of the well. A Form 1002A Completion Report may be used in lieu of a Form 1029A to establish an oil allowable if oil and gas production rates reported on Form 1002A establish the well's classification as an oil well. No further allowable shall be assigned to the well until compliance with this subsection.

(4) All initial tests shall be conducted in the manner set forth in (1) of this subsection.

(5) Annual testing shall not be required.

(b) Per-lease basis allowables.

(1) If the well is an unallocated well located on lands in which drilling and spacing units have not been established and the operator elects to accept allowables on a per-lease basis, the operator shall file a production test with the Conservation Division not later than 30 days after:

- (A) Making the election,
- (B) Completion of the initial well on the lease,
- (C) Completion of a subsequent well on the lease,
- (D) Recompletion of any well on the lease, or
- (E) Retesting of any well on the lease.

(2) Each lease shall be given an additional allowable equivalent to the shallowest ten-acre or less allowable from the Allocated Well Allowable Table (Appendix A to this Chapter) multiplied by the current market demand factor for each new producing well added to the lease until the production test has been performed with the results reported to the Conservation Division. The additional allowable shall be effective for a period not longer than 30 days from completion of the well. No further additional allowable shall be assigned to the lease until compliance with this subsection.

- (3) If an operator fails to submit the required test results for any lease with allowables calculated on a per-lease basis, no allowable shall be assigned to the lease. The operator may submit the results of the test to the Conservation Division to reinstate the allowable. A Form 1002A Completion Report may be used in lieu of a Form 1029A to establish an oil allowable if oil and gas production rates reported on Form 1002A establish the well's classification as an oil well. The allowable shall be effective the first day of the following month after the Conservation Division accepts the test.
- (4) No lease shall be granted underage resulting from failure to perform a required test in compliance with this Section.
- (5) All initial tests, annual tests and retests shall be conducted in the manner set forth in (1) of this subsection.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 26 Ok Reg 2498, eff 7-11-09]

165:10-15-14. Enhanced oil recovery project allowables

- (a) **Effective date of allowable.** The allowable for an enhanced oil recovery project shall be effective on the date operations commenced or the date specified by order of the Commission authorizing the project, whichever is later, provided the operator has complied with the provisions of this Section and other rules governing allowables. In situations where the operator fails to comply, the allowable shall become effective the date the operator complies with this Section and other rules governing allowables.
- (b) **Qualification for enhanced oil recovery allowable.** For any project to qualify for an enhanced oil recovery allowable, an order of the Commission authorizing the project must be obtained.
- (c) **Allowable for enhanced oil recovery project.** The allowable for an enhanced oil recovery project shall be on a project basis and shall be the capacity of the project to produce.
- (d) **Wells on a project producing from another reservoir.** Oil wells within the boundaries of a project which do not produce from the project shall not be permitted to produce any portion of the allowable of such enhanced oil recovery project. The oil produced by non-project wells shall be separately produced, measured, and reported.

165:10-15-15. Production tests and reports for enhanced oil recovery projects

- (a) Within 30 days of commencement of any enhanced oil recovery project, the operator shall file with the Conservation Division an inventory of all the wells located within the boundaries of the project completed in the approved common source of supply showing the name of the project and the new OTC Production Unit Number (including merge number) and the following for each well:
 - (1) Previous OTC Production Unit Number.
 - (2) API Number.
 - (3) Well Name and Number.
 - (4) Legal location, including quarter quarter quarter quarter section.
 - (5) Current status (producer, injector, observation, or temporarily abandoned).
- (b) The operator shall notify the Conservation Division in writing within 30 days of the completion of any new well or the change in status of any existing well in the project.

- (c) Until the operator submits the required test results for any enhanced oil recovery project as provided in subsection (a), no allowable shall be assigned to the project. If said test results are filed late, then the allowable shall be effective the first day of the following month after the Conservation Division accepts the tests.
- (d) All initial tests shall be conducted as set forth in subsection (a).
- (e) Annual testing shall not be required except as provided in OAC 165:10-1-6.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-15-16. Excessive water exempt oil project allowables

- (a) **Effective date of allowables.** The allowable for an excessive water exempt oil project shall be on a well or a project basis and shall be effective when the Conservation Division receives and accepts the production test of, Form 1013, unless otherwise specified by order of the Commission.
- (b) **Qualification for excessive water exempt oil project.** For any project or well to qualify for excessive water exempt allowable, an order of the Commission authorizing the well or project must be obtained.
- (c) **Allowable for excessive water exempt oil project.** The allowable for a well or Project which has received a special excessive water exempt allowable shall be the capacity of the well or project to Produce without causing preventable waste unless otherwise adjusted by the Director of Conservation. The production from a well which has received a special excessive water exempt allowable under this Section shall be separately produced, measured, and accounted for to the Commission from the oil produced from the remainder of the lease.

165:10-15-17. Production tests and reports for excessive water exempt oil projects

- (a) The operator of each individual well with an excessive water exempt allowable shall file an initial production test on Form 1013 with the Conservation Division. Each individual well shall be tested for seven consecutive days, and the amount of oil and the amount of water produced each day shall be reported on Form 1013. With respect to the initial test, the operator shall give twenty-four (24) hour notice of the opportunity to witness said test to the Conservation Division and the offset operator(s) producing from the same formation, but no waiver or signature of Conservation Division personnel is required on Form 1013.
- (b) Each individual well shall be given an initial allowable equal to the unallocated per-well basis allowable until the production test has been performed with the results reported to the Conservation Division on Form 1013. The allowable shall be effective for a period not longer than 30 days from completion of the well. No further allowable shall be assigned to the well until compliance with this subsection.
- (c) Until the operator submits the required test results for any excessive water exempt well or project, as provided in subsection (a), no allowable shall be assigned to the well or project. If said test results are filed late, the allowable shall be effective the first day of the following month after the Conservation Division accepts the test.
- (d) All initial tests shall be conducted as set forth in (a) of this Subsection.
- (e) Annual testing shall not be required except as provided in OAC 165:10-1-6.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 33 Ok Reg 593, eff 8-25-16]

165:10-15-18. Production tests and reports for reservoir dewatering oil spacing units

(a) **Effective date for oil allowable.** To establish the commencement date of an allowable for an oil well in a reservoir dewatering oil spacing unit, the operator shall file Forms 1002A and 1013, in lieu of the Form 1029A, with the Commission according to OAC 165:10-13-3 within thirty (30) days after the completion date of the well. The allowable will commence on the date of first production.

(b) **Qualification for reservoir dewatering unit.** Proof of fifty percent (50%) water saturation presented at the time of a hearing to establish dewatering oil spacing may entail calculations from logs or core data from wells within the common source of supply covered by the application or an analogous common source of supply, or an actual production test from a well in the common source of supply covered by the application. To qualify for the reservoir dewatering spacing unit allowable provided on Appendix J, the Form 1013 must provide data that verifies that the water-oil ratio is greater than 1:1. If the water-oil ratio is less than 1:1, then the oil allowable shall be the appropriate allowable for the depth of the top of the formation and the maximum acreage provided in Appendix A.

(c) **Allowable rate not provided for in Appendix J.** To establish an allowable other than that specified in Appendix J, the operator shall file a Form 1030 with the Commission to adjust the allowable.

(d) **Record of annual production rates.** The operator shall maintain production records on an annual basis. Operators shall make these records available to the Conservation Division staff upon the request of the Manager of the Technical Department. Annual testing shall not be required except as provided in OAC 165:10-1-6.

[Source: Added at 19 Ok Reg 639, eff 1-14-02 (emergency); Added at 19 Ok Reg 966, eff 7-1-02]

SUBCHAPTER 17. GAS WELL OPERATIONS AND PERMITTED PRODUCTION

165:10-17-1. Gas production from gas pools [RESERVED]

165:10-17-2. Classification of gas pools

(a) **Types of gas pools.** Each gas pool shall be classified by the Commission into one of the following categories:

- (1) Allocated Gas Pool.
- (2) Special Allocated Gas Pool.
- (3) Unallocated Gas Pool.

(b) **Treatment of gas well in an oil pool.** If a well in an oil pool is classified as a gas well for allowable purposes, the well shall be treated as if it were in an unallocated gas pool, unless the well is subject to pool rules which establish allowables by volumetric withdrawal.

(c) **Allocated gas wells.**

- (1) **Classification of pool by order.** Upon application, notice, and hearing, the Commission may issue an order establishing allowables for gas wells in a pool by the allocated gas pool rules in 165:10-17-8.
- (2) **Status of an oil well reclassified as a gas well.** If a well classified as an oil well in an allocated gas pool is reclassified as a gas well for allowable purposes, the well shall be subject to allocated gas pool rules.

(3) **Termination of allocated status.** Each allocated gas well shall be subject to allocated gas pool rules until:

- (A) The Commission establishes special allocated gas pool rules for the common source of supply.
- (B) The well is reclassified as an oil well for allowable purposes.
- (C) The Commission issues an order reclassifying the well as an unallocated gas well.
- (D) The well becomes the only gas well in the pool.
- (E) The well is abandoned.

(d) **Special allocated gas pools.** Each gas pool for which special pool allocation rules (field rules) are or have been established by the Commission shall be classified as a special allocated gas pool. Each gas well in a special allocated gas pool shall be referred to as a special allocated gas well for allowable purposes.

(e) **Unallocated gas pools.** Each gas pool not classified as an allocated gas pool or as a special allocated gas pool shall be classified as an unallocated gas pool. Each gas well in an unallocated gas pool shall be referred to as an unallocated gas well for allowable purposes.

165:10-17-3. Effective date of allowables

A gas well shall be assigned an allowable as of the date it is connected into a pipeline and the first delivery is made if the Notice of Intention to Drill (Form 1000) is valid, the Completion Report (Form 1002A) is filed with attachments, if required, and all required tests are run within 30 days from the date of first sales and are filed within 45 days of the date of first sales, and special reports have been filed with the Conservation Division.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99]

165:10-17-4. Standard gas measurement law

Sections 471 through 477, inclusive, of Title 52, Oklahoma Statutes Annotated, cited as the "Standard Gas Measurement Law", are hereby adopted as rules of the Commission as fully as if set out verbatim herein.

165:10-17-5. Meters and recorders

(a) Requirement of a gas meter and recorder.

(1) For allowable, allocation or custody transfer purposes, each well producing natural gas other than a shut-in gas well shall have a gas meter and recorder for the gathering line; provided, if two or more wells share a single allowable, a single meter and recorder may be used to measure gas production, unless a special order of the Commission or either 165:10-13-9 or 165:10-3-39 require allocation of gas production on a per well basis.

(2) For purposes of (1) of this subsection, the term "recorder" refers to a circular gas chart recorder or other type of recording device which has been mutually agreed upon by the gas seller and the gas purchaser.

(3) For purposes of (1) of this subsection, an offsite recorder shall be permitted provided:

- (A) There is compliance with the requirements of (2) of this subsection.
- (B) The recording device is made available for inspection by the Conservation Division to determine that the recorder is functioning properly.

(4) Offsite recordation under (1) and (3) of this subsection shall be treated as wellsite metering for purposes of the reporting requirements of 165:10-1-47.

(5) Use of electronic gas measurement and recording devices that meet industry standards of (b)(2) of this Section are permitted for allowable, allocation, custody transfer, and well testing.

(b) Standards for meters and recorders.

(1) Each meter and recorder shall be properly constructed, maintained, repaired, and operated to continually and accurately register the quantity of gas produced from the well into a gathering line.

(2) The meter and recorder shall be installed, used, and operated according to the natural gas industry standards and guidelines promulgated by the American Gas Association, the American Petroleum Institute, and the Gas Processors Association, in effect at the time of installation of the meter and recorder. If there are conflicting standards, then the most current American Petroleum Institute standard shall apply.

(c) Prohibited meter bypasses For each meter measuring production at the wellsite, use of piping to bypass the meter is prohibited. Gas meters with internal bypasses are permitted.

(d) Reporting of estimated volume if the meter or recorder fails.

(1) **Seventy-two hours to repair equipment** If a meter or recorder at the wellsite malfunctions, then the malfunctioning equipment shall be repaired within 72 hours after discovery of the malfunction.

(2) **Reporting of estimated volumes while the meter or recorder is down** If the well continues to produce gas while the meter or recorder is malfunctioning or being repaired, estimated gas volumes shall be reported to the Conservation Division for purposes of 165:10-1-47.

[Source: Amended at 12 Ok Reg 2017, eff 7-1-95]

165:10-17-6. General well testing requirements

(a) All single-point and multi-point potential tests shall be calculated for all non-exempt gas wells in a uniform manner with respect to the following:

(1) The potential shall be the calculated wellhead absolute open flow potential of the well determined by obtaining a static column wellhead flowing pressure and shall indicate the capacity of the well to produce against zero psia at the wellhead.

(2) All pressures used in test calculations shall be corrected to pounds per square inch absolute, using 14.4 psia as the average barometric pressure.

(3) The static column wellhead pressure, either measured or calculated as reported in the potential test, shall be no more than 90 percent of the wellhead shut-in pressure. If data cannot be obtained in accordance with the foregoing provisions, an assumed static column wellhead pressure of 90 percent of the wellhead shut-in pressure shall be used to calculate the results of the test. This paragraph supersedes any contrary provision in special pool rules.

(b) The operator of a well shall be responsible for testing the well and submitting the test results to the Conservation Division. The results of a potential test shall be filed with the Conservation Division on Form 1016. If the operator wishes to obtain a copy of the approved Form 1016, he shall enclose with the original form a self-addressed stamped envelope and one additional copy of the test and/or form. The Conservation Division shall acknowledge such requests within 15 days, stating

either the date of acceptance of the test results or rerunning the original test if it has been rejected. If any order or rule of the Conservation Division requires witnessing of a test, the operator of the well shall be responsible for securing the presence of an authorized Conservation Division representative to witness the test and sign the Form 1016 for the test.

(c) Unless otherwise prescribed by special pool rules, field testing procedure shall be performed in accordance with the procedures set out in Oklahoma Corporation Commission Manual of Back-Pressure Testing of Gas Wells, Parts I and II, utilizing the specified tables in the Interstate Oil and Gas Compact Commission Manual of Back-Pressure Testing. A gas turbine meter may be used in lieu of an orifice meter for flow measurements in gas well testing.

(d) The initial test for all gas wells shall be run into the pipeline within 30 days and test results filed within 60 days after the date of first sales of gas. Any test filed after the 60 day limit will not be made effective until the first of the month following the date of acceptance of the test. With regard to initial tests for special allocated gas wells, the operator of the well shall provide twenty-four (24) hours notice to the Conservation Division of its intent to run an initial test in order to give the Conservation Division the opportunity to witness said test, but in no case shall the operator be precluded from performing said test and filing the results as provided for in subsection (b). Initial tests for special allocated gas wells need not be witnessed, nor signatures obtained, if witnessed, in order for the Conservation Division to assign an allowable to said well. Initial tests for unallocated gas wells with calculated open flow of less than two million cubic feet per day are exempt from witnessing by Conservation Division personnel under 165:10-17-7(b)(1).

(e) Tests for all non-exempt gas wells shall be run into a pipeline in accordance with this Section or applicable pool rules. Any annual test for a well in a special allocated pool, filed late shall not be made effective until the first of the month following the date of acceptance of the test.

(f) Wells in allocated pools shall be tested in accordance with the requirements for wells in unallocated pools, unless superseded by specific field rules. Form 1016 shall be used to report shut-in pressure tests on wells in allocated and special allocated pools, except for the Guymon-Hugoton Pool #182 which shall use a form 1017 Deliverability Gas Test.

[Source: Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 38 Ok Reg 1739, eff 10-1-21]

165:10-17-7. Well tests

(a) Wells in special allocated pools.

(1) An initial test shall be filed for each newly completed gas well in each special allocated pool. The well shall be tested into a pipeline no later than 30 days after the date of the first sale of gas. Test procedures shall be those specified in the applicable pool rules subject to the uniform requirements of 165:10-17-6.

(2) An annual test shall be filed in accordance with the requirements of the applicable pool rules, subject to the following provisions specific to the Guymon-Hugoton special allocated pool.

(3) Wells in the Guymon-Hugoton special allocated pool.

(A) The Conservation Division staff will not be required to witness any well test on any well in the Guymon-Hugoton special allocated gas pool unless requested to do so by an offset operator. Operators have a right to witness any well test on any well offsetting said

operator's well in the pool. Operators of offsetting wells will be given sufficient prior notice of testing to allow for a representative to be present to witness testing, and will be provided access to the designated witness throughout testing.

(B) Wells in the Guymon-Hugoton special allocated gas pool which are not capable of producing 450 Mcf/day will be exempt from biannual deliverability tests. Operators shall have the right to elect to receive the minimum allowable by deciding not to conduct well deliverability tests on any such wells in the pool. No well shall be exempt from the annual wellhead shut-in pressure test requirements. For the purpose of the annual wellhead shut-in pressure test, the shut-in pressure shall be measured after the well has been shut-in for approximately 48 hours. In no case shall the well have been shut-in for less than 44 hours at the time the shut-in pressure is taken.

(b) Wells in unallocated pools.

(1) Testing of newly completed or newly recompleted wells.

(A) An initial test shall be submitted to the Conservation Division for each newly completed gas well or recompleted gas well involving a new formation in an unallocated gas pool under 165:10-17-2. The well shall be tested into a pipeline no later than 30 days after the date of first sale of gas into a pipeline. The flow period for the initial test shall be 24 hours.

(B) It shall not be necessary for the operator to submit the initial flow potential test for an unallocated well with a maximum flow rate of less than the minimum allowable. Only a current 24-hour wellhead shut-in pressure is required, unless otherwise requested by the Commission. A copy of the Form 1002A Completion Report may be submitted in lieu of Form 1016 to establish the minimum allowable, provided the section on the Form 1002A Completion Report requesting a minimum gas allowable is explicitly marked, and the following items are reported:

- (i) current 24 hour shut-in pressure;
- (ii) date of first sales and date of recompletion, if applicable;
- (iii) Oklahoma Tax Commission production unit number; and
- (iv) name of reporting entity of monthly gas volumes for the well (either the purchaser/measurer, or self-reporting operator). If the required information is not provided on the Form 1002A Completion Report submitted to the Commission, an initial test on Form 1016 containing the information must be filed with the Commission to establish an initial allowable for the well.

(C) An initial potential test is required to receive an allowable greater than a minimum allowable. The established allowable shall be from the date of first sales of gas, provided that a complete and correct Form 1002A Completion Report for the well is filed with the Commission within 60 days after the date of first sales. If the Form 1002A Completion Report is filed with the Commission after the 60 day period, the allowable will become effective on the first

day of the month in which the Form 1002A Completion Report is approved by the Commission. A request to extend the time to test may be granted by the Conservation Division in order to recover fluids introduced into the well. The request shall be submitted in writing to the Conservation Division with the expected test date.

(2) **Testing or retesting of established gas wells.** A potential test to assign a new allowable for an initially tested well may be submitted on Form 1016 at any time after three months from the date of the initial test. To establish or maintain an allowable greater than the minimum allowable after the initial potential test, a potential test shall be run at least once every 12 months for the first two years, and every two years thereafter. The established allowable from any potential test shall be valid for 12 months from the date of first sales of gas. The Director of the Conservation Division may require additional tests at any time. Tests become effective the first day of the month following acceptance of the test by the Conservation Division.

(A) Unless specifically requested by the Director of the Conservation Division, it shall not be necessary to run a potential test or retest for an established well having a flow rate of less than the minimum allowable.

(B) Upon expiration of a potential test, the well will revert to a minimum allowable status, unless superseded by a later potential test.

(C) If two or more potential tests are submitted for a well, and the effective periods of the tests overlap or conflict, the test having the greatest calculated open flow potential shall be utilized to determine the well's allowable for the overlapping period.

(3) **One-point tests.** The potential test required for each gas well in each unallocated pool shall use the one-point back pressure method and an assumed flow characteristic of 0.85 shall be used in establishing the wellhead absolute open flow. The test shall be governed by the requirements of OAC 165:10-17-6.

(4) **Durability of minimum allowable.** Once an initial allowable is established for a well, that well shall be assigned at least a minimum allowable until such time the well is plugged, reclassified, recompleted or commingled into an additional formation, or is found to be in violation of a rule or order of the Commission. If a potential test is submitted for the well, that test will supersede the minimum allowable for the effective period of the test set out herein.

(5) **Test exemptions for certain minimum wells.**

(A) The following types of gas wells shall be exempt from initial and annual potential and shut-in tests:

(i) Minimum gas wells producing exclusively from coal bed methane formations.

(ii) Minimum gas wells producing from shale formations or including shale formations, if commingled.

(iii) Minimum gas wells using down hole pumps for artificial lift of produced liquids.

(iv) Minimum gas wells producing less than 100 mcf/day.

(B) For these exempt wells operators shall report the initial stabilized rate of production on Form 1002A "Completion Report"

in lieu of reporting an initial test on Form 1016 "Backpressure test for Natural Gas Wells".

(6) **Alternate shut-in pressure.** The Conservation Division may allow the equivalent of the 24-hour shut-in pressure required in this Section and in OAC 165:10-17-6 to be derived from accepted industry methodologies if the operator sufficiently demonstrates to the Division that such calculations will result in an appropriate representation of the actual 24-hour shut-in pressure.

(7) **Minimum compliance.** Each operator shall be responsible for conducting and submitting the required potential tests on the applicable form. All submitted tests must contain complete and accurate information. Permitted production rates will be granted only to those wells which meet this requirement and all other rules or orders of the Commission.

[Source: Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 15 Ok Reg 2165, eff 7-1-98; Amended at 16 Ok Reg 2206, eff 7-1-99; Added at 24 Ok Reg 183, eff 10-4-06 (emergency); Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 37 Ok Reg 1121, eff 1-1-20; Amended at 38 Ok Reg 1739, eff 10-1-21]

165:10-17-8. Allocated pools

(a) The current monthly allowable for each allocated pool shall be equal to the total production from the pool during the current month.

(b) The current allowable for each capable drilling and spacing unit within the pool shall be that proportion of the pool allowable that the acreage of the drilling and spacing unit bears to the total developed acreage in the pool, adjusted in accordance with any order of the Commission imposing an allowable adjustment. The current allowable for each limited drilling and spacing unit shall be equal to the current production from the unit. A unit shall be deemed limited when its underage is cancelled under this Section until it thereafter produces a current allowable for any one month.

(c) Accrued underage shall be carried forward as a cumulative credit by adding it to the unit's current allowable until the underage has been produced. If the unit's cumulative underage exceeds six times the allowable assigned to it for the preceding January, all of the underage will be cancelled, the unit shall be classified as "limited", and the unit shall not thereafter accumulate underage until such time as the unit produces a current allowable for any one month. All cancelled underage shall be distributed to the capable drilling and spacing units within the pool in the proportion that the acreage of each unit bears to the total capable acreage in the Pool, adjusted in accordance with any order of the Commission imposing an allowable adjustment. A capable unit shall be any non-limited unit. Cancelled underage may be reinstated administratively by the Director of Conservation to any capable unit in an overproduced status within six months after cancellation by application on Form 1010.

(d) Accrued overage shall be carried forward as a cumulative charge against the unit by subtracting it from the unit's current allowable until the overage has been made up. If the cumulative overage exceeds six times the current allowable assigned for the preceding January, the Director of Conservation shall notify the operator in writing, and the unit shall thereafter be permitted to produce not more than 25 percent of its current allowable until all of the overage in excess of six times the well's current allowable for the preceding January has been made up. In the event the operator fails to limit production as herein provided, the well shall be ordered shut-in by the Commission upon application of the Director of Conservation and after notice and hearing.

(e) If a unit did not have a current allowable assigned to it on a full month's basis for the preceding January, the first current allowable assigned to the unit on a full month's basis shall be used as reference for the purpose of limiting underage and overage.

165:10-17-9. Special allocated gas pools

(a) **Scope.** This Section applies to special allocated gas pools except any special allocated gas pool with allowables based upon volumetric withdrawals.

(b) **Minimum unit allowable of 150 mcf/d.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the minimum allowable for a drilling and spacing unit in the pool shall be 150 MCF/D regardless of the amount of any location exception penalty charged against a unit well. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(c) **Minimum unit allowable of 450 mcf/d for the Guymon-Hugoton pool.**

(1) For the Guymon-Hugoton Special Allocated Gas Pool, minimum allowables shall be determined as follows: The minimum allowable shall be the lesser of 450 mcf/d or the drilling and spacing unit's capability.

Capability shall be defined as the average of the highest three (3) of the last twelve (12) months of production. A drilling and spacing unit receiving a minimum allowable shall not accrue underage. The minimum allowables under this Section shall not affect the calculation of capable well allowables. The field monthly allowable shall be equal to total nominations and not adjusted for underage or overage.

(2) The deliverability standard pressure (DSP) to be used in the application of special allocated rules (field rules) shall be defined as 25 pounds less than the average shut-in wellhead pressure of the pool.

(3) The Corporation Commission shall calculate and publish reports of allowable and production quarterly.

(d) **Minimum unit allowable of 2,000 mcf/d for the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the minimum allowable for a drilling and spacing unit in each pool shall be 2,000 mcf/d. For purposes of this Section, the net minimum allowable shall be the gross minimum allowable adjusted for overage or underage according to this Section.

(e) **Double minimum allowable of 300 mcf/d.**

(1) **Compressor and application required.** For all special allocated gas pools except the West Cheyenne Upper Morrow, Purvis Chert, Guymon-Hugoton, Custer City N. Hunton, Sharon W. Morrow, Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, if a drilling and spacing unit has a minimum allowable under (b) of this Section, the operator of a well in the drilling and spacing unit may obtain for the unit a double minimum allowable regardless of any location penalty against a well by installing a compressor on a unit well and applying for a double minimum allowable under (2) of this subsection.

(2) **Request for administrative approval.** To apply for a double minimum allowable, the operator shall submit to the Manager of Production Allowables for the Conservation Division a letter requesting a double

minimum allowable and stating the factual basis for the request and the legal description of the well with the compressor.

(f) **Basic allowable.**

(1) **Use of basic allowable for determining overage and underage.** For purposes of determining the amount of overage or underage accrued by a well or drilling and spacing unit, the Conservation Division shall establish on a yearly basis a status factor known as the basic allowable.

(2) **Apportionment of basic allowable.**

(A) **Increased density unit without apportionment of the allowable.** If neither OAC 165:10-13-9 nor an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a unit basis.

(B) **Increased density unit with ratable allowables.** If either OAC 165:10-13-9 or an order of the Commission require specific allocation of the unit allowable to each unit well, overage and underage shall be carried on a per well basis. For purposes of computing overage and underage, the basic allowable shall be apportioned to each unit well using the formula for determining each well's ratable allowables for the applicable month under (3) of this subsection. The term "ratable allowables" refers to a well's share of the unit allowable under the formula apportioning the allowable amongst the unit wells.

(3) **Computation of the basic allowable.** Except as provided in (C) of this paragraph for basic allowable changes, the basic allowable for the calendar year shall be computed as follows:

(A) **For all pools except the Red Oak Pools.** For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's January allowable for the calendar year.

(B) **For the Red Oak Pools.** For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro, the basic allowable shall equal the drilling and spacing unit's March allowable for the calendar year.

(C) **Changes in the basic allowable.**

(i) If a drilling and spacing unit receives test exempt minimum allowable status as provided in this Section, then the basic allowable shall be a minimum allowable.

(ii) If a drilling and spacing unit receives a test exempt double minimum allowable as provided in this Section, then the basic allowable for the unit shall be a double minimum allowable.

(iii) If the well operator submits to the Conservation Division a retest which is approved by the Conservation Division, then the Conservation Division shall recompute the basic allowable using the retest. Retests are permitted at any time and become effective the first day of the month after acceptance by the Conservation Division.

(g) **Determination of overage and underage.**

(1) **Overage.**

(A) **Drilling and spacing unit without ratable allowables.** If no well in a drilling and spacing unit is subject to a ratable allowable, the current monthly allowable shall be compared with the second

prior month's unit production. Production in excess of the current monthly allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, overage shall not reduce any subsequent monthly allowable until accumulated overage exceeds the applicable overage limit under (h) of this Section.

(B) Drilling and spacing unit subject to ratable allowables. If any well in a drilling and spacing unit is subject to a ratable allowable, the current monthly ratable allowable for the well shall be compared with the second prior month's production from the well. Production in excess of the ratable allowable is overage. Aside from any adjustment to the pool allowable required by pool rules, the well's overage shall not reduce any subsequent monthly ratable allowable until accumulated overage exceeds the well's overage limit under (h) of this Section.

(2) Underage.

(A) Drilling and spacing unit without ratable allowable. If no well in a drilling and spacing unit is subject to a ratable allowable under OAC 165:10-13-9, the current monthly allowable for the unit shall be compared with the second prior month's unit production. If production is less than the allowable, the difference between the production and the unit allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly allowable.

(B) Drilling and spacing unit with ratable allowables. In a drilling and spacing unit with ratable allowables, the current monthly ratable allowable for a well shall be compared with the second prior month's production from the well. If production was less than the current monthly ratable allowable, the difference between the production and the ratable allowable is underage. Aside from any adjustment to the pool allowable required by pool rules, only reinstated cancelled underage under (k) of this Section shall increase any subsequent monthly ratable allowable for the well.

(h) Overage limits.

(1) For all pools Except the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro. For all pools except the Red Oak Fanshawe, Red Oak Red Oak, and the Red Oak Spiro, the overage limit is six times:

(A) The basic allowable for the drilling and spacing unit, if the overage carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(2) For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools. For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools, the overage limit is 168 times:

(A) The basic allowable for the drilling and spacing unit, if the overage is carried on a unit basis; or

(B) The well's share of the basic allowable for the drilling and spacing unit, if the well receives a ratable allowable.

(3) Mandatory curtailment for excessive overage.

(A) Single well drilling and spacing unit. If accumulated overage from a single well drilling and spacing unit exceeds the applicable

overage limit, production from the unit shall be curtailed to 25 percent of the monthly allowable until accumulated overage is reduced below the overage limit.

(B) Multiple well unit without ratable allowables. In a multiple well drilling and spacing unit without ratable allowables, if accumulated overage for the unit exceeds the applicable overage limit, the unit production shall be curtailed to 25 percent of its monthly allowable until the accumulated overage is reduced below the overage limit.

(C) Multiple well unit with a ratable allowable. In a multiple well drilling and spacing unit with one or more wells subject to a ratable allowable, if the accumulated overage for a well exceeds its overage limit, production from the well shall be curtailed to 25 percent of its monthly ratable allowable until the well's accumulated overage is reduced below its overage limit.

(i) Underage limits.

(1) For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools. For the Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro Pools (Pool Nos. 456, 457 and 458) located in Latimer and LeFlore Counties, Oklahoma, the underage limit is three times the status factor for:

(A) The drilling and spacing unit,

(i) If the unit has only one well, or

(ii) If the unit has multiple wells but no unit well has a ratable allowable; or

(B) The well, if a well has a ratable allowable.

(2) For all other special allocated gas pools subject to this Section. For all other special allocated gas pools subject to the Section, the underage limit is six times the status factor for:

(A) The drilling and spacing unit, if the status factor is determined on a unit basis; or

(B) The well, if the well is subject to a ratable allowable.

(j) Cancellation of underage.

(1) Underage in excess of the underage limit. If accumulated underage exceeds the applicable underage limit, the accumulated underage shall be cancelled.

(2) Subsequent underage. After cancellation, underage shall not accrue until after:

(A) The drilling and spacing unit produces a current monthly allowable, if the unit wells share a unit allowable; or

(B) A well with a ratable allowable produces a current monthly ratable allowable.

(k) Reinstatement of cancelled underage.

(1) The operator may apply for reinstatement of cancelled underage by:

(A) An application for administrative approval on Form 1010, if filed within six months after cancellation of underage; or

(B) Application, notice, and hearing under OAC 165:5-7-1.

(2) Reinstated cancelled underage shall be available to increase the monthly allowable or ratable allowable for up to one year without cancellation. If reinstated underage is cancelled, the operator may reapply under (1) of this subsection.

(3) For the Guymon-Hugoton special allocated gas pool, the operator of any drilling and spacing unit in such pool which unit has accumulated cancelled underage credited thereto on the records of the Commission prior to July 1, 1998 shall have until January 1, 2000 to file an application with the Commission pursuant to OAC 165:5-7-1 for the reinstatement of such accumulated cancelled underage as credited to such unit prior to July 1, 1998. Upon the filing of such an application, the cause seeking reinstatement of such accumulated cancelled underage shall be diligently prosecuted. In such proceeding for the reinstatement of such accumulated cancelled underage credited to such drilling and spacing unit prior to July 1, 1998, the Commission shall determine the portion of such accumulated cancelled underage which is proper and valid under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool and shall reinstate only such portion that is determined to be proper and valid under such special pool allocation rules (field rules). If an application for reinstatement of any such accumulated cancelled underage credited to a drilling and spacing unit on the records of the Commission prior to July 1, 1998 is not filed with the Commission on or before January 1, 2000, such accumulated cancelled underage shall be permanently deleted from the records of the Commission and shall not thereafter be able to be reinstated or used for any other purpose under the special pool allocation rules (field rules) applicable to the Guymon-Hugoton special allocated gas pool.

(l) **Effect of reinstatement of underage on pool allowables.** If cancelled underage has been distributed among the capable wells in the pool, reinstated underage shall not be deducted for the allowables of the capable wells which received distributed cancelled underage.

(m) **Test exempt status.**

(1) **No allowable without test.** For all pools except West Cheyenne Upper Morrow and Purvis Chert, no allowable shall be assigned unless:

(A) **Single well drilling and spacing unit.** The operator submits the required test or the unit has test exempt status under this Section.

(B) **Multiple well drilling and spacing unit.** In a multiple well drilling and spacing unit, the operator of at least one well in the unit submits the required test in accordance with applicable pool rules or the unit is granted test exempt status under this Section.

(2) **Automatic test exempt status.**

(A) **For the West Cheyenne Upper Morrow and Purvis Chert Pool.** For the West Cheyenne Upper Morrow and Purvis Chert, a drilling and spacing unit shall have test exempt status as follows:

(i) In a single well drilling and spacing, the well operator does not submit either an initial or an annual test.

(ii) In a multiple well drilling and spacing unit, none of the well operators in the unit submit either an initial or annual test. A test exempt drilling and spacing unit on the West Cheyenne Upper Morrow and Purvis Chert Pools shall have a minimum allowable under the applicable orders establishing and modifying pool rules as opposed to (b) of this Section.

(3) **Test exempt status upon requests for all other pools.** For all other pools except Guymon-Hugoton a drilling and spacing unit shall be test exempt upon written request to the Conservation Division if the potential for the unit does not exceed:

(A) The applicable minimum allowable under this Section.

(B) A double minimum allowable, if the Conservation Division has granted a double minimum to the unit.

(4) **Termination of requested test exempt status.**

(A) **Automatic termination.** Requested test exempt status shall terminate upon:

(i) Submission of a retest showing that the well has a potential in excess of a test exempt allowable, or;

(ii)

(I) If gas production from a single well drilling and spacing unit exceeds a test exempt allowable during any month while the well has test exempt status, the unit shall lose test exempt status beginning with next month following the month with overproduction.

(II) If total gas production from a multiple well drilling and spacing unit exceeds the minimum allowable during any month while the unit has test exempt status, the unit shall lose test exempt status beginning with the next month following the month with overproduction.

(B) **Reinstatement of test exempt status after automatic termination.** After termination of test exempt status for overproduction, the Conservation Division shall not reinstate test exempt status until:

(i) The operator requests test exempt status; and

(ii) The allowable year during which overproduction occurred expires.

(n) **Suspension of well allowable calculations under field rules when market demand exceeds supply for Red Oak Fanshawe, Red Oak Red Oak, and Red Oak Spiro pools.** The Commission, upon finding in the market demand hearing that the supply of natural gas from the various separate common sources of supply included in and covered by the Red Oak Fanshawe Pool 456, the Red Oak Red Oak Pool 457, and the Red Oak Spiro Pool 458 is less than such market demand, shall suspend the special field rules calculations for determining allowables for wells in such pools and such suspension shall be effective until such time that the supply of natural gas from these pools exceeds the market demand for such natural gas, and during such suspension the gas allowables for wells in such pools shall be determined under this rule. See Order No. 571714 which issued in Cause CD No. 200902831.

(1) **For existing wells, granting separate allowables and establishing overage status as of the effective date of this rule.** Each well in existence as of the effective date of this rule which is then completed in one or more of the Red Oak Fanshawe Pool 456, Red Oak Red Oak Pool 457, and the Red Oak Spiro Pool 458 shall be deemed an Existing Well for purposes of this rule. Each Existing Well shall receive a full separate allowable. Any total net overage including cancelled underage, accumulated by and

assigned to any such drilling and spacing unit, shall be distributed and assigned in equal proportions to the Existing Wells in such drilling and spacing unit. Any such net overage so assigned to an Existing Well shall hereinafter be made up from the separate allowable for such well under the provisions of the Commission's rules applicable to a well in an unallocated gas pool.

(2) **Test requirements and determination of unit allowables for new and existing wells.** Any new well drilled and completed or any Existing Well re-completed into one or more of the Red Oak Fanshawe Pool 456, Red Oak Red Oak Pool 457, and Red Oak Spiro Pool 458 after the effective date of this rule, shall be deemed a New Well for purposes of this rule. The allowable for any New Well or Existing Well as to the applicable pool covered hereby shall be determined using the same allowable formula used by the Commission for the determination of a gas allowable for a capable well or a minimum well in an unallocated gas pool. **EXCEPTION:** Any Existing Well which is a minimum well shall be exempt from the annual test requirement. If any drilling and spacing unit formed for any common source of supply in any pool covered by this rule contains more than one New Well completed in such common source of supply and such New Wells are classified as gas wells, such New Wells shall share a single unit gas allowable in the same manner as any other gas wells in the same drilling and spacing unit in an unallocated gas pool, unless the Commission grants a separate gas allowable as to production from such pool after proper notice and hearing.

(o) **Suspension of well allowable calculations using field rules when market demand exceeds supply for the Guymon-Hugoton Pool 182.** The Commission, upon finding that the supply of natural gas from Guymon-Hugoton Pool 182 common source of supply is less than the market demand and that the expectations for supply to continue to be less than the market demand as determined in the market demand hearing, will suspend special field rule calculations for determining allowables until such time that the supply of natural gas from this pool exceeds the market demand. See Order No. 571714 which issued in Cause CD No. 200902831.

(1) For allowable purposes, wells which produce less than 450 mcfg per day must conduct a 48 hour shut-in pressure test according to pool rules.

For reporting purposes, an operator may submit these data for several wells as an attachment to Form 1017 providing operator name, date of test, well name, location and api number for each well.

(2) For allowable purposes, wells which produce more than 450 mcfg per day must conduct a deliverability test according to pool rules and submitted on Form 1017.

(3) Upon submission of the proper test, the allowable shall be the well's capability to produce.

(p) **Suspension of well allowable calculations using field rules when all wells in the West Cheyenne Upper Morrow gas pool produce less than the pool minimum allowable and the market demand exceeds supply.** The Commission, upon finding that the supply of natural gas from West Cheyenne Upper Morrow Pool 136 common source of supply is less than the market demand and that the expectations for supply to continue to be less than the market demand as determined in the market demand hearing, will suspend special field rule calculations for determining allowables and well allowables will be the wells' capacity to produce up to 2000 mcf per day. See Order No. 571714 which issued in

Cause CD No. 200902831. Each well will be exempt from the annual test requirement.

[Source: Amended at 15 Ok Reg 2165, eff 7-1-98; Amended at 16 Ok Reg 2206, eff 7-1-99; Amended at 18 Ok Reg 2372, eff 7-1-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10]

165:10-17-10. Unallocated pools [RESERVED]

165:10-17-11. Maximum permitted rates of production for unallocated gas wells

(a) Scope.

(1) This Section shall apply to each gas well in unallocated status except as otherwise provided by Commission order. The Commission may establish different production rates by:

(A) Location exception order.

(B) Establishment of pool rules for the common source of supply.

(C) Other order adjusting gas production from the well.

(2) For purposes of this Section, the term "well" shall include any drilling and spacing unit with multiple unallocated gas wells, which do not receive separate maximum permitted rates of production by Commission order.

(3) For the purposes of this Section, the term "allowable formula" shall mean the formula used by the Commission for the determination of the daily rates for capable and minimum wells.

(4) For purposes of this Section, the term "capable well" shall refer to those unallocated gas wells with a production rate of 3000 mcf/d or greater. All other wells are minimum wells.

(5) For purposes of this Section, the term "daily natural flow" means the wellhead absolute open flow potential determined in the manner described in OAC 165:10-17-6 and OAC 165:10-17-7.

(b) **Commission authority and responsibility.** Production shall be governed by the provisions of 52 O.S. Section 29. Pursuant to said statute, the Commission has the power and authority to adjust allowables to meet reasonable market demand. The Commission, upon its own application, after notice and hearing, shall establish allowables which may be greater or lesser than those set forth in 52 O.S. Section 29.

(c) Procedure.

(1) Allowables for wells other than those provided in subsections (a), (e), (f), and (g) of this Section shall be determined pursuant to a proration hearing held at least annually. The Commission may hold additional proration hearings at shorter intervals if necessary. At least 15 days prior to scheduled annual hearings, the Commission shall publish in a newspaper of general circulation in Oklahoma County, the proposed allowable formula for the next proration period. The annual proration hearings shall be held at least 30 days prior to the proration period for which the allowable is being determined. Such hearing shall be for the purpose of gathering comments and hearing testimony from all interested parties concerning the determination of reasonable market demand for the next proration period. As a guideline, but not to the exclusion of any other information that the Commission deems pertinent, the following may be considered by the Commission in determining reasonable market demand and corresponding allowables:

- (A) Production from prior years.
- (B) Production from the most recent proration period.
- (C) Wellhead open flow potentials.
- (D) New wells, recompletions, temporarily abandoned wells and plugged wells.
- (E) Gas which is available but is not being produced at the present time.
- (F) Changes in existing gas markets, forecasts, and new markets for Oklahoma gas.
- (G) State-wide gas production and the portion thereof attributable to unallocated gas wells.
- (H) Overproduction and underproduction from the preceding proration period.

(2) After a proration hearing, the Commission shall publish in a newspaper of general circulation in Oklahoma County, the allowable formula, no later than 15 days prior to the proration period for which the allowable formula is determined.

(d) Emergency allowables.

(1) When the Commission determines that an emergency gas supply situation exists, the Commission may establish an emergency allowable. The emergency allowable shall provide for the protection of correlative rights including those relating to minimum wells and penalized wells.

(2) The Commission may extend or change the emergency allowable for as long as an emergency exists. However, any authorized extension of the emergency allowable shall be by order after notice and hearing.

(e) Exceptions. Upon application, notice, and hearing, the Commission may establish a different allowable for good cause shown.

(f) Exclusion for hardship and distressed wells. The allowable established under this Section shall not limit rates established by special order for those wells classified as hardship or distressed wells.

(g) Discovery gas well.

(1) For thirty (30) months from the date of first production, a discovery gas well, as defined in this subsection, subject to the provisions of this Section, shall have a production allowable which shall be the greater of one thousand three hundred (1,300) mcf/d or sixty-five percent (65%) of the absolute open flow (AOF) as specified by the Corporation Commission. Such discovery well allowable shall not be available for any discovery gas well wherein two (2) or more separate common sources of supply are commingled and one (1) common source of supply would not qualify a new gas well as a discovery gas well, as defined in this Section.

(2) Drilling and spacing units which are downspaced after June 1, 1997, shall not qualify for the discovery gas well allowable.

(3) For purposes of this subsection, "discovery gas well" shall mean a new gas well, which is not an off-pattern well, is the first well completed in a common source of supply within a drilling and spacing unit and is at least one (1) mile from all existing gas wells which are completed in the same common source of supply. In the absence of spacing, a discovery well shall be the first well in the governmental section completed in a common source of supply, provided that the discovery gas well shall not be drilled closer than one thousand three hundred twenty (1,320) feet from the boundaries of the governmental section and is at least one (1) mile from all existing gas

wells which are completed in the same common source of supply.

(h) **Exclusion for reservoir dewatering.** Allowables shall not apply, regardless of unit size, in the instance of production of gas by reservoir dewatering to extract said gas from reservoirs having initial water saturations at or above fifty (50%) percent.

(i) **Minimum compliance.**

(1) The Conservation Division shall monitor well production at least annually. The allowable for a well shall be based on the product of the number of days in the proration period, multiplied by the applicable allowable formula, provided that said product shall be reduced for overproduction as provided by this Section or by any penalty or limitation on production imposed by applicable Commission order.

(2) Any overproduction existing at the end of the calendar year shall be applied against the allowable for the next calendar year. Furthermore, the overproduced well shall be required to make up overproduction within the first six months of the next calendar year. If the overproduction is not made up within that time period, the flow rate shall not exceed ten percent of the then current allowable until the overproduction is made up.

[Source: Amended at 10 Ok Reg 1579, eff 5-13-93; Amended at 14 Ok Reg 2198, eff 7-1-97; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 19 Ok Reg 1947, eff 7-1-02; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 30 Ok Reg 1041, eff 7-1-13; Amended at 38 Ok Reg 1739, eff 10-1-21]

165:10-17-12. New proposed well classification for the priority schedule

(a) Any common purchaser as defined in 52 O.S. 1981, Section 240 shall purchase all the gas which may be offered for sale and which may reasonably be reached by its trunk lines or gathering lines, without discrimination in favor of one producer as against another or in favor of any one source of supply as against another, except as authorized by the Commission under (b) of this Section.

(b) In the interest of the prevention of waste and protection of correlative rights, the following priority schedule shall be implemented by any first purchaser of gas whenever the permitted production from all wells in any common source of supply in its system in this State, including gas which is processed, is in excess of that purchaser's reasonable market demand; provided, however, if the first purchaser does not contractually control wellhead production, the first taker of gas shall be responsible for implementation of the following priority schedule.

(1) Priority One - Hardship and distressed wells.

(2) Priority Two - Enhanced recovery wells.

(3) Priority Three - Wells producing casinghead gas and associated gas.

(c) With respect to all gas not identified in (b) of this Section, the collective market demand of multiple common purchasers on each pipeline system for natural gas production from each well and each common source of supply in this state shall be deemed adequate to meet statutory purchasing requirements unless the Commission, upon its own motion or upon verified application by any interested party and after notice and hearing, as hereinafter provided, shall determine that differing obligations shall be imposed upon any common purchaser in order to protect correlative rights, the interest of the public or otherwise meet the requirements of applicable law.

(d) When permitted production of gas from all Priority 1, 2, and 3 wells from which a purchaser or taker is required to take exceeds the market demand of said purchaser or taker, all reductions in gas purchases or takes from wells in each priority shall be ratable. All production from the lower priority wells shall be shut-in before production from any well in the next higher priority is curtailed.

(e) Any well which meets the definition of more than one priority shall be assigned the higher priority.

(f) When there is more than one purchaser or taker involved in the taking of gas from a well into any purchaser's system, all purchasers and takers within that system shall be responsible for compliance with this Section.

(g) Upon a verified application of the Director of the Conservation Division or any other person, the Commission, after notice and hearing, may determine if gas has been ratably purchased or taken from a common source of supply on a system-wide basis in accordance with this Section without avoidable waste and with equitable participation in production and markets by all operators and other interested parties.

(h) First purchasers or takers of gas produced from Priority 1, 2, or 3 wells, who anticipate curtailing production from such wells, shall file by the twentieth day of each month nominations of requirements for gas to be purchased and/or used by them during the following month (Form 1004B). Nominations shall be made according to priorities established in (b) of this Section. Curtailments of production and acceptance of deliveries of gas shall be performed in accordance with (a) and (b) of this Section.

(i) Any interested party may file an application requesting that the Commission, for good cause shown, authorize limited deviation from the general priority schedule provided under (b) of this Section. The Commission, on its own motion, may initiate a review of the continued need for such a limited deviation. After notice and hearing, the Commission may authorize limited deviation upon finding that the same is necessary in order to prevent waste, protect correlative rights, and is otherwise required by the public interest or authorized by law.

[Source: Amended at 12 Ok Reg 2045, eff 7-1-95]

165:10-17-13. Use of gas for carbon black

Gas may not be used for the manufacture of carbon black or similar products predominately carbon, except as specifically authorized by the Commission after notice and hearing.

165:10-17-14. Waste of tail gas at gasoline plants

The duty, obligation, and jurisdiction of the Commission to prevent waste of tail gas where an additional market is available shall not be circumvented by any exclusive provisions in private contracts between the owners and the purchasers of tail gas.

165:10-17-15. Gas removed from storage

The rules relating to gas production from pools shall not apply to gas being removed from storage except and unless waste is involved.

165:10-17-16. Reports [REVOKED]

[Source: Amended at 19 Ok Reg 1947, eff 7-1-02; Revoked at 37 Ok Reg 1121, eff 1-1-20]

SUBCHAPTER 19. NATIONAL GAS POLICY ACT DETERMINATION [REVOKED]

165:10-19-1. Definitions [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

165:10-19-2. Applications for NPGA determination [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

165:10-19-3. Application for additional well in existing proration unit [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

165:10-19-4. Notice of application; service of notice [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

165:10-19-5. Procedures for protest, administrative consideration, and hearing [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

165:10-19-6. Stripper well determination [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

PART 1. TERTIARY RECOVERY PROJECT [REVOKED]

165:10-21-1. Tertiary recovery project certification [REVOKED]

[Source: Revoked at 13 Ok Reg 2933, eff 7-11-96]

PART 2. ENHANCED RECOVERY PROJECT [REVOKED]

165:10-21-2. Gross production tax exemption for enhanced recovery project [REVOKED]

[Source: Revoked at 13 Ok Reg 2933, eff 7-11-96]

PART 3. HORIZONTALLY DRILLED PRODUCTION WELLS [REVOKED]

165:10-21-3. Qualification and application for exemption from the levy of gross production tax on horizontally drilled production wells [REVOKED]

[Source: Revoked at 13 Ok Reg 2933, eff 7-11-96]

PART 4. DELETERIOUS SUBSTANCES [REVOKED]

165:10-21-4. Recycling, reuse, and ultimate destruction of deleterious substances [REVOKED]

[Source: Revoked at 18 Ok Reg 226, eff 11-2-00 (emergency); Revoked at 18 Ok Reg 1035, eff 5-11-01]

PART 6. PRODUCTION ENHANCEMENT PROJECTS [REVOKED]

165:10-21-21. General [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-1-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01;

Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-22. Definitions [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-23. Qualification procedure [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-24. Rebates - Refund procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 7. RE-ESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL [REVOKED]

165:10-21-35. General [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-36. Definitions [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-37. Qualification procedure [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-38. Rebates - Refund procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 8. DEEP WELLS [REVOKED]

165:10-21-45. General [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency);

Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 26 Ok Reg 2498, eff 7-11-09; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-46. Definitions [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Revoked at 15 Ok Reg 2171, eff 7-1-98]

165:10-21-47. Qualification procedure [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-47.1. Rebates - Refund procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-48. Audit requirements [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Revoked at 20 Ok Reg 1479, eff 4-24-03 (emergency); Revoked at 20 Ok Reg 1543, eff 7-1-03]

165:10-21-49. Certificate of investment to be filed by the operator [REVOKED]

[Source: Added at 12 Ok Reg 491, eff 1-1-95 (emergency); Added at 12 Ok Reg 1605, eff 7-1-95; Amended at 13 Ok Reg 2933, eff 7-11-96]

PART 9. NEW DISCOVERY WELLS [REVOKED]

165:10-21-55. General [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-56. Definitions [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-57. Qualification procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-58. Rebates - Refund procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-59. Audit requirements [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Revoked at 20 Ok Reg 1479, eff 4-24-03 (emergency); Revoked at 20 Ok Reg 1543, eff 7-1-03]

PART 11. HORIZONTALLY DRILLED PRODUCING WELLS [REVOKED]

165:10-21-65. General [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 28 Ok Reg 1949, eff 7-11-11; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-66. Definitions [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-67. Qualification procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-68. Rebates - Refund procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells [REVOKED]

[Source: Added at 20 Ok Reg 1479, eff 4-24-03 (emergency); Added at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 28 Ok Reg 1949, eff 7-11-11; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 13. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS [REVOKED]

165:10-21-75. General [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-76. Definitions [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-77. Qualification procedure [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 27 Ok Reg 2128, eff 7-11-10; Revoked

at 36 Ok Reg 534, eff 8-1-19]

165:10-21-78. Recovery of costs allowed as payback factors [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 15 Ok Reg 2171, eff 7-1-98; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-79. Responsibility for filing and payment of taxes [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-80. Expiration of exemption for incremental production [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 14. PRODUCTION OF OIL, GAS OR OIL AND GAS FROM ANY WELL LOCATED WITHIN BOUNDARIES OF A THREE-DIMENSIONAL SEISMIC SHOOT [REVOKED]

165:10-21-82. General [REVOKED]

[Source: Added at 18 Ok Reg 226, eff 11-2-00 (emergency); Added at 18 Ok Reg 1035, eff 5-11-01; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-82.1. Definitions [REVOKED]

[Source: Added at 18 Ok Reg 226, eff 11-2-00 (emergency); Added at 18 Ok Reg 1035, eff 5-11-01; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-82.2. Qualification procedure [REVOKED]

[Source: Added at 18 Ok Reg 226, eff 11-2-00 (emergency); Added at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-82.3. Rebates - Refund procedure [REVOKED]

[Source: Added at 18 Ok Reg 226, eff 11-2-00 (emergency); Added at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 21 Ok Reg 1960, eff 5-11-04 (emergency); Amended at 21 Ok Reg 2019, eff 7-1-04; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 24 Ok Reg 1784, eff 7-1-07; Amended at 27 Ok Reg 2128, eff 7-11-10; Amended at 29 Ok Reg 950, eff 7-1-12; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

165:10-21-82.4. Time periods for exemption from gross production tax levied on oil, gas or oil and gas production from a well located within boundaries of three-dimensional seismic shoot [REVOKED]

[Source: Added at 18 Ok Reg 226, eff 11-2-00 (emergency); Added at 18 Ok Reg 1035, eff 5-11-01; Amended at 20 Ok Reg 1479, eff 4-24-03 (emergency); Amended at 20 Ok Reg 1543, eff 7-1-03; Amended at 35 Ok Reg 973, eff 9-14-18; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 15. GENERAL PROVISIONS [REVOKED]

165:10-21-85. Election of exemption [REVOKED]

[Source: Added at 13 Ok Reg 2933, eff 7-11-96; Amended at 18 Ok Reg 226, eff 11-2-00 (emergency); Amended at 18 Ok Reg 1035, eff 5-11-01; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Revoked at 36 Ok Reg 534, eff 8-1-19]

PART 17. SALES TAX EXEMPTION FOR ELECTRICITY AND ASSOCIATED DELIVERY AND TRANSMISSION SERVICES SOLD FOR OPERATION OF RESERVOIR DEWATERING PROJECT AND/OR UNIT

165:10-21-90. General

(a) **Scope.** This Part deals with the classification by the Oklahoma Corporation Commission (Corporation Commission or Commission) of a reservoir dewatering project and/or unit for the purpose of an exemption, beginning January 1, 2004, from sales taxes levied on electricity and associated delivery and transmission services sold to an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, as provided in 68 O.S. 2002 Supp., §1357(31).

(b) **Distinction from designation as reservoir dewatering oil spacing unit or other spacing application.** The classification of an area and reservoir(s) as a "reservoir dewatering project" and/or a "reservoir dewatering unit" pursuant to this Part shall be separate and distinct from the designation of a reservoir dewatering oil spacing unit for oil allowable purposes pursuant to OAC 165:10-15-18.

Corporation Commission approval of an area and reservoir(s) for the instant sales tax exemption shall be made by application under this Part and not as a result of a spacing application filed for oil allowable purposes under OAC 165:10-15-1 and OAC 165:10-15-18, a spacing application filed for gas allowable purposes under OAC 165:10-17-2 through 10-17-16, a spacing application filed for horizontal drilling purposes under OAC 165:10-3-28, or any spacing application filed under OAC 165:10-1-22.

(c) **Reservoir Dewatering Projects for Oil Production.** Any reservoir that is the subject of an application pursuant to this Part, which produces predominantly oil, shall be evaluated to determine the initial water-to-oil ratio is equal to or greater than five-to-one (5-to-1).

(d) **Reservoir Dewatering Projects for Gas Production.** Any reservoir that is the subject of an application pursuant to this Part, which produces predominantly gas, shall be evaluated to determine the initial five-to-one (5-to-1) water-to-oil ratio using a gas conversion factor of one (1) barrel of oil converted to an MCF of natural gas based on an initial natural gas formation volume factor, BTU or price calculation or conversion accepted by the Conservation Division.

[Source: Added at 20 Ok Reg 1479, eff 4-24-03 (emergency); Added at 20 Ok Reg 1543, eff 7-1-03; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-21-91. Definitions

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

"Reservoir dewatering project" means an oil or gas production project covering a specified area and reservoir(s), which utilizes water recovery and disposal technology to increase water production in the initial phase of reservoir development, with the primary purpose of increasing oil or gas production from the

reservoir(s) as a result of the dewatering process. For the purpose of qualification for the sales tax exemption pursuant to this Part, the definition of reservoir dewatering project shall require the proof that the reservoir's initial water-to-oil ratio is greater than or equal to five-to-one (5-to-1), or is greater than or equal to the appropriate gas-to-water ratio calculated using the gas conversion factor outlined in OAC 165:10-21-90(d).

"Reservoir dewatering unit" means an area and reservoir(s) designated a reservoir dewatering project where a reservoir dewatering process is conducted as defined in this Part.

[Source: Added at 20 Ok Reg 1479, eff 4-24-03 (emergency); Added at 20 Ok Reg 1543, eff 7-1-03; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-21-92. Qualification procedure

(a) **Applicable operations.** The provisions of this Section establish criteria for determining if an area and reservoir(s) can be classified a reservoir dewatering project and/or a reservoir dewatering unit, beginning January 1, 2004, for the purpose of an exemption from sales taxes levied on electricity and associated delivery and transmission services sold to an oil and gas operator for a reservoir dewatering project and associated operations commencing on or after July 1, 2003.

(b) **Application to the Oklahoma Corporation Commission.** An oil and gas operator seeking the classification of an area and reservoir(s) as a reservoir dewatering project and/or reservoir dewatering unit pursuant to this Part shall file an application with the Corporation Commission on a Form 1535 for a determination that the project and/or unit qualifies for the exemption, as provided in 68 O.S. 2002 Supp., §1357(31). The operator shall attach to the Form 1535 a copy of the following information:

- (1) A production test or other appropriate data showing the initial water-to-oil ratio is greater than or equal to five-to-one (5-to-1) or is greater than or equal to the appropriate gas-to-water ratio calculated using the gas conversion factor outlined in OAC 165:10-21-90(d). For this purpose, a Corporation Commission Form 1013 may be filed with the sales tax exemption application to demonstrate the initial 5-to-1 water-to-oil ratio for the reservoir.
- (2) Geological structure and isopach maps for the applicable reservoir showing its geological characteristics; and any additional engineering and geological data or information deemed necessary by the Conservation Division to evaluate the application.
- (3) A schematic diagram of the electrical grid and dewatering and water disposal equipment associated with the reservoir dewatering project covered by the application.

(c) **Administrative approval and determination.**

- (1) If the application is administratively approved, copy shall be forwarded to the operator.
- (2) To obtain the tax exemption, the operator should contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194.
- (3) Any data, maps and other information submitted with the Form 1535 for determination that an area and reservoir qualify for the exemption provided in this Part shall be held as confidential information by the Conservation Division and/or Corporation Commission, and shall be returned to the applicant or destroyed upon approval of the application.

[Source: Added at 20 Ok Reg 1479, eff 4-24-03 (emergency); Added at 20 Ok Reg 1543, eff 7-1-03; Amended at 23 Ok Reg 2229, eff 7-1-06; Amended at 36 Ok Reg 534, eff 8-1-19]

PART 19. STATE SALES TAX EXEMPTION FOR ELECTRICITY SOLD FOR OPERATION OF ENHANCED RECOVERY METHODS ON A SPACING UNIT OR LEASE

165:10-21-95. General

(a) **Scope.** This Part deals with the designation by the Oklahoma Corporation Commission (Corporation Commission or Commission) of enhanced recovery methods on a spacing unit or lease for the purpose of an exemption, beginning July 1, 2006, from sales taxes levied on electricity sold to an oil and gas operator for such operations, as provided in 68 O.S. §1357(35).

(b) **Distinction from designation as enhanced recovery project pursuant to application for underground injection, spacing or unitization.** The designation of enhanced recovery methods on a spacing unit or lease pursuant to this Part shall be separate and distinct from the designation of an enhanced recovery project otherwise provided by Commission rules. The Commission's designation pertaining to the instant sales tax exemption shall be made by application under this Part and not as a result of an application for: (1) enhanced recovery project designation under OAC 165:10-5-4; (2) drilling and spacing units under OAC 165:10-15-1 and OAC 165:10-15-18 (oil allowables), OAC 165:10-17-2 through 10-17-16 (gas allowables), OAC 165:10-3-28 (horizontal drilling), or any spacing application under OAC 165:10-1-22; or (3) unitization under Title 52 O.S., § 287.1 et seq. and OAC 165:5-7-20.

[Source: Added at 23 Ok Reg 2229, eff 7-1-06; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-21-96. Definitions

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

"Enhanced recovery methods" means production methods by which oil is produced, or is attempted to be produced, including but not limited to, increased pressure in a producing formation through use of water or saltwater if the electrical usage is associated with and necessary to the operation of equipment required to inject or circulate fluids in the producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead.

[Source: Added at 23 Ok Reg 2229, eff 7-1-06]

165:10-21-97. Qualification procedure

(a) **Applicable operations.** The provisions of this Section establish criteria for designating enhanced recovery methods on a spacing unit or lease, beginning July 1, 2006, for the purpose of an exemption from sales taxes levied on electricity sold to an oil and gas operator for such operations.

(b) **Application to the Oklahoma Corporation Commission.** An operator seeking the designation of enhanced recovery methods on a spacing unit or lease pursuant to this Part shall file an application with the Corporation Commission on a Form 1535 for a determination that the operations qualify for the exemption, as provided in 68 O.S. §1357(35). The operator shall attach to the Form 1535 a copy of the following information:

(1) Production test or other appropriate data showing the total content of oil recovered after the use of enhanced recovery methods does not exceed one percent (1%) by volume. For this purpose, a Corporation Commission Form 1535 may be filed with the sales tax exemption application to demonstrate the daily rate and total content of oil recovery by volume from the spacing unit or lease prior to use of enhance recovery methods.

(2) Geological structure and isopach maps for the producing formation and any additional engineering and geological data or information deemed necessary by the Conservation Division to evaluate the application.

(3) A map and schematic diagram of the producing wells, underground injection or disposal wells, and other water injection or circulating equipment associated with the enhanced recovery methods on a spacing unit or leased covered by the application.

(c) Administrative approval and determination.

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator should contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194.

(3) Any data, maps and other information submitted with the Form 1535 for designation that enhanced recovery methods on a spacing unit or lease qualify for the exemption provided in this Part shall be held as confidential information by the Conservation Division and Corporation Commission, and upon approval of the application, shall be returned to the applicant or destroyed.

[Source: Added at 23 Ok Reg 2229, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 534, eff 8-1-19]

SUBCHAPTER 23. RATABLE SHARING OF REVENUE [REVOKED]

165:10-23-1. Definitions [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-2. General provisions for all interest owners in a well producing natural gas or casinghead gas [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-3. Revenue sharing in contract entered into on or after January 1, 1984; market by operator [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-4. Revenue sharing in contract entered into prior to May 3, 1983 [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-5. Revenue sharing in contract entered into on or after May 3, 1983, but prior to January 1, 1984 [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-6. Gas statements of production [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-7. Expiration of a gas contract [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-8. Special circumstances; parties selling under a joint operating agreement [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-9. Payments on production [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-10. Administrative expense [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-11. Commencement of an action [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-12. Other rights and remedies [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-13. Crude oil [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-14. Liability [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

165:10-23-15. Severability [REVOKED]

[Source: Revoked at 10 Ok Reg 2601, eff 6-25-93]

SUBCHAPTER 24. MARKET SHARING

165:10-24-1. Scope

(a) This Subchapter implements the Natural Gas Market Sharing Act of 1992, codified at 52 O.S. Section 581, et seq.

(b) This Subchapter establishes a procedure whereby an owner in a well may compel the well operator or other designated marketer to either sell gas on the owner's behalf or find a market for that owner's gas.

(c) This Subchapter shall apply to the sale of natural gas from a well except for:

(1) any sale under a gas contract for more than one year, entered into before January 1, 1985 (including any successor, replacement or roll-over contract entered into before January 1, 1990) provided that any participating mineral owners who were sharing in a contract on January 1, 1992, and continue to share in such a contract on September 1, 1992, are subject to this Subchapter;

(2) any sale under a contract which provides for:

- (A) an initial term of more than three years; and
 - (B) a guarantee or warranty of delivery of fixed volumes without limitation on specified wells or reserves; and
 - (C) delivery of such volumes;
- (3) any sale of natural gas liquids extracted by mechanical processing of the natural gas stream for removal of liquid components other than methane.
- (d) Nothing in this Subchapter shall change the obligation of a first purchaser of production under an existing gas contract unless otherwise agreed to by the parties.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-24-2. Definitions

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

"Designated marketer" means the operator of the well or a producing owner substituted for the operator as provided in 165:10-24-5.

"Electing owner" means any owner who elects to produce and market its share of production pursuant to the provisions of this Subchapter.

"Nonexempt sales" means those gas sales which are subject to the provisions of this Subchapter and do not qualify for exemptions as set forth in 165:10-24-1(c) and 165:10-24-3(b).

"Overproduced owner" means an owner who has produced and sold a volume of gas in excess of his working interest percentage of cumulative sales from a well.

"Owner" means a person or persons who own a working interest in a well.

"Producing owner" means an owner who produces and sells gas from a well for its own account.

"Working interest" means the interest in a well, calculated prior to deduction for royalty, overriding royalty and other non-cost bearing interests burdening production, entitling the owner thereof to drill for and produce oil and gas, including the interest of a participating mineral owner to the extent set forth in Section 87.1 of Title 52 of the Oklahoma Statutes.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-24-3. Election to market share

(a) An owner eligible to market share as to a particular well, may elect to market share as to such well by sending written notice to the designated marketer for the well.

(b) An owner may not elect to market share as to a particular well if as to such well:

- (1) said owner is subject to a balancing agreement (or other written agreement expressly providing for gas balancing or the taking, sharing, marketing of gas); or
- (2) the term has yet to expire for a gas contract, where the owner terminated the contract for value received; or
- (3) said owner terminated market sharing within the previous 12 months; or
- (4) said owner is currently over-produced; or
- (5) the designated marketer is relieved from the duty to market share pursuant to 165:10-24-4(g) or 165:10-24-4(i) and (j).

(c) An election to market share shall be effective on the first day of the month following 60 days from receipt of the election by the designated marketer.

(d) The well operator shall serve as the designated marketer until appointment of a substitute.

(e) An owner may terminate his election by sending writing notice to the designated marketer. Notice of termination is effective on the first day of the month following 60 days after receipt of the notice.

(f) Copies of all market sharing elections and notices shall be sent to the well operator, if said operator is not the designated marketer.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-24-4. Duties and accounting

(a) The designated marketer shall find an independent, non-affiliated purchaser for the electing owner's gas, or the designated marketer shall produce and sell said gas for the account of the electing owner.

(b) During market sharing, the designated marketer shall have the right to produce and sell and electing owner's gas, without further notice and consent except in those cases where the designated marketer has secured an independent non-affiliated purchaser for the gas production of such electing owner.

(c) If the designated marketer produces and sells the electing owner's gas for the account of the electing owner, the designated marketer shall account to the electing owner at the average price, weighted by volume, received by the marketer for all of the designated marketer's non-exempt sales from the well for that month, less post production cost and expenses required to render the gas marketable and to sell and deliver the gas to market, and net of all reasonable marketing costs, expenses and administrative fees. Volumetric allocation between the designated marketer and the electing owner shall be in proportion to their working interests in the well, with one exception. If the owner's proportionate production interest is different from his working interest, the proportionate production interest shall be used.

(d) Disbursement of gas sales proceeds shall be subject to the Production Revenue Standards Act of 1992 (52 O.S. Section 570.1, et seq.).

(e) The designated marketer shall not be considered as a fiduciary to any electing owner or to any owner with an interest burdening the electing owner's interest. The designated marketer shall not be liable for losses absent bad faith, gross negligence or willful misconduct.

(f) Market sharing according to this Subchapter shall not confer any contract rights to an electing owner or his assigns, either directly or as third party beneficiaries.

(g) For a gas contract with a term in excess of one year, the designated marketer may require an electing owner to either agree in writing to be bound by the contract terms or forego market sharing under that contract. Absent a confidentiality provision in said gas contract, the designated marketer shall send a copy of the gas contract to each electing owner.

(1) After receipt of the contract, the electing owner shall have 30 days in which to:

- (A) send written consent to the contract terms, or
- (B) provide a written termination of market sharing or
- (C) elect a new designated marketer.

(2) If the electing owner fails to so respond, his election to market share shall be deemed terminated.

(h) If the designated marketer ceases to sell gas from the well and therefore has no sales, the designated marketer:

(1) may:

- (A) notify the electing owners in writing that it has no sales and that the electing owners must elect a new designated marketer, or
- (B) locate a non-affiliated purchaser for the electing owners.

(2) shall not be responsible for sharing sales with electing owners as it has no sales. If such a designated marketer again begins to produce and market gas from the well, then the electing owners may re-elect it as designated marketer.

(i) If the designated marketer provides the electing owner with a sales contract with a gas purchaser, the designated marketer shall be relieved of the duty to market share with the electing owner to the extent that the terms of said contract provide for the purchase of the electing owner's share of each withdrawal from the well during the contract period, provided:

(1) The designated marketer is not an affiliate of the gas purchaser: said term "affiliate" being defined at 18 O.S. Section 1148A(2); and

(2) The contract is of a type and with terms generally offered at the time to other producers for gas production from wells in the common source of supply; and

(3) If the designated marketer operates and controls a gathering line to the well, it does not prohibit access to downstream transportation or impose unjust or discriminatory gathering fees or tariffs upon the electing owner; and

(4) Before discontinuing market sharing if it had begun, the designated marketer provides the electing owner with at least thirty days in which to accept or reject the offer for said contract.

(j) In so far as the exemption established by subsection (i) of this Section, if the designated marketer fulfills each of the foregoing conditions, it shall be relieved from the duty to market share with the electing owner for a time period hereafter described as the "exemption period", calculated as follows:

(1) If the electing owner enters into said contract with said purchaser, then the exemption period shall be the duration of the contract as originally offered to the electing owner or the duration of the contract as entered into by the electing owner, whichever is greater;

(2) If the electing owner fails to enter into said contract for any reason, then the exemption period shall be the duration of the contract period as initially offered to the electing owner or twelve months, whichever is less.

(k) During the exemption period as determined in subsection (j) of this Section, failure to enter into said contract shall not be grounds for election or appointment of an additional designated marketer to market share with the electing owner with respect to volumes of gas which would have been purchased if the electing owner had entered into the said contract as initially offered to the electing owner.

(l) Upon request, the designated marketer or electing owner shall provide the first purchaser of production with information concerning the election to market share and the electing owner's share of monthly production.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-24-5. Replacement of the designated marketer

A new designated marketer may be appointed by a majority vote of the remaining market sharing owners. If an electing owner does not agree to the terms of a gas contract with a term greater than one year, the electing owner may elect a new designated marketer unless said election is prohibited by 165:10-24-4(i) and (j). Otherwise, substitution of the designated marketer shall occur not more than once every twelve months.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-24-6. Fees

- (a) The designated marketer may charge each electing owner with an administrative fee for marketing the electing owner's share of production. Said fee shall be assessed monthly on a per-well basis. It shall be based on a formula described in this Section subject to annual adjustments as provided below. Said formula consists of 2.5% of the electing owner's monthly share of proceeds, but not less than twenty dollars nor more than seventy-five dollars, unless application of the annual adjustment factor provides a different maximum amount. The maximum amount of the fee permitted by this Section shall be adjusted as of the first day of May each year following May 1, 1993. The annual adjustment shall be computed by multiplying the rate currently in use by the percentage of increase or decrease in the annual overhead adjustment factor established by the Council of Petroleum Accountants Societies at its annual spring meeting for purposes of adjusting the combined fixed-rate overhead charges against joint operations in a well.
- (b) If the designated marketer produces and sells gas for the account of the electing owner, the designated marketer may charge the electing owner or deduct said fee from the electing owner's share of the undistributed proceeds of production.
- (c) Administrative fees under this Section shall be in addition to and separate from any and all post-production costs and expenses, including but not limited to reasonable marketing costs and expenses which may also be deducted from the proceeds payable to eligible electing owners.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

SUBCHAPTER 25. ESCROWED ACCOUNTS FOR POOLED MONIES

165:10-25-1. Definitions

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

"Escrow account" means an account established in a financial institution and held in the name of the holder and an escrow agent wherein each owner is federally insured to One Hundred Thousand Dollars (\$100,000.00).

"Financial institution" means a federally or state chartered bank, savings and loan, or credit union.

"Holder" means any person in possession of royalties, bonus payments, or other monies directed to be paid under a Commission pooling order and which cannot be paid because the persons entitled thereto are unknown or cannot be located.

"Owner" means the last known record titleholder of a mineral interest which is subject to a Commission pooling order.

"Person" means any individual, partnership, joint stock associations, trust, cooperative, unincorporated association, or corporation.

165:10-25-2. Escrow account required

- (a) Each pooling order which pools interest of unknown or unlocated owners shall contain language substantially similar to the following: "If any payment of bonus, royalty payments, or other payments due and owing under this order cannot be made because the person entitled thereto cannot be located or is unknown, then said bonus, royalty payments or other payments shall be paid into an escrow account in a financial institution within ninety (90) days after this order and shall not be commingled with any funds of the applicant or operator. Provided however, that the

commission shall retain jurisdiction to grant to financially solid and stable holders an exception to the requirement that such funds be paid into an escrow account with a financial institution and permit such holder to escrow such funds within such holder's organization. Responsibility for filing reports with the Commission as required by law and commission rule as to bonus, royalty or other payments escrowed hereunder shall be with the applicable holder. Such escrowed funds shall be held for the exclusive use of, and the sole benefit of, the person entitled thereto. It shall be the responsibility of the operator to notify all other holders of this provision and of the Commission rules regarding unclaimed monies under pooling orders".

(b) Each pooling order issuing upon an application filed on or after July 1, 1984, shall contain, in addition to the foregoing language, an attached exhibit listing all parties or interests which are unknown or cannot be located, together with each party's last known address, if available.

165:10-25-3. Escrow account requirements

(a) Monies which are directed to be paid under a Commission pooling order and which cannot be paid because the persons entitled thereto are unknown or cannot be located shall be placed into escrow accounts in a financial institution. The holder shall choose the institution. The holder and the financial institution may make such arrangements as are necessary and appropriate for the establishment of the account. Service charges, fees, and costs may be deducted from any interest generated by the monies but in no event shall such charges, fees, and costs be deducted from the principal. Any financially solid and stable holder may apply to the commission for an exception to the requirement to place monies into escrow accounts in a financial institution. The granting of an exception shall be within the sole discretion of the Commission and may only be granted upon the filing of a proper application therefor pursuant to notice given to the Manager of the Mineral Owners Escrow Account by mail at least ten days prior to the hearing and by publication one time at least 15 days prior to the hearing in a newspaper of general circulation in Oklahoma County and in a newspaper of general circulation in the county where the holder's principal office in the state is located. The granting of an exception shall not exempt the holder from any other requirements set forth in this Subchapter.

(b) Only one account need be established by each holder. If only one account is established, a record shall be made of deposits and withdrawals for each person for whom monies are being held. Either the holder or the financial institution may keep the deposit/withdrawal record.

(c) An application for an exception under (a) of this Section shall state that the holder has proof by the holder's annual financial statement that it is a solid and stable holder. The holder must introduce its annual financial statement into evidence in the cause and the order, if one is issued, shall show that the annual financial statement was in fact introduced into evidence and considered by the Administrative Law Judge in making the determination to grant holder's request for an exemption under (a) of this Section, and holder shall submit a current financial statement on an annual basis thereafter.

(d) Withdrawals from such escrow account by the holder may only be made for the following purposes:

- (1) To pay the rightful recipient of the monies upon presentation of a proper claim.

(2) To submit and pay to the commission the principal of all monies placed in escrow pursuant to 165:10-25-6.

(3) To correct an overpayment or other mistake made in the distribution of monies by the holder.

[Source: Amended at 9 Ok Reg 2337, eff 6-25-92]

165:10-25-4. Payment to owner

The holder shall have a designated officer or employee to whom claims upon the escrow account may be made. The holder shall promptly pay the appropriate sum to any person showing the holder sufficient proof of ownership and proof of identity as may be determined in good faith by the holder. The holder shall report any payments made on his annual report to the Commission.

165:10-25-5. Reports to the Commission

Each holder shall submit a report for persons who cannot be located or are unknown and for whom monies are being held in escrow no later than 30 days after such holder's annual reporting date. Each holder's initial report shall be filed no later than one year and 30 days after the date of the issuance of the first pooling order subject to this Subchapter. Such reports shall be filed each year that any monies are held in escrow, until the well is plugged.

165:10-25-6. Payment to the Commission

(a) No later than 30 days after the annual reporting date of each year, the holder shall submit to the Commission the principal of all monies placed in escrow accruing under the orders issued during the first year, and all subsequent years where the sum exceeds \$100.00 for any one person.

(b) If the holder has placed in escrow less than \$100.00 for any one person, the holder may follow the procedures for deposit, or maintain the funds in escrow. If the amount accumulates to over \$100.00 for any one person after any annual reporting date, it shall be submitted to the Commission on the next annual reporting date.

(c) Payments shall be tendered to the Finance Office of the Commission. Payments shall be made by cashier's check, certified check, or money order made payable to the "Oklahoma Corporation Commission".

165:10-25-7. Affidavit of compliance

In addition to the Plugging Record (Form 1003) and Completion Report (Form 1002A) required under 165:10-11-7, the operator shall file a compliance affidavit. No plugging bond shall be released until after the compliance affidavit is filed.

165:10-25-8. Forms

The Commission may issue appropriate forms to implement the provisions of this Subchapter.

165:10-25-9. Release from liability

Any holder who pays or delivers monies to the Commission required to be paid under this Subchapter shall be relieved of all liability for the monies so paid or delivered for any claim which then exists or thereafter may arise or be made in respect to such monies.

165:10-25-10. Construction

This Subchapter shall not be construed as limiting the Commission's authority to grant an exception to any rule in this Subchapter, unless precluded by law.

SUBCHAPTER 27. PRODUCTION REVENUE STANDARDS

165:10-27-1. Scope

This Subchapter implements the Production Revenue Standards Act of 1992, codified at 52 O.S. Section 570.1, et seq. It shall apply to all producing wells as set forth in the Production Revenue Standards Act of 1992. However, Sections 165:10-27-4 through 165:10-27-10 shall not apply to any well which is a part of a compulsory enhanced recovery project, or where royalty remittance is otherwise regulated by written agreement among all owners in the well. This Subchapter is intended to supplement and clarify as needed the language in the statutes.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-2. Effective date [REVOKED]

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Revoked at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-3. Definitions

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

"Owner" means a person or governmental entity with a legal interest in the mineral acreage under a well which entitles that person or entity to oil or gas production or the proceeds or revenues therefrom.

"Produce", "producing" and "production" mean the physical act of severance of oil and gas from a well by an owner and includes but is not limited to the sale or other disposition thereof.

"Producing owner" means an owner entitled to produce who during a given month produces oil or gas for its own account or the account of subsequently created interests as they burden its interest.

"Proportionate production interest" means that interest in production which a working interest owner is entitled to produce in order to adjust for shifting of royalty burdens among working interest owners under the royalty provisions of 52 O.S. Sections 570.1, et seq., and is equal to the quotient of:

(A) the sum of a working interest owner's net revenue interest plus the net revenue interests of any subsequently created interests as they burden such owner's working interest,

(B) divided by the remainder of one (1) less the royalty share.

"Proportionate royalty share" means the percentage of the royalty share owned by a royalty interest owner calculated by dividing such owner's royalty interest in a well by the royalty share.

"Royalty interest" means the entirety of the percentage interest in production or proceeds therefrom:

(A) reserved or granted by a mineral interest owner exclusive of any interest defined as a working interest or a subsequently created interest, or

(B) otherwise provided or ascribed to a mineral interest owner by statute, rule, order or operation of law.

"Royalty interest in a well" means an owner's royalty interest multiplied by the quotient of:

(A) the gross mineral acres under the well attributable to such interest, divided by

(B) the total mineral acres under the well.

"Royalty proceeds" means the share of proceeds or other revenue derived from or attributable to any production of oil and gas attributable to the royalty share, but shall not include payments of bonus, delay rentals, shut-in royalties or any additional royalty payable to the Commissioners of the Land Office or other governmental entity, pursuant to and valued according to the terms of its oil and gas lease, which is calculated separately from the royalty portion of actual proceeds from the sale of oil or gas.

"Royalty share" means the percentage of the well equal to the sum of all royalty interests in the well.

"Share of production" means the monthly entitlement to produce belonging to a producing owner.

"Shipper" means any entity who contracts with a transporter to move gas through the transporter's system.

"Subsequently created interest" means any interest carved from a working interest other than a royalty interest. In addition to the royalty interest contained in a lease, a non-participatory interest created by a working interest owner for the benefit of a mineral interest owner in excess of a one-eighth (1/8) royalty interest may, by separate agreement other than the oil and gas lease, be a subsequently created interest and thereby not be communitized under the terms of the Production Revenue Standards Act only if there is clear and unambiguous language expressing that intent in the creating document. The additional royalty payable to the Commissioners of the Land Office or other governmental entity pursuant to and valued according to the terms of its oil and gas lease, which is calculated separately from the sale of oil or gas, shall also be a subsequently created interest and thereby shall not be communitized under 52 O.S. Section 570.1, et seq.

"Well" means an oil or gas well, and shall include:

(A) a well having uniform ownership as to all producing zones, or

(B) a drilling and spacing unit having uniform ownership wherein multiple wells producing gas are commonly metered, and

(C) each separately metered producing zone within a single wellbore wherein ownership varies by zone.

"Working interest" means the interest in a well entitling the owner thereof to drill for an produce oil and gas, including but not limited to the interest of a participating mineral owner to the extent set forth in Section 87.1 of Title 52 of the Oklahoma Statutes.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-4. Well operator records

Each well operator shall establish or cause to be established records showing the production allocations and payments to each interest owner in the well. For purposes of such records, the working interest owners shall provide the well operator with accounting and remittance information as required by statute. At a minimum, the required information shall consist of the name, address, interest

amount and tax identification number of each royalty owner along with payment status. Each working interest owner shall provide said information in writing within 60 days of receipt of a written information request from the well operator. Updated information shall be provided by a working interest owner within 60 days after receipt of notice of a change.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-5. Pre-sale nominations

(a) Any producing owner marketing production separately from the well operator shall send pre-production nominations to the well operator for his withdrawals. A nomination shall be due five business days prior to the month in which the nomination is to be effective, but earlier if required by the first purchaser or transporter. The nomination shall consist of the name of the first purchaser or shipper, shipper contract number and the volumes of gas nominated for production for such producing owner's account.

(b) Nothing in this Section shall supersede or limit the operator's right to control gas nominations and allocations under a joint operating agreement, separate balancing agreement or Commission order.

(c) The owner of the gas meter shall confirm all nominations with the operator of the well no later than the last business day prior to the month in which production occurs.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-6. Entitlement

Each producing owner in a well shall be entitled to produce each month his proportionate production interest subject to balancing restrictions created by statute, rule, agreement or operation of law.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-7. Post-sale reports

(a) Within sixty days after the end of the month of production, each producing owner shall report and account to the operator of the well, the identity of the first purchaser or shipper of the gas and information specified in 165:10-27-13.

(b) Within fifteen days after the end of the month of production, each owner of a gas meter taking gas solely from a gathering system shall provide upon first request by the owner of such gathering system and thereafter, the gross volume of gas measured by such meter both in MCF and British Thermal Unit equivalent.

(c) Within twenty days after the end of the month of production, each owner of a gas meter shall provide or cause to be provided in writing to the operator of the well, the gross volume of gas measured by such meter, both in MCF and British Thermal Unit equivalent, and the volume of gas allocated at the meter to each first purchaser or shipper and each contracted producing owner that sold gas to the owner of the gas meter. Each meter owner shall, within the same time period, furnish each first purchaser or shipper the volume of gas allocated at the meter to that first purchaser or shipper. However, if the gas processing plant operator is performing the allocations, then within ten days after the end of the month of production, the owner of the pipeline residue gas meter shall provide, upon first request by the processing plant operator and thereafter, the volume in MCF and British Thermal Unit equivalent measured through its meter as required by the gas processing plant operator for its allocations under this subsection.

(d) As an alternative to supplying the operator with information in the manner prescribed by subsections (b) and (c) of this Section, the owner of a gas meter who has a contract with one or more producing owners, covering all of the gas flowing through its meter, may furnish monthly volume statements to the operator of the well, provided said owner of the gas meter has previously furnished the operator with names of the producing owners and the decimal interest owned by each such producing owner or owners or any method other than by decimal interest then in effect for allocating gas among the producing owners. After adopting alternative reporting under this subsection, the owner of the gas meter shall be required to supply the operator of the well with any change to the name of a producing owner, the decimal interest by a producing owner or the method, other than by decimal interest, for allocating gas among the producing owners: such change to reported by the owner of the gas meter to the operator of the well within thirty days after the owner of the gas meter receives notice of such change.

(e) Within thirty-five days after the end of the month of production, each first purchaser or shipper of gas from a gas meter shall furnish or cause to be furnished to the operator of the well, a volume allocation statement showing the volume of gas purchased from or shipper for each contracted producing owner. Within thirty days after making any retroactive gas volume adjustment for such well, the first purchaser or shipper shall furnish notice of such retroactive gas volume adjustment to the operator of the well.

(f) Any person subject to multiple reporting requirements under this Section shall not be required to re-report the same information to the operator if such information has been previously provided by such person in a different report. Such person may consolidate the required information into a single report to the operator; provided, however, that all such reporting must comply with the applicable statutory time periods for the type of information being communicated to the operator.

(g) Any first purchaser, shipper or owner of a gas meter that does not provide the information required of it by this Section shall be subject to having its takes from the well suspended by the operator of the well pursuant to 165:10-27-8.

[Source: Added at 10 Ok Reg 2601, eff 7-11-94; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-8. Operator's option to confirm zero volume of gas sales because of noncompliance

(a) If a producing owner fails to timely provide the operator of the well with any of the information required by 165:10-27-4 and 165:10-27-7, or if the owner of a gas meter, first purchaser or shipper of gas fails to timely provide the operator of the well with any of the information required of it by 165:10-27-7 for the transfer, transportation, delivery or sale of gas by a producing owner, the operator of the well shall have the right, but not the obligation, to confirm zero volume of gas sales for such producing owner, and to make available for nomination and sale to other producing owners in the well, then in compliance with said Sections, all of such producing owner's share of production for the next subsequent calendar month and for each and every month thereafter of noncompliance. If the operator elects to make such producing owner's share of production available for nomination and sale, the operator shall immediately notify such producing owner by certified mail and inform such producing owner that such producing owner shall no longer have the right to nominate any volume of gas, until the next production month following the date of compliance, unless the operator of the well agrees to an earlier date. Such notice shall contain the lease or well identification, legal description, production months of noncompliance, a brief description of the noncompliance,

and a provision stating that the operator is confirming zero volume of gas sales for such producing owner. The operator shall then immediately notify each producing owner then in compliance with the aforesaid Sections and inform said producing owner about additional gas volumes available for nomination and sale. In regard to the producing owner for which the operator has confirmed zero gas sales, the operator shall also immediately notify in writing such producing owner's first purchaser or shipper, and the owner of the gas meter, and such notice shall report that such producing owner does not have the right to nominate and sell or transport any volume of gas, until the next production month following compliance, unless the operator of the well agrees to an earlier date. Such notice shall also contain the lease or well identification, legal description, a brief description of the noncompliance, and the production months of noncompliance.

(b) As soon as a noncomplying party is in compliance, but no sooner than the next production month unless otherwise agreed to, the operator of the well shall give the affected producing owner the opportunity to nominate and sell gas subject to existing agreements or by common practice within the oil and gas industry.

(c) The first purchaser or shipper and the owner of the gas meter shall be entitled to rely on and shall incorporate on a prospective basis any nomination or allocation changes pursuant to such notification from the operator under this Section. Changes pursuant to such notification may be made on a retroactive basis if so agreed to by the operator, owner of the meter, the first purchaser or shipper.

(d) The remedies provided for in this Section shall not preclude any party from pursuing the remedies available to it through the district courts, as provided by existing law, including the right of offset.

(e) All elections and notices given pursuant to the provisions of this Subchapter shall become effective as of the first day of the month following the end of any time period specified in the Production Revenue Standards Act as last amended, 52 O.S. Section 570.1, et seq.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93; Amended at 11 Ok Reg 3699, eff 7-11-94]

165:10-27-9. Designated payor for royalty distributions

(a) For royalty distributions, the well operator shall serve as payor for all proceeds of production, absent appointment of a substitute payor and/or election of a working interest owner to distribute royalties attributable to that working interest owner's sales.

(b) A substitute payor may be appointed by Commission order or by the owners owning a majority in interest of the working interest in the well. A substitute payor so appointed shall assume the rights and duties of the well operator concerning assessment of fees, royalty record maintenance and disbursement of royalties. A surety bond of \$50,000 shall be required if the substitute payor is not a working interest owner, a first purchaser of production from the well, a bank or a trust company. Such bond shall be posted with the Surety Department of the Conservation Division before receipt of sales proceeds by the substitute payor. Any such bond shall be drafted so as to compensate royalty owners if the substitute payor defaults on his disbursement obligation.

(c) A producing owner may elect to distribute royalties from his sales subject to the following conditions:

- (1) the producing owner shall provide 60 days written notice to the operator before starting or stopping the alternative procedure;
- (2) the producing owner shall assume liability for its errors;

- (3) the producing owner shall report payment information to the well operator within 30 days after each disbursement;
- (4) the producing owner cannot re-start the alternative procedure within 12 months after terminating it.

(d) For good cause shown, the Commission may cancel a producing owner's election to separately distribute royalty. Cancellation shall occur only by order after application, notice and hearing.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-10. Administrative fees

(a) This Section prescribes fees which may be charged by the operator of a gas producing well or substitute payor, for administrative expenses generated by the Production Revenue Standards Act.

(b) Fees shall be assessed on a per-well basis against the cost-bearing working interests in a well according to respective gross working interest. They shall not be assessed against either royalty interests or non-cost bearing working interests in the well.

(c) A one-time implementation fee shall cover any cost associated with establishing or modifying the well operator's record keeping for the well, and it shall apply to any existing gas producing well with a date of first production occurring before September 1, 1992. If operations are transferred to a different operator after assessment of the one-time implementation fee, the successor operator may not assess another implementation fee against the working interests in the well.

(d) Should any working interest owner in a well producing gas fail to fully and timely comply with the requirements of 165:10-27-4, the well operator or substitute payor shall have the right to charge against said non-complying working interest owner a late fee of two hundred-fifty dollars per affected well.

(e) An annual maintenance fee shall cover any cost associated with record keeping, issuance of gas balancing statements and any election of a producing owner regarding separate distribution of royalty proceeds. Maintenance fees shall be calculated on an annual basis using the first day of May as the anniversary date. Such fees may be prorated and billed on a monthly basis at the well operator's discretion. If a well has a date of first production after the first day of May of the calendar year, the annual maintenance fee shall be prorated based on the remaining number of months before the next anniversary date on the first day of May.

(f) No working interest owner other than the well operator shall be entitled to assess either an implementation fee or a maintenance fee.

(g) The rates for implementation fees and annual maintenance fees shall be based on the appropriate table values found in Appendix G to this Chapter, subject to annual adjustments as provided below. The appropriate table value shall be determined from a matrix using the number of working interest owners or royalty owners in a well. The table value shall be adjusted as of the first day of May each year following May 1, 1993. The annual adjustment shall be computed by multiplying the rate currently in use by the percentage of increase or decrease in the annual overhead adjustment factor established by the Council of Petroleum Accountants Societies at its annual spring meeting for purposes of adjusting the combined fixed-rate overhead charges against joint operations in a well.

(h) Any fee assessed under this Section may be billed or deducted from the working interest owner's share of undistributed proceeds of production.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-11. Balancing of royalty accounts

(a) In the event of a production imbalance among royalty owners in a well, the affected working interest owners may adopt a royalty payment method to balance the royalty accounts, provided it is used only to extent necessary to balance the cumulative accounts of the royalty owners, and prior notice of the plan is sent to the affected royalty owners and to the well operator along with any ongoing information necessary for said operator to discharge its duties.

(b) Nothing in this Section shall impair any balancing rights arising by contract or law.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-12. Record keeping

Any record required by this Subchapter shall be maintained for a period of at least five years. Upon reasonable request, the well operator or substitute payor shall make available to a royalty owner for confidential inspection a record of receipts and payment of proceeds to said royalty owner, as well as copies of information furnished to the well operator pursuant to the Production Revenue Standards Act.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

165:10-27-13. Check stub information

(a) With each royalty payment, the following information shall be provided:

- (1) lease or well identification;
- (2) month and year of sales included in the payment;
- (3) total barrels or MCF attributed to such payment;
- (4) price per barrel or MCF, including British Thermal Unit adjustment of gas sold;
- (5) gross production and severance taxes attributable to said interest;
- (6) net value of total sales attributed to such payment after deduction of gross production and severance taxes;
- (7) owner's interest in the well expressed as a decimal;
- (8) owner's share of the total value of sales attributed to such payment before any deductions;
- (9) owner's share of the sales value attributed to such payment less owner's share of the production and severance taxes.

(b) Upon payee's request, the payor shall provide a list of any other deduction from such payment.

(c) All revenue decimals shall be calculated to at least six decimal places.

(d) Gas volumes shall be measured according to 52 O.S. Section 474.

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

SUBCHAPTER 29. SPECIAL AREA RULES

165:10-29-1. Lake Atoka and McGee Creek Reservoir

(a) **Scope.** The requirements of this section will apply to wells located in the areas listed below, and will supersede all field orders related to these areas. These requirements are in addition to the Commission's existing statewide requirements. The areas controlled by this section include:

- (1) **INATOKA COUNTY**

- (A) Sections 1-35 of Township 1 North, Range 12 East;
- (B) Sections 1-18, 21-28 and 35-36 of Township 1 North, Range 13 East;
- (C) Sections 1-36 of Township 1 North, Range 14 East;
- (D) Section 6 of Township 1 North, Range 15 East;
- (E) Sections 1-5, 8-16, 20-29 and 32-36 of Township 2 North, Range 12 East;
- (F) Sections 1-36 of Township 2 North, Range 13 East;
- (G) Sections 4-9 of Township 2 North, Range 14 East;
- (H) Sections 1-2, 11-14, 23-26 and 36 of Township 1 South, Range 11 East;
- (I) Sections 2-10, 16-20, 24-25 and 30-31 of Township 1 South, Range 12 East;
- (J) Sections 1-3, 9-16, 19-30 and 32-36 of Township 1 South, range 13 East;
- (K) Sections 1-11 and 13-36 of Township 1 South, Range 14 East;
- (L) Sections 1-5, 8-17, 22-27 and 34-36 of Township 2 South, Range 13 East;
- (M) Sections 1-24 and 26-35 of Township 2 South, Range 14 East;
- (N) Sections 1-2 and 12 of Township 3 South, Range 13 East;
- (O) Sections 2-9 of Township 3 South, Range 14 East.

(2) **IN PITTSBURG COUNTY**

- (A) Sections 7, 18-22 and 25-36 of Township 2 North, Range 14 East;
- (B) Section 31 of Township 2 North, Range 15 East;
- (C) Sections 1-3, 9-16, 20-29 and 32-36 of Township 3 North, Range 12 East;
- (D) Sections 1-36 of Township 3 North, Range 13 East;
- (E) Sections 6 and 28-33 of Township 3 North, Range 14 East;
- (F) Sections 26-28 and 32-36 of Township 4 North, Range 13 East.

(3) **IN COAL COUNTY** Sections 12-14, 22-27 and 34-36 of Township 1 North, Range 11 East.

(b) **General.** The design criteria for all wells shall consider all pertinent factors for well control including formation pressures and casing setting depths such that the wellbore can be maintained under control at all times and that all surface and subsurface fresh water supplies or formations are protected.

(c) **Well site limitations.** No oil and/or gas well shall be located within 1,320 feet of the maximum water surface level contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek and 590 feet above sea level for Lake Atoka Reservoir.

(d) **Drill site containment.** During the drilling and completion of an oil and gas well the operator shall:

- (1) Maintain an earthen retaining wall downslope of the well, no closer than 50 feet from the wellbore, if the well is located within six (6) miles of the maximum water surface level contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek Reservoir and 590 feet above sea level for Lake Atoka. The retaining wall shall be constructed prior to the commencement of drilling and shall be of adequate size for the terrain involved with a minimum length of 330 feet and a minimum compacted height of two (2) feet;

(2) Maintain a diversion ditch upslope of the well. The diversion ditch shall be constructed prior to the commencement of drilling and shall be adequate to divert surface drainage water from the well location;

(3) Pump any fluid, other than storm water, trapped within the well site into steel tanks for storage and removal. Storm water may be discharged as necessary as long as there is no sheen or other visible evidence of hydrocarbons being present, the chloride concentration does not exceed 500 mg/l, and the operator maintains records of each discharge for a period of three (3) years. These records must be supplied to the Commission upon request.

(e) Production site containment.

(1) During production operations, all fluid separation and storage vessels shall be enclosed within earthen or equivalent retaining walls so that the enclosed area has a storage capacity of at least one and one-half (1.5) times the liquid capacity of the largest vessel in the storage area.

(2) Any fluid other than storm water and any storm water that cannot be discharged will be pumped into steel tanks for storage and removal. Storm water may be discharged as necessary as long as there is no sheen or other visible evidence of hydrocarbons being present, the chloride concentration does not exceed 500 mg/l, and the operator maintains records of each discharge for a period of three (3) years. These records must be supplied to the Commission upon request.

(f) Erosion control. During the drilling phase of operations, silt fencing or other suitable materials or practices shall be used on the downslope side of the drill site to control runoff from the location. The silt fencing or other suitable materials or practices used to control runoff at the location shall be maintained in a manner so as to consistently work to control run-off.

(g) Circulating and reserve pits.

(1) Steel tanks shall be used for circulating and reserve pits for all drilling operations located within one (1) mile of the maximum water surface level contour line of either reservoir. The maximum water surface level is 609.8 feet above sea level for McGee Creek Reservoir and 590 feet above sea level for Lake Atoka.

(2) Outside of the areas designated by OAC 165:10-29-1(g)(1), any pit shall be lined with a geomembrane liner that meets or exceeds each of the following specifications:

(A) be made of linear low density polyethylene;

(B) have a thickness of 20 millimeters; and

(C) conform to the test requirements prescribed in the Geosynthetic Research Institute (GRI) Test Method GM17; and

(D) The liner shall also comply with the requirements for geomembrane liners found in OAC 165:10-7-16(c)(7).

(3) No pit shall be constructed or maintained so as to receive outside runoff water and the fluid level of earthen pits shall be maintained at all times as least 24 vertical inches below the lowest point of embankment.

(4) If there is flowback during the fracing of a well, the flowback must be to steel tanks prior to being placed into a lined pit if the temperature of the flowback exceeds 150 degrees Fahrenheit.

(5) The Oklahoma Corporation Commission shall inspect all pits within the purview of these rules prior to the liner being installed. The operator shall notify the District Office at least one (1) business day prior to installation of

the liner. If the Commission has not inspected the pit within one (1) business day following the notification, the operator may proceed to install the liner.

(6) Any reserve/circulation pit shall be closed within six (6) months after drilling operations cease. Upon request by the operator, a six (6) month extension shall be granted by the District Office, after review by a field inspector to confirm the pit is in compliance with Commission requirements.

(h) **Air drilling.** When drilling with air for circulation, an unlined earthen pit to contain the wellbore cuttings is allowed, provided the chloride concentration of any fluids discharged into the pit does not exceed 1000 mg/l. Discharge of air and cuttings from the "blooey line" shall be subjected to fresh water injection or spray to eliminate, to the greatest extent possible, the drift of dust and particulates from the well site. Water and additives for liquid drilling fluid shall be maintained at the well site at all times in sufficient volumes to circulate the wellbore if needed. All water in the unlined earthen pit shall be removed and properly disposed of as soon as air drilling ceases.

(i) **Casing.** All casing shall be new or reconditioned and tested to conform to API specifications.

(1) **Surface casing.** Surface casing shall be set to a minimum depth of 700 feet, or 50 feet below the deepest treatable water, whichever depth is greater. In setting the surface casing, a minimum of six (6) centralizers shall be used in the bottom portion of the casing string.

(2) **Production casing.** Production casing of four and one-half (4.5) inches or greater OD, and all related equipment items, such as the wellhead valves, shall have a pressure rating sufficiently in excess of the highest formation pressure encountered in the well. In setting the production casing, the annular space between the wellbore and the production casing shall be filled with cement calculated to fill at least 500 feet above the shallowest planned zone to be tested. Centralizers shall be used across the planned zone(s) to be tested. The production casing shall be pressure tested to conform to OAC 165:10-3-4(g). In the event the total depth of the well is less than 500 feet, the annular space between the wellbore and the production casing shall be filled with cement calculated to fill at least that portion of the wellbore to the base of the surface casing. Centralizers shall be used across the planned zone to be tested. The production casing shall be pressure tested to comply with OAC 165:10-3-4(g).

(j) **Blowout prevention equipment.** Before drilling below the surface casing and until drilling operations are completed, a blowout preventer (BOP) with a minimum of two (2) hydraulically operated rams, one (1) blind type and one (1) pipe type to fit the drill pipe, and related well control equipment, including a manifold and a floor valve, with a working pressure that exceeds the maximum anticipated surface pressure, shall be installed, used and tested in a manner to prevent blowouts. The BOP stack shall include a drilling spool with side outlets if side outlets are not provided on the BOP body. BOPs shall be tested to the rated pressure of the blowout stack assembly. All blowout prevention equipment is to be tested prior to drilling out from the surface casing. While drilling operations are in progress, the BOP shall be actuated once each trip. When removing drill pipe from any hole that utilized drilling fluids, the annulus shall be filled with mud before the mud level drops 100 feet from surface. A Kelley-cock shall be installed below the swivel. Wells being drilled to a depth less than 4,000 feet may use annular type blowout

preventers.

(k) **Drill stem testing.** Drill stem testing shall only be allowed during daylight hours. Fluid removed from the well during testing must be flowed or pumped into steel pits or tanks and promptly removed from the location at the conclusion of testing. The formation fluids in the hole shall be reversed-out prior to the removing of the drill stem test tool from the hole.

(l) **Prevention of leakage and pollution.** Equipment, pipe, pumps, tanks, and other appurtenances used in conducting operations shall be maintained at all times to prevent leakage and the escape of saltwater, oil and other deleterious substances. All oil, water and deleterious substances from wet strings of tubing shall be drained into steel tanks. All cellars with oil and oil sumps shall be promptly pumped out.

(m) **Exceptions to this section.** When good cause is shown, and when it is not reasonably likely to result in any pollution to either reservoir, an administrative exception to a requirement of this section may be granted by the Oklahoma Corporation Commission. Notice of an application for an exception to this section shall be sent at least 15 days in advance to: (1) the manager of the District 4 Office of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission; (2) the General Manager of the Oklahoma City Water Utilities Trust, 420 W. Main, Suite 500, Oklahoma City, Oklahoma 73102; and (3) the General Manager of the McGee Creek Authority, 420 W. Main, Suite 500, Oklahoma City, Oklahoma 73102. A 15-day period from the date of the written notice should be established for any party to file an objection to such an administrative application. If an objection is filed, a full hearing shall be held on the merits.

(n) **Other.** In reviewing an application for a permit-to-drill (form 1000), the Technical Services Department of the Oklahoma Corporation Commission will determine whether or not the well lies within any of the areas designated in OAC 165:10-29-1(c), OAC 165:10-29-1(d)(1) and OAC 165:10-29-1(g)(1).

[Source: Added at 25 Ok Reg 2187, eff 7-11-08]

165:10-29-2. Alternative location requirements for horizontal well units

(a) **Scope and effect.** The well location requirements of this Section apply to horizontal wells completed in horizontal well units in designated common sources of supply as specified in this Section. Horizontal wells covered by this Section are subject to OAC 165:10-3-28 and other applicable Commission rules except as provided in this Section.

(b) Woodford shale-north and south laterals.

(1) This subsection applies to horizontal wells completed in the Woodford shale common source of supply where the lateral runs north and south.

(2) The completion interval of a horizontal well subject to this subsection shall be located not less than the minimum distance from the boundary of a standard or non-standard horizontal well unit as follows:

(A) Not less than 330 feet from an east or west unit boundary.

(B) Not less than 165 feet from a north or south unit boundary.

(c) Woodford shale-east and west laterals.

(1) This subsection applies to horizontal wells completed in the Woodford shale common source of supply where the lateral runs east and west.

(2) The completion interval of a horizontal well subject to this subsection shall be located not less than the minimum distance from the boundary of a standard or non-standard horizontal well unit as follows:

(A) Not less than 165 feet from an east or west unit boundary.

(B) Not less than 330 feet from a north or south unit boundary.

(d) **Additional review.** Laterals outside the parameters in subsections (b) and (c) may require additional review by the Technical Services Department.

[Source: Added at 27 Ok Reg 2128, eff 7-11-10; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 36 Ok Reg 534, eff 8-1-19]

165:10-29-3. Rush Springs Sandstone Groundwater Basin

(a) **Scope.** The requirements of this section will apply to the areas listed below, and will supersede Commission field order number 251978 related to these areas. These requirements are in addition to the Commission's existing statewide requirements.

The areas controlled by this section include:

(1) IN BECKHAM COUNTY

(A) Sections 1-18, 21-25 and 36 of Township 8 North, Range 21 West;

(B) Sections 1-5, and 8-12 of Township 8 North, Range 22 West;

(C) Sections 19 and 26-36 of Township 9 North, Range 21 West;

(D) Sections 21-28 and 33-36 of Township 9 North, Range 22 West.

(2) IN BLAINE COUNTY

(A) Sections 2-11, 15-22 and 26-35 of Township 13 North, Range 12 West;

(B) All sections of Township 13 North, Range 13 West;

(C) Sections 2-35 of Township 14 North, Range 12 West;

(D) All sections of Township 14 North, Range 13 West;

(E) Sections 6-8, 16-21 and 27-35 of Township 15 North, Range 12 West;

(F) All sections of Township 15 North, Range 13 West;

(G) Sections 30 and 31 of Township 16 North, Range 12 West;

(H) Sections 3-11 and 13-36 of Township 16 North, Range 13 West;

(I) Sections 5-8, 16-21 and 28-34 of Township 17 North, Range 13 West;

(J) Sections 31 and 32 of Township 18 North, Range 13 West.

(3) IN CADDO COUNTY

(A) All sections of Township 5 North, Range 9 West;

(B) All sections of Township 5 North, Range 10 West;

(C) Sections 1-17, 20-29 and 33-36 of Township 5 North, Range 11 West;

(D) Sections 1, 2 and 12 of Township 5 North, Range 12 West;

(E) Sections 2-36 of Township 6 North, Range 9 West;

(F) All sections of Township 6 North, Range 10 West;

(G) All sections of Township 6 North, Range 11 West;

(H) Sections 1-5, 7-18, 21-27, 35 and 36 of Township 6 North, Range 12 West;

(I) Sections 12 and 13 of Township 6 North, Range 13 West;

(J) Sections 31-35 of Township 7 North, Range 9 West;

(K) Sections 4-10, 15-23 and 25-36 of Township 7 North, Range 10 West;

(L) All sections of Township 7 North, Range 11 West;

(M) Sections 1-30 and 32-36 of Township 7 North, Range 12 West;

(N) Sections 1-18 and 21-24 of Township 7 North, Range 13 West;

(O) Sections 6, 7, 17-20 and 28-33 of Township 8 North, Range 10 West;

(P) All sections of Township 8 North, Range 11 West;

- (Q) All sections of Township 8 North, Range 12 West;
- (R) All sections of Township 8 North, Range 13 West;
- (S) Sections 3-11, 14-23 and 26-36 of Township 9 North, Range 11 West;
- (T) All sections of Township 9 North, Range 12 West;
- (U) All sections of Township 9 North, Range 13 West;
- (V) Sections 6-9, 14-23, 26-30 and 32-34 of Township 10 North, Range 9 West;
- (W) Sections 1-27 of Township 10 North, Range 10 West;
- (X) Sections 1-8, 10-13, 17-20 and 28-33 of Township 10 North, Range 11 West;
- (Y) All sections of Township 10 North, Range 12 West;
- (Z) All sections of Township 10 North, Range 13 West;
- (AA) All sections of Township 11 North, Range 11 West;
- (BB) All sections of Township 11 North, Range 12 West;
- (CC) All sections of Township 11 North, Range 13 West;
- (DD) Sections 4, 5, 7-9 and 14-36 of Township 12 North, Range 11 West;
- (EE) Sections 2-36 of Township 12 North, Range 12 West;
- (FF) All sections of Township 12 North, Range 13 West.

(4) IN CANADIAN COUNTY

- (A) Sections 16-21 and 28-30 of Township 11 North, Range 9 West;
- (B) Sections 5-11 and 13-35 of Township 11 North, Range 10 West;
- (C) Section 31 of Township 12 North, Range 10 West.

(5) IN COMANCHE COUNTY

- (A) Sections 1-17, 21-27, 35 and 36 of Township 3 North, Range 9 West;
- (B) Sections 1, 2 and 12 of Township 3 North, Range 10 West;
- (C) All sections of Township 4 North, Range 9 West;
- (D) Sections 1-29 and 33-36 of Township 4 North, Range 10 West;
- (E) Sections 1-4 and 11-13 of Township 4 North, Range 11 West.

(6) IN CUSTER COUNTY

- (A) All sections of Township 12 North, Range 14 West;
- (B) All sections of Township 12 North, Range 15 West;
- (C) All sections of Township 12 North, Range 16 West;
- (D) Sections 1-28 and 34-36 of Township 12 North, Range 17 West;
- (E) Sections 1-4 and 11-13 of Township 12 North, Range 18 West;
- (F) All sections of Township 13 North, Range 14 West;
- (G) All sections of Township 13 North, Range 15 West;
- (H) All sections of Township 13 North, Range 16 West;
- (I) All sections of Township 13 North, Range 17 West;
- (J) Sections 1-30 and 32-36 of Township 13 North, Range 18 West;
- (K) Sections 1-5, 9-15 and 24 of Township 13 North, Range 19 West;
- (L) All sections of Township 14 North, Range 14 West;
- (M) All sections of Township 14 North, Range 15 West;
- (N) All sections of Township 14 North, Range 16 West;
- (O) All sections of Township 14 North, Range 17 West;
- (P) All sections of Township 14 North, Range 18 West;
- (Q) All sections of Township 14 North, Range 19 West;

(R) Sections 1-3, 10-14 and 23-25 of Township 14 North, Range 20 West;

(S) All sections of Township 15 North, Range 14 West;

(T) All sections of Township 15 North, Range 15 West;

(U) All sections of Township 15 North, Range 16 West;

(V) All sections of Township 15 North, Range 17 West;

(W) All sections of Township 15 North, Range 18 West;

(X) All sections of Township 15 North, Range 19 West;

(Y) Sections 1-3, 10-15, 22-27 and 34-36 of Township 15 North, Range 20 West.

(7) IN DEWEY COUNTY

(A) All sections of Township 16 North, Range 14 West;

(B) All sections of Township 16 North, Range 15 West;

(C) All sections of Township 16 North, Range 16 West;

(D) All sections of Township 16 North, Range 17 West;

(E) All sections of Township 16 North, Range 18 West;

(F) All sections of Township 16 North, Range 19 West;

(G) Sections 1-3, 10-15, 22-27 and 34-36 of Township 16 North, Range 20 West;

(H) All sections of Township 17 North, Range 14 West;

(I) All sections of Township 17 North, Range 15 West;

(J) All sections of Township 17 North, Range 16 West;

(K) All sections of Township 17 North, Range 17 West;

(L) All sections of Township 17 North, Range 18 West;

(M) All sections of Township 17 North, Range 19 West;

(N) Sections 12-14, 23-26, 35 and 36 of Township 17 North, Range 20 West;

(O) Sections 31-36 of Township 18 North, Range 14 West;

(P) Sections 31-36 of Township 18 North, Range 15 West;

(Q) Sections 31-36 of Township 18 North, Range 16 West;

(R) Sections 31-36 of Township 18 North, Range 17 West;

(S) Sections 31-36 of Township 18 North, Range 18 West;

(T) Sections 31-36 of Township 18 North, Range 19 West.

(8) IN GRADY COUNTY

(A) Sections 19, 20 and 29-32 of Township 3 North, Range 6 West;

(B) All sections of Township 3 North, Range 7 West;

(C) All sections of Township 3 North, Range 8 West;

(D) Sections 4-36 of Township 4 North, Range 7 West;

(E) All sections of Township 4 North, Range 8 West;

(F) Sections 27-29 and 31-34 of Township 5 North, Range 7 West;

(G) Sections 2-11, 14-23 and 26-36 of Township 5 North, Range 8 West;

(H) Sections 7-11, 14-23 and 25-26 of Township 6 North, Range 8 West.

(9) IN KIOWA COUNTY

(A) Sections 1-6 and 9-14 of Township 7 North, Range 14 West;

(B) Sections 1-3 of Township 7 North, Range 15 West;

(C) All sections of Township 8 North, Range 14 West.

(10) IN STEPHENS COUNTY

(A) Sections 5 and 6 of Township 2 North, Range 6 West;

(B) Sections 1-12 of Township 2 North, Range 7 West;

- (C) Sections 1-6 and 10-12 of Township 2 North, Range 8 West;
- (D) Section 1 of Township 2 North, Range 9 West.

(11) IN WASHITA COUNTY

- (A) Sections 1-6 of Township 7 North, Range 14 West;
- (B) All sections of Township 8 North, Range 14 West;
- (C) All sections of Township 8 North, Range 15 West;
- (D) Sections 1-30, 35 and 36 of Township 8 North, Range 16 West;
- (E) Sections 1-30 of Township 8 North, Range 17 West;
- (F) Sections 1-26 of Township 8 North, Range 18 West;
- (G) Sections 1-24, 30 and 31 of Township 8 North, Range 19 West;
- (H) All sections of Township 8 North, Range 20 West;
- (I) All sections of Township 9 North, Range 14 West;
- (J) All sections of Township 9 North, Range 15 West;
- (K) Sections 1-5, 8-17 and 20-36 of Township 9 North, Range 16 West;
- (L) Sections 31-36 of Township 9 North, Range 17 West;
- (M) Sections 31-36 of Township 9 North, Range 18 West;
- (N) Sections 31-36 of Township 9 North, Range 19 West;
- (O) Sections 31-36 of Township 9 North, Range 20 West;
- (P) All sections of Township 10 North, Range 14 West;
- (Q) All sections of Township 10 North, Range 15 West;
- (R) Sections 1-5, 8-17, 20-29 and 32-36 of Township 10 North, Range 16 West;
- (S) All sections of Township 11 North, Range 14 West;
- (T) All sections of Township 11 North, Range 15 West;
- (U) Sections 1-30 and 32-36 of Township 11 North, Range 16 West;
- (V) Sections 1, 2 and 11-13 of Township 11 North, Range 17 West.

(b) **Commercial pits prohibited.** The construction, enlargement, reconstruction or operation of any commercial pit (as defined in OAC 165:10-9-1) in any area listed in subsection (a) above, is prohibited.

[Source: Added at 29 Ok Reg 950, eff 7-1-12]

APPENDIX A. ALLOCATED WELL ALLOWABLE TABLE*

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Source: Revoked and reenacted at 28 Ok Reg 1949, eff 7-11-11]

APPENDIX B. DISCOVERY WELL ALLOWABLE TABLE

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Source: Revoked and reenacted at 28 Ok Reg 1949, eff 7-11-11]

APPENDIX C. TABLE HD

[Figure 1](#)

[Source: Revoked and reenacted at 27 Ok Reg 2128, eff 7-11-10; Revoked and reenacted at 28 Ok Reg 1949, eff 7-11-11]

APPENDIX D. LIST OF NGPA FORMS [REVOKED]

[Source: Revoked at 13 Ok Reg 2401, eff 7-1-96]

APPENDIX E. FINE SCHEDULE

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Figure 5](#)

[Source: Added at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Revoked and reenacted at 14 Ok Reg 2198, eff 7-1-97; Revoked and reenacted at 19 Ok Reg 1947, eff 7-1-02; Revoked and reenacted at 37 Ok Reg 1121, eff 10-1-20]

APPENDIX F. SCHEDULE B FINES [REVOKED]

[Source: Added at 9 Ok Reg 2295, eff 6-25-92; Amended at 9 Ok Reg 2337, eff 6-25-92; Revoked and reenacted at 19 Ok Reg 1947, eff 7-1-02; Revoked and reenacted at 27 Ok Reg 2128, eff 7-11-10; Revoked and reenacted at 34 Ok Reg 921, eff 9-11-17; Revoked at 37 Ok Reg 1121, eff 10-1-20]

APPENDIX G. IMPLEMENTATION FEES (ONE-TIME)

[Figure 1](#)

[Source: Added at 10 Ok Reg 2601, eff 6-25-93]

APPENDIX H. CALCULATIONS

[Figure 1](#)

[Source: Added at 12 Ok Reg 2017, eff 7-1-95]

APPENDIX I. SOIL LOADING FORMULAS

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Source: Added at 12 Ok Reg 2039, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2198, eff 7-1-97]

APPENDIX J. DEWATERING OIL ALLOWABLE TABLE

[Figure 1](#)

[Source: Added at 19 Ok Reg 639, eff 1-14-02 (emergency); Added at 19 Ok Reg 966, eff 7-1-02]

CHAPTER 15. FUEL INSPECTION

[Authority: 17 O.S., §§ 306(12), 307, 322, 342, and 347]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program governing the sale, storage, and inspection of regulated substances such as antifreeze, motor oil, motor fuel, gasoline, kerosene, aviation fuel, and diesel fuel, and specify standards governing the measuring devices and facilities used to store, sell, dispense, or deliver these products. This Chapter is intended to protect the end user by regulating the integrity and quantity of the product sold; protect the public and the environment from fire, explosion and contamination; assist the tank owner/operator regarding how to maintain a petroleum storage tank system to avoid damages or deterioration of the system, economic loss to the owner/operator, and damages to others.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"Aboveground storage tank" or "AST" means a "Storage tank" as defined in 17 O.S. § 303(40) that has more than ninety percent (90%) of its volume above the surface of the ground.

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or "Calibration" means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

"Face of the dispenser" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the dispenser where the unit price, volume dispensed, and dollar amount of the sale appear.

"Fuel Specialist" means any field inspector employed by the Compliance and Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state

law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in OAC 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Gasoline" means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Important building" means a building that is considered not expendable in an exposure fire.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the dispenser that signifies the amount relative to a quantity measured by a measuring device.

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or **"liquid fuel device"** means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, motor oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl used as a component in gasoline.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Measuring device" or **"meter"** means a measuring device as defined in 17 O.S. § 303(23).

"Observation well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Octane", or **"octane number"**, or **"octane rating"** means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means the substances as set forth in 17 O.S. § 303(31). It does not include 100% biodiesel, compressed natural gas, liquid natural gas, methanol, or propane.

"Primary indicating elements" or **"recording elements"** means those principal visual indicating elements and recording elements that may be used by an owner or operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated by PSTD as a fleet and commercial facility.

"PSTD" means Petroleum Storage Tank Division.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include

compressed natural gas, liquid natural gas or propane.

"Retail device" means a measuring device or mechanism designed for single deliveries of PSTD regulated substances to individual land, air, and water vehicles.

"Retail facility" means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or "seal" or "lock/locking mechanism" means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

"Transport calibration" or "truck calibration" means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or "UST" means a "Storage tank" as defined in 17 O. S. § 303(40) that has 10 percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or a delivery truck that is connected to the storage tank system.

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 19 Ok Reg 1603, eff 6-13-02; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:15-1-3. Application of rules

(a) The rules contained in this Chapter apply to:

(1) All manufacturers and handlers of fuel subject to the jurisdiction of the Commission.

(2) All persons who sell or distribute any regulated substance, oxygenate, or blend of products.

(b) All persons who use liquid measuring devices in the sale or distribution of motor fuel, as defined by applicable statutes and (a) of this Section, must comply with this Chapter.

(c) Motor fuel in transit or manufactured in Oklahoma for consumption in other states is not subject to inspection under the rules of this Chapter.

(d) The tolerances on metric equipment must be equivalent to those specified in English units for similar equipment.

(e) All regulated substances manufactured in, or imported into, the State of Oklahoma for use or sale must be tested by the manufacturer or importer to ensure its compliance with the rules of this Chapter.

(f) The results of these tests, together with any other information required by the Commission, must be maintained by the manufacturer in accordance with usual and customary business practices, and copies must be furnished to the Petroleum Storage Tank Division upon request. These test results, excluding trade secrets and proprietary information, must also be furnished to the wholesale dealer of the manufacturer upon request.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 34 Ok Reg 922, eff 9-11-17]

165:15-1-4. Application of motor fuel rules

(a) The rules contained in this Chapter apply to all manufacturers and handlers of motor fuel intended for use in the State of Oklahoma.

(b) No person can sell any regulated substance, motor fuel, oxygenate, or blend within the State of Oklahoma that does not meet the tests, specifications, and standards set forth in this Chapter.

(c) All motor fuel manufactured in, or imported into, the State of Oklahoma for use or sale must be tested by the manufacturer or importer to ensure its compliance with the rules of this Chapter.

(d) The results of these tests, together with any other information required by the Commission, must be maintained by the manufacturer in accordance with usual and customary business practices, and copies must be furnished to the Petroleum Storage Tank Division upon request. These test results, excluding trade secrets and proprietary information, must also be furnished to the jobber or wholesale dealer of the manufacturer upon request.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-1-5. [RESERVED]

[Source: Reserved at 18 Ok Reg 1052, eff 5-11-01]

165:15-1-6. Fuel Specialists' Requirements

Fuel Specialists must:

- (1) Identify themselves before they begin working and offer identification if requested.
- (2) Leave a copy of the completed inspection form.
- (3) Return all samples to their respective petroleum storage tanks.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-1-7. [RESERVED]

[Source: Reserved at 18 Ok Reg 1052, eff 5-11-01]

165:15-1-8. Fuel Specialists' interpretation of rules [REVOKED]

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Revoked at 21 Ok Reg 2029, eff 7-1-04]

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 1. GENERAL AUTHORITY

165:15-3-1. Authority to enter and/or stop for inspection

(a) A Fuel Specialist has the authority to enter upon the premises of any manufacturer, bulk dealer, or retailer of any regulated substance, as well as any other place where a regulated substance is or was sold or stored prior to sale or use, and perform tests required by PSTD rules, take samples, or make any other investigation in order to ensure compliance with this Chapter or the laws of the State. Fuel Specialists will also inspect TOU petroleum storage tank systems.

(b) The Fuel Specialist has the authority to inspect any records and documents pertaining to the operation, maintenance, or repair of tank systems and the ordering of, delivery of, and/or payment for petroleum products offered for sale.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-3-2. Authority to lock or seal for violation

A Fuel Specialist or PSTD Director's designee has the authority to place or to direct that a lock or seal be placed on any dispenser, delivery device, receptacle, or container tank used in the sale, distribution or storage of regulated substances in Oklahoma when the rules in this Chapter, OAC 165:16, 165:25, 165:26, 165:27, 165:29, state statutes, a Commission order or requirement are being violated.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-3-3. Authority to remove lock or seal after correction of violation

The authority to remove a lock or seal by the owner or operator after a violation is corrected may be obtained by:

- (1) Written permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock; or
- (2) Written or verbal permission from the Division Director or the Director's designee; or
- (3) Application to and order of the Commission.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-3-4. Exception [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

PART 3. MOTOR FUELS AND ANTIFREEZE

165:15-3-10. Sampling

Samples of regulated substances for testing must be obtained by Fuel Specialists from the same dispensing device used for sales to customers. Samples will be taken as often as necessary to ensure quality in one of the following manners:

- (1) At a retail or wholesale device dispensing a single grade of product, the first product to flow from the device will be taken for testing and considered representative of the product dispensed.
- (2) When the Fuel Specialist is calibrating a retail or wholesale device dispensing single or multiple products, the Fuel Specialist may take the sample from the same five (5) gallons used in the calibration of the dispenser.

- (3) At a wholesale plant using a single outlet for more than one product, the sample should be obtained directly from the storage tank or by any other convenient way that will ensure a sample representative of each product.
- (4) At a retail device dispensing a blend of products or dispensing multiple products through a single nozzle, the device must be set on the desired product to be sampled and the second sample will be taken for testing.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-3-11. Testing methods for motor fuel

A Fuel Specialist will test the octane rating or check for any contaminants or foreign substances as necessary for each type of motor fuel sold at any retail facility, airport, bulk plant or marina using the Zeltex machine or other Commission-approved device.

[Source: Amended at 13 Ok Reg 2405, eff 7-1-96; Amended at 14 Ok Reg 2488, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-3-12. Fuel deliveries

Deliveries of fuel made for all facilities must be conducted as follows:

- (1) No facility owner or operator may accept delivery of lower octane fuel into a higher octane tank, except when the tank's resulting octane level meets or exceeds the tank's labeled octane level.
- (2) When delivering fuel into a storage tank, no person may purposefully disable a tank's overfill valve for any reason.
- (3) Owners, operators, their employees or agents, or transporters must ensure that the volume available in the tank (ullage) is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent spilling and overfilling.
- (4) Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 34 Ok Reg 922, eff 9-11-17]

165:15-3-13. Antifreeze testing

Fuel Specialists may take a sample of any antifreeze repackaged for sale in Oklahoma for the purpose of sending it to a laboratory for analysis.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01]

PART 5. LIQUID MEASURING DEVICES

165:15-3-15. Fuel Specialist's duty

Fuel Specialists have the responsibility to implement and enforce the rules of this Chapter, Chapter 16, Chapter 25 and Chapter 26, which includes determining that a measuring device and equipment are accurate and as safe as possible for the public and the environment. If a measuring device does not conform to all official requirements, the Fuel Specialist is required to prohibit its use until the device is brought into compliance.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-3-16. Inspection for compliance

- (a) Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five (5) gallon test measure by the Fuel Specialist from time to time or as often as deemed necessary. High volume dispensers (those that are used to pump at a rate of at least twenty (20) gallons per minute) used to fill large tanks must be calibrated using a fifty (50) or one hundred (100) gallon prover.
- (b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated before ten (10) million gallons of use, or more often if PSTD deems it necessary.
- (c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and be able to show written proof when requested by the Fuel Specialist.
- (d) These tests may be ordered or directed by the Commission at any time.
- (e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.
- (f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring device is repaired or replaced and complies with Commission standards, rules, and requirements.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18]

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-20. Water in storage tanks

- (a) **Water in storage tanks in excess of Commission standards is prohibited.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time. However, water inspections by the Fuel Specialist does not remove the responsibility of the tank owner/operator that water levels in tanks do not exceed Commission standards, rules, and requirements.
- (b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water. Upon the second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.
- (c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s), for fuel deliveries, and inspections.
- (d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. Water shall not exceed one inch (1") in depth when measured with water indicating paste or other acceptable means in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends, and kerosene sold at retail. No water phase greater than one-fourth inch (1/4") as determined by an appropriate detection paste or other acceptable means is allowed to accumulate in any tank utilized in the storage of gasoline-

alcohol blend, biodiesel blends, E85 fuel ethanol, aviation gasoline, and aviation turbine fuel. The owner or operator is required to find the source of the water including, but not limited to, excavating and replacing the product line(s) and/or the storage tank(s) as necessary. This must be done as quickly as possible. The Fuel Specialist or Compliance and Inspection Manager may be notified verbally or by written confirmation when the necessary repairs have been completed.

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, excavating and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the water intrusion problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 30 Ok Reg 583, eff 7-1-13; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 35 Ok Reg 974, eff 10-1-18]

165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health, safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards, rules, and requirements are met to prevent releases.

(1) **Spill and overflow protection.** Fuel Specialists must ensure that appropriate spill and overflow protection devices are in place and operational.

(2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in OAC 165:25 and 165:26.

(A) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any single vapor monitoring well reading above 4,000 units/ppm for gasoline and 1,500 units/ppm for diesel shall be reported to a Commission Project Environmental Analyst by telephone at (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner, operator, employees, agents, or Monitor Well Technicians knowing of the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 units/ppm shall be

reported. If high readings have not been reported, the Fuel Specialist shall immediately report it.

(B) Groundwater monitoring wells. The Fuel Specialist must ensure, if groundwater monitoring wells are an owner or operator's method of leak detection, that the requirements listed below are met:

- (i) Wells must be correctly installed and sufficient in number for the particular facility.
- (ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.
- (iii) Wells must be properly monitored and the results recorded every thirty (30) days on the appropriate OCC form.
- (iv) Any indication of product discovered shall be reported to a Commission Project Environmental Analyst by telephone at (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner, operator, employees, agents, or Monitor Well Technicians knowing of its presence. If the discovery of product has not been reported, the Fuel Specialist shall immediately report it.

(C) Statistical Inventory Reconciliation (SIR).

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day and data must be reconciled every thirty (30) days. Product deliveries must be reconciled with an appropriate device, and data must be reconciled every thirty (30) days. SIR records must demonstrate the following:

- (I) Report a quantitative result with a calculated leak rate;
- (II) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days, with a probability of detection of 0.95 and a probability of false alarm of 0.05; and
- (III) Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate.

- (ii) The tank must be equipped with a drop tube and measured for water at least every thirty (30) days.
- (iii) Records must be submitted to a certified SIR vendor for evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE website, will be accepted (www.nwglde.org).
- (iv) Results of SIR analysis must be on premises for inspector review every thirty (30) days.
- (v) The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(vi) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(vii) SIR analysis reports must include a summary report of the quantitative results.

(D) Automatic tank gauging (ATG).

(i) The ATG must be in operating condition. It must perform a test at least once every thirty (30) days capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system detects a 0.2 gph leak rate, inventory reconciliation must be completed in conjunction with it.

(ii) If the Fuel Specialist has concerns about the operation of the system, they may require notice and be present when an authorized person is printing relevant reports from the ATG.

(E) Manual tank gauging. If manual tank gauging is the selected form of release detection Fuel Specialists must determine that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with OAC 165:25 and 165:26. Manual tank gauging may only be used on tanks 1,000 gallons or less.

(F) Interstitial monitoring. Sampling or testing must be capable of detecting a leak at least every thirty (30) days in accordance with the manufacturer's instructions.

(G) Other methods. If a method of leak detection other than those listed in this Chapter is used, it must be approved by PSTD and checked by the Fuel Specialist.

(3) Leak detection on pressurized lines. The Fuel Specialist must check for leak detection on pressurized piping. A complete list of requirements is in OAC 165:25 and 165:26. All pressurized piping must have electronic/automatic or mechanical line leak detectors capable of detecting a three (3) gallons per hour leak. New installations and facilities replacing a piping system must have double-walled piping. An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.

(i) Automatic electronic or mechanical line leak detectors must be installed on all pressurized lines. Double-walled piping systems must have dispenser and tank sumps with a sensor, float or similar mechanical device installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) Annual line tightness testing. An annual line tightness test, either hydrostatic or electronic, must be performed unless the requirements of (C) below are met.

(C) Alternative to line tightness testing. A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

- (i) The system is capable of detecting and tests for a leak of three (3) gallons per hour before or after each operation of the submersible turbine pump; and
- (ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every thirty (30) days; and
- (iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) Vapor monitoring wells. If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

- (i) There must be a sufficient number of wells limited to a twenty foot (20') radius around the lines, and the wells must be properly marked and secured.
- (ii) Wells must be correctly installed, and the PSTD approved monitoring well site assessment must be made available to the Fuel Specialist.
- (iii) Wells must be properly monitored and the results recorded every thirty (30) days.

(E) Interstitial monitoring.

- (i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.
- (ii) Containment sumps connected to product piping must be equipped with at least one sump sensor at the lowest end of the piping gradient.
- (iii) Sump sensors must detect any liquid or leaking petroleum product in accordance with the manufacturer's specifications.

(4) Suction piping. A line tightness test must be performed every three (3) years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) Safe suction piping. No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) Cathodic protection. The Fuel Specialist must ensure that cathodic protection is installed and in proper working order for all metal tanks and piping that routinely contain regulated substances or product and are in contact with the ground. Cathodic protection can be an impressed current or galvanic system with these requirements:

- (A) A site map and anode information should be made available to the Fuel Specialist and all tanks and lines must be protected.
- (B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.
- (C) Rectifier and cathodic protection tests must be performed by a qualified cathodic protection tester once every three years.
- (D) Rectifier readings on impressed current systems must be recorded at least every sixty (60) days and kept on site for review.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 19 Ok Reg 1603, eff 6-13-02; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-3-21.1. Leak detection and cathodic protection records

- (a) Records for the preceding 12 months must be maintained at the facility and readily available to the Fuel Specialist.
- (b) Records must be maintained on forms specified by the Commission.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-3-22. Equipment installation

Fuel Specialists must ensure that tanks and ancillary equipment are installed properly and conform to Commission standards. These standards apply to all facilities. Requirements are listed in detail in OAC 165:25 and 165:26.

(1) Unattended self-service stations.

(A) Operating instructions must be conspicuously posted.

(B) There must be a properly placed emergency shutoff device and conspicuously posted emergency instructions. A telephone or other approved means of communication to notify the fire department.

(2) **Emergency pressure release venting.** Aboveground storage tanks must have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires, and have some form of emergency pressure venting. This applies to all compartments and interstitial spaces of tanks, and any enclosed spaces around tanks that can contain liquid.

(3) **Release vent construction.** An aboveground tank must have some form of pressure-relieving construction to appropriately control and direct a tank rupture. The tank owner or operator must present, upon request, evidence certifying the construction if the owner has the information.

(4) **Venting and venting specifications.** The Fuel Specialist will ensure that vent piping size, height, width, placement and construction meet approved standards, vent vapors upward and do not present collision or fire hazards.

(5) **Piping requirements.** The Fuel Specialist must ensure piping is appropriately constructed and protected from physical damage and corrosion where appropriate. Appropriate valves must be in place in piping to prevent leaks and fires. Aboveground storage tank piping and associated parts such as flanges and bolts must be constructed to resist fire to the appropriate extent.

(A) All new aboveground or underground piping must be installed in accordance with requirements of either OAC 165:25 and 165:26.

(B) Pressurized piping must have automatic line leak detectors with one sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(6) **Equipment and materials.** All pipes, valves, couplings, faucets, flexible connectors, fittings and other pressure-containing parts must meet material specifications and pressure and temperature limitations, adhering to Commission standards. Underground equipment must be cathodically protected where appropriate and aboveground equipment must resist fire to

the approved extent. Impact/shear valves and breakaway valves must be in place to prevent leaks and stop their flow in an emergency.

(7) **Electrical equipment.** All electrical equipment must meet the requirements NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed, and required emergency switches must be installed and appropriately placed.

(8) **Vault requirements.** Vaults are not required, can be used above or below grade, and must meet NFPA 30 and NFPA 30A requirements. The Fuel Specialist will ensure that those standards are met.

(9) **Fill pipes.** Fill pipes must be properly installed and labeled, and overflow sump lids must be color-coded or properly labeled with permanent markings.

(10) **Collision barriers.** Aboveground storage tanks and all dispensers exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. Secondary containment may serve as a collision barrier.

(11) **Fencing requirements.** All aboveground tanks must be enclosed by an appropriate security fence.

(12) **Spill Prevention Control and Countermeasure Plan.** Owners or operators of aboveground storage tanks must have a Spill Prevention Control and Countermeasure Plan (SPCC Plan) completed in strict accordance with the requirements of Environmental Protection Agency 40 CFR 112, and updated every five (5) years. Each facility location must have its own plan.

(13) **Corrosion protection.** Any portion of a tank or its piping system that routinely contain regulated substances or product and in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design listed in OAC 165:26 Subchapter 2, Part 4 of Commission rules. A tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by some dielectric material.

(14) **Storage tank spacing and buffer distances.**

(A) Aboveground storage tanks must be appropriately spaced; the Fuel Specialist will determine whether the spacing is in accordance with OAC 165:26 Subchapter 2, Part 1, of Commission rules.

(B) Minimum distances from aboveground storage tanks must also be maintained between tanks and the nearest important building, fuel dispensers, public ways, and property lines.

(15) **Secondary containment requirements for aboveground storage tanks.** Double-walled tanks do not require additional containment if conditions listed in OAC 165:26-2-31 are satisfied.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 19 Ok Reg 1603, eff 6-13-02; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-3-23. Marina inspections

In addition to the inspection requirements for all facilities, Fuel Specialists must inspect items particular to marina petroleum storage tank systems.

(1) **Aboveground tanks.** The Fuel Specialist must ensure that the special requirements of marina aboveground tanks are met. The tanks must be appropriately located and have a capacity appropriate to their locations. The Fuel Specialist will also check these requirements:

(A) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of Commission standards.

(B) If the tank produces a gravity head, it must be equipped with a normally-closed solenoid valve, and manual shutoff valves must be located at the tank and at the shoreline.

(2) **Requirements for dispensers and attached parts.** The Fuel Specialist will ensure that fueling hoses are well-maintained, and that dispensing devices at marine service stations are appropriately located apart from other structures to allow for safe ingress and egress of watercraft for fueling.

(3) **Tight fill connection requirements.** The Fuel Specialist will ensure that tight fill connection requirements at marinas are met, including appropriate valves on tanks filled through remote piping.

(4) **Attendants at marinas.** Each marine service station may have an attendant or supervisor on duty when the station is open for business. The attendant's primary function is to supervise, observe, and control the dispensing of fuels to ensure that all safety requirements are met, and that the waters of the state are not contaminated by fuel.

(5) **Miscellaneous safety requirements.** The Fuel Specialist will ensure that required signs and appropriately located fire extinguishers are in place. There must also be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-3-24. Bulk plant inspections

In addition to the inspection requirements for all facilities, Fuel Specialists must inspect items particular to bulk plant petroleum storage tank systems.

(1) **Requirements for dispensers.**

(A) The Fuel Specialist will ensure that bulk plants that also dispense fuel into automobile tanks comply with the requirements for dispensers at retail facilities.

(B) The Fuel Specialist will also ensure that minimum distances from tanks are met if they are required.

(2) **Requirements for loading and unloading facilities.**

(A) The Fuel Specialist will ensure that tank vehicle and tank car loading and unloading facilities are separated from tanks and other facilities by appropriate distances.

(B) Loading and unloading facilities must be checked for means to contain spills and canopies or roofs that restrict the dispersion of vapors.

(C) Loading and unloading facilities at bulk plants that are used to load motor fuel into tank vehicles through open domes must be provided with a means for electrically bonding to protect against static electricity hazards.

(i) The means for electrical bonding must consist of a metal wire that is permanently and electrically connected to the

bulk plant's fill pipe assembly or to some part of the bulk plant's rack structure that is in electrical contact with the fill pipe assembly.

(ii) The free end of this metal wire must have a clamp for convenient attachment to some metallic part of the vehicle that is in electrical contact with the cargo tank of the tank vehicle.

(iii) All parts of the fill pipe assembly, including the drop tube, must form a continuous electrically conductive path.

(D) Bulk plants where motor fuel or blending materials are loaded or unloaded through open domes of railroad tank cars must be protected against stray electrical current by permanently bonding the bulk plant's fill pipe and the individual storage tanks to at least one rail of the railroad.

(E) Before loading tank vehicles through open domes, a bonding connection must be made to the vehicle or tank before dome covers are raised and must remain in place until filling is completed and all dome covers have been closed and secured. When possible, the Fuel Specialist will observe the performance of this procedure to ensure it is done correctly and safely.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01]

165:15-3-24.1. Airport inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to airport petroleum storage tank systems.

(1) Requirements for dispensers and attached parts.

(A) The Fuel Specialist will ensure that aircraft hoses are well maintained, and that fueling hydrants, cabinets and pits are an appropriate distance from any terminal building, hangar, service building or enclosed passenger concourse (other than loading bridges).

(B) The Fuel Specialist must ensure that the valve that controls the flow of fuel to an aircraft is equipped with a deadman control. The fuel control device must be arranged to accommodate operational requirements and be either a hydrant pit valve or on the hose nozzle for overwing servicing. Deadman controls also have specific requirements that the Fuel Specialist will ensure are met.

(C) Conductive hose at airports must be used to prevent electrostatic charge but not to accomplish required bonding between the aircraft and the fueling equipment.

(D) Each overwing servicing nozzle must have a cable with a plug or clip for bonding to the aircraft.

(E) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

(2) Emergency controls. The Fuel Specialist will ensure that each fuel system has a means for quickly and completely shutting off the flow of fuel in an emergency. This requirement is in addition to the deadman fuel control requirement. The emergency fuel shutoff system must include shutoff stations located outside probable spill areas and near the route normally used to leave the spill area or to reach the fire extinguishers

provided for the area's protection.

(3) **Miscellaneous safety requirements.** Safety requirements include required signs and appropriately located fire extinguishers.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06]

165:15-3-24.2. Fleet and commercial facility inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to fleet and commercial facilities.

(1) **Requirements for dispensers.** There are no minimum distance requirements between dispensers and tanks at fleet and commercial facilities. Owners at these facilities often enclose the dispenser with the aboveground tank inside a secondary containment to protect against potential leaks caused by the dispenser.

(2) **Fencing.**

(A) Aboveground tanks at fleet and commercial facilities must have appropriate fencing.

(B) Aboveground tanks are not required to be enclosed within a fence if the property on which the tanks are located already has a perimeter security fence.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04]

165:15-3-24.3. UST inspections at farms

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm underground storage tank systems.

(1) **Leak detection.** Because the primary purpose of the Commission's regulation of farm tanks over 1,100 gallons is to prevent leaks, the farmer must select some form of leak detection. Any leak detection method referenced in Chapter 25 of Commission rules may be used. Fuel Specialists will check manual tank gauging records to ensure the monthly standards are not exceeded. If the standards are exceeded, there is most likely a leak in the tank which shall be reported to a Commission Project Environmental Analyst at (405) 521-4683 (if after hours or on weekends or holidays, call the PSTD emergency number at (405) 823-0994) within 24 hours of the owner or any of his or her employees knowing the gauging results.

(2) **Cathodic protection.** The Fuel Specialist must ensure, for any metal tanks or piping, that cathodic protection is installed and in proper working order.

(3) **Electrical requirements.** Fuel Specialists will ensure that all electrical equipment meets the requirements of NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions, or other approved local code, and is suitable for the locations in which it is installed.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16]

PART 9. LARGE VOLUME METERS

165:15-3-25. Testing and inspection of large volume meters

(a) All large meters at refinery terminals and pipeline terminals used to deliver a petroleum product for sale to another party must be calibrated for accuracy every

six (6) months or every ten (10) million gallons, whichever comes first. The tolerances in Appendix A apply.

(b) The owner, operator or lessor must have a certified source calibrate all meters.

(c) A certified source must complete all calibrations when maintenance or recalibration is required. If calibration is performed more than twice a year, the next calibration is due six (6) months from last calibration.

(d) The owner, operator or lessor of meters is responsible for notifying the Compliance and Inspection Department in advance of the calibration so a Fuel Specialist may witness it. A copy of the test results shall be provided to the Compliance and Inspection Department within ten (10) working days of completion of the test.

[Source: Amended at 14 Ok Reg 2448, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 36 Ok Reg 535, eff 8-1-19]

PART 11. ACCESSIBILITY AND ASSISTANCE

165:15-3-30. Outlet accessibility for testing purposes [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-3-31. Assistance in testing operations [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-3-32. Retail facility with aboveground storage tanks

(a) At a retail facility with aboveground storage tanks, the owner or operator must provide a safe means of returning motor fuel to the storage tank or tanks used in checking the calibration of the measuring devices.

(b) When the fuel return opening to the storage tank is reached only by the use of steps, stairs, or a ladder, or is not located at ground level, the owner or operator must:

- (1) Provide safe containers with sufficient volume to complete a required inspection.
- (2) Label each container with the particular contents of product being stored.
- (3) Store containers outside the diked area.
- (4) Properly dispose of the product used in checking the calibration in accordance with applicable law.

[Source: Amended at 13 Ok Reg 2405, eff 7-1-96; Amended at 14 Ok Reg 2488, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:15-3-33. Retail outlet with locked storage tanks [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-3-34. Authority to block off

A Fuel Specialist has the authority to block off a portion or all of a fueling facility driveway when, in the opinion of the Fuel Specialist, there is a safety problem for the Fuel Specialist, equipment, or for both. These actions should take place when the openings to the underground storage tanks are located in the driveway or parking area adjacent to the fueling facility. If necessary, the owner, operator, or attendant may be required to assist the Fuel Specialist in the performance of these actions. Driveways should never be blocked unless safety

requires it, and then only to the minimum extent necessary.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 35 Ok Reg 974, eff 10-1-18]

165:15-3-35. Marina docks

(a) At a marina dock, when the distance from the motor fuel dispensing device to the fuel return opening is fifty (50) yards or more, the owner, operator, or marina personnel must assist the Fuel Specialist, as requested, or return the fuel to the storage tank.

(b) If the petroleum storage tanks at a marina dock are aboveground, the owner, operator or marina personnel must provide a safe means of returning fuel to the storage tank(s) used for checking the calibration of measuring devices.

(c) When the fuel return opening to the storage tank is reached only by using steps, stairs or a ladder, or is not located at ground level, the owner, operator or marina personnel must:

- (1) Provide safe containers with sufficient volume to complete a required inspection.
- (2) Label each container with the particular contents of the product being stored.
- (3) Store containers outside the diked area.
- (4) Properly dispose of the product used in checking the calibration in accordance with applicable law.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 35 Ok Reg 974, eff 10-1-18]

SUBCHAPTER 5. APPLICATIONS FOR USE OF BLEND PUMPS AND SPECIAL MOTOR FUEL [REVOKED]

165:15-5-1. Administrative application for use of blend pumps [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-5-2. Application for special motor fuel [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS

165:15-7-1. Applicability and general compliance

(a) **Compliance.** All motor fuel sold in the State of Oklahoma must comply with the standards of this Subchapter.

(b) **Removal from market.** Any motor fuel that does not meet the standards and specifications of the Commission must not be sold in Oklahoma.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 31 Ok Reg 1003, eff 9-12-14; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-7-2. Gasoline

(a) **Characteristics.** Gasoline must be essentially free of undissolved water, sediment, and suspended matter, and must be suitable for use as a fuel in a spark ignition, internal combustion engine. It must be clear and bright at the ambient temperature or 70°F, whichever is higher.

(b) **The minimum value for (R+M)/2 for unleaded motor fuel.** The minimum value for (R+M)/2 stated in this subsection applies to all unleaded fuel sold in the State of Oklahoma.

(1) The measuring devices must be labeled as follows and the motor fuel dispensed must meet or exceed the stated value corresponding to the stated grade. At a minimum, labeling of measuring devices for unleaded product grade must state as follows:

- (A) West of 99 degrees west longitude, 86
- (B) 87
- (C) 88
- (D) 89
- (E) 90
- (F) 91
- (G) 92
- (H) 93
- (I) 94

(2) In addition to the labeling requirements of (1), labels may read as follows:

- (A) East of 99 degrees west longitude
 - (i) Unleaded or Unleaded Regular: 87 or 88
 - (ii) Unleaded Plus or Mid-Grade Unleaded or Mid-Grade UL: 89 or 90
 - (iii) Premium Unleaded or Super Unleaded or Premium UL or Super UL: 91 and above.
- (B) West of 99 degrees west longitude
 - (i) Unleaded or Unleaded Regular: 86 or 87
 - (ii) Unleaded Plus or Mid-Grade Unleaded or Mid-Grade UL: 88 or 89
 - (iii) Premium Unleaded or Super Unleaded or Premium UL or Super UL: 90 and above.

(3) Any labeling of measuring devices for grade(s) of products other than those described in (1) and (2) above require an application to the Director of the Petroleum Storage Tank Division.

(c) **Gum content.** The gum content of gasoline must not exceed 5 milligrams per 100 milliliters.

(d) **Additives.** Ethanol, MtBE or TAME added to gasoline as a component must not exceed concentrations permitted by the United States Environmental Protection Agency.

(e) **Other.** Any other type, grade, or mixture of gasoline must be certified pursuant to the provisions of Subchapter 5 of this Chapter.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 10 Ok Reg 4245, eff 8-12-93; Amended at 13 Ok Reg 2405, eff 7-1-96; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-7-3. Kerosene

(a) Kerosene must be free from suspended water and sediment.

(b) Kerosene must have an API gravity of not less than 40.

(c) The flash point for kerosene must be 100°F or greater.

(d) Kerosene labeled as "No. 1-K" must not exceed 0.04 percent sulfur by weight. All other kerosene must not exceed 0.3 percent sulfur by weight.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-7-4. Aviation gasoline

Aviation gasoline must be free from suspended water and sediment and have an appropriate octane reading and color.

(1) **Octane rating.** There are three different classifications of aviation gasoline:

(A) Grade 80-87. The lean octane rating must not be less than 80. The rich octane rating must not be less than 87.

(B) Grade 100-130. The lean octane rating must not be less than 100. The rich octane rating must not be less than 130.

(C) Grade 100-130LL. The lean octane rating must not be less than 100. The rich octane rating must not be less than 130.

(2) **Aviation gasoline color.**

(A) Grade 80-87 must have a red color.

(B) Grade 100-130 must have a green color.

(C) Grade 100-130LL must have a blue color.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-7-5. Diesel fuel

The standard classification of diesel fuel, as described in ASTM D 975 and biodiesel as described in 52 O.S. §325, must be used.

[Source: Amended at 10 Ok Reg 4245, eff 8-12-93; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-7-6. Naphtha [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-7-7. Aviation turbine fuel

(a) **Characteristics.** Aviation turbine fuel must be essentially free from suspended water and sediment, clear, straw-to amber-colored and suitable for use in an aviation turbine engine.

(b) **Classification.** Aviation turbine fuel is classified as follows:

(1) **Jet A/A-1.** A relatively high flash point distillate of the kerosene type. Two grades of kerosene fuel that differ in freezing point. Other grades would be suitably identified.

(2) **Jet B.** A relatively wide boiling range volatile distillate.

[Source: Added at 14 Ok Reg 2448, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

165:15-9-1. General representation; lettering

Whenever the description of any motor fuel subject to the rules of this Chapter is displayed on any receptacle, dispenser, or other delivery device used in its sale to the public, the type, grade, and quality of the motor fuel must be equal to or greater than the representation on the measuring device. The sign must be in one-quarter inch (1/4") to one-half inch (1/2") text letters that are easily legible from at least five feet (5').

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-9-2. Display on dispenser

(a) Every dispenser or delivery device regulated by the Commission used for sale of motor fuel to the public must legibly display the type of motor fuel offered for sale.

(b) Any motor fuel must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 13 Ok Reg 2405, eff 7-1-96; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 31 Ok Reg 1003, eff 9-12-14; Amended at 35 Ok Reg 974, eff 10-1-18]

165:15-9-3. Motor fuel sold at airports for fueling auxiliary support equipment

Motor fuel sold at airports for fueling auxiliary airport support equipment must be labeled with the percent of alcohol in the fuel, if any.

[Source: Amended at 10 Ok Reg 4245, eff 8-12-93; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 19 Ok Reg 1965, eff 1-1-03; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-9-4. Additives [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

SUBCHAPTER 11. REPORTS

165:15-11-1. Refinery plant reports

(a) All refiners and manufacturers who own or operate plants of any kind or description for the manufacture of any motor fuel, or who maintain and operate any other place or device where any motor fuel is manufactured, refined, or mixed and who have not made their existence known must file a report with the Petroleum Storage Tank Division setting forth:

- (1) The physical location (block, addition, town, or city or quarter section, township, and range).
- (2) Local post office address of operator.
- (3) General office address if different from local.
- (4) Capacity of the plant.
- (5) Whether in operation or temporarily closed.
- (6) Types of motor fuels manufactured or produced.

(b) Any person who opens a new plant must file a location report within thirty (30) days of the plant opening.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-11-2. Special reports [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES

165:15-13-1. General identification and color coding requirements

- (a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the overfill sump lids to identify the type, grade, or quality of regulated substance they contain.
- (b) East of 99 degrees west longitude, color coded markings must be:
- (1) Unleaded motor fuel, 91 octane or above: red.
 - (2) Unleaded motor fuel, 89 or 90 octane: blue.
 - (3) Unleaded motor fuel, 86 through 88 octane: white.
 - (4) Diesel motor fuel: yellow.
 - (5) Kerosene: brown.
 - (6) Dyed diesel: half yellow, half red.
 - (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
 - (8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
 - (9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.
 - (10) Biodiesel: bronze with yellow and black border around lid.
 - (11) E85: orange with black "X" and a black border around lid.
- (c) West of 99 degrees west longitude, color coded markings must be:
- (1) Unleaded motor fuel, 90 octane or above: red.
 - (2) Unleaded motor fuel, 88 or 89 octane: blue.
 - (3) Unleaded motor fuel, 86 or 87 octane: white.
 - (4) Diesel motor fuel: yellow.
 - (5) Kerosene: brown.
 - (6) Dyed diesel: half yellow, half red.
 - (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
 - (8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
 - (9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.
 - (10) Biodiesel: bronze with yellow and black border around lid.
 - (11) E85: orange with black "X" and a black border around lid.
- (d) Vapor-recovery connections and manholes shall be marked with orange circles.
- (e) Observation and monitoring wells shall be marked with a black triangle on a white background.
- (f) At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.
- (g) The tag labeling and color coding must be waterproofed and fuel-proofed material so that the type, grade, or quality of the motor fuel is readily visible to persons adding to or taking a sample from the line or storage tank.

[Source: Amended at 13 Ok Reg 2405, eff 7-1-96; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 31 Ok Reg 1003, eff 9-12-14; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:15-13-2. Underground tanks [REVOKED]

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Revoked at 33 Ok Reg 594, eff 8-25-16]

165:15-13-3. Aboveground storage tanks [REVOKED]

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Revoked at 33 Ok Reg 594, eff 8-25-16]

165:15-13-4. Aviation gasoline at airports

At any airport, the labeling for aviation gasoline product lines or dispensing units must be as follows:

- (1)AVGAS 80
- (2)AVGAS 100
- (3)AVGAS LL100

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 1. INSTALLATION

165:15-15-1. General installation requirements

A measuring device must be installed in accordance with the manufacturer's instructions, including any instructions marked on the device. A measuring device installed in a fixed location must be installed so that neither its operation nor its performance will be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-2. Discharge rate

A measuring device for dispensing fuel into automobiles must be installed so that the actual maximum discharge rate will not exceed 10 gallons per minute. If necessary, means for flow regulations must be incorporated in the installation, in which case this must be fully effective and automatic in operation.

[Source: Amended at 14 Ok Reg 2448, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01]

PART 3. CALIBRATION AND TOLERANCES

165:15-15-7. Initial calibration

Before any liquid measuring device subject to the rules of this Chapter may be put into service, it must conform to the National Institute of Standards and Technology (NIST) Handbook 44. In addition, any liquid measuring device must be calibrated as nearly as practicable to zero error by the installer, who must attach a seal to the adjusting mechanism in such a manner that a readjustment of the measuring unit cannot be made without breaking the seal.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-8. Duty to zero equipment

Tolerances are primarily accuracy criteria for use by the regulatory official. However, when a liquid measuring device is being adjusted for accuracy, either initially or following repair after official rejection, the effect should be to adjust as closely as practicable to zero error. Equipment owners or operators shall not take advantage of tolerances by deliberately adjusting their equipment to have a value or to give a performance at or close to the tolerance limit, nor should the repairman or

serviceman bring measuring devices merely within tolerance range when it is possible to adjust closer to zero error. If the majority of meter tolerances measured by the fuel specialist are below zero, the fuel specialist shall require those affected meters be recalibrated as close to zero as possible.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06]

165:15-15-9. Tolerances

(a) The official tolerances prescribed by the Commission for commercial equipment are the limits of inaccuracy officially permissible within the State of Oklahoma. Tolerances are established, to fix the range of inaccuracy within which equipment will be officially approved for commercial use. Tolerances using a five (5) gallon test measure are ± 3 cubic inches when applied to new or newly reconditioned or adjusted equipment. Tolerances using a five (5) gallon test measure on all measuring devices must not exceed ± 6 cubic inches. More than -15 cubic inches in accuracy will result in immediate shut down of the affected meters.

(b) Tolerances for new or newly reconditioned equipment apply as follows:

(1) To any equipment about to be put into commercial use for the first time.

(2) To equipment that has been placed in commercial service within the preceding 30 days and is being officially tested for the first time.

(3) To equipment that has been returned to commercial service following official rejection for failure to conform to performance requirements and is being officially tested for the first time within 30 days after corrective service.

(4) To equipment that is being officially tested for the first time within 30 days after major reconditioning or overhaul.

(c) Tolerances for retail and wholesale liquid measuring devices are as set forth in the charts in Appendix A to this Chapter.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 19 Ok Reg 1603, eff 6-13-02; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 30 Ok Reg 583, eff 7-1-13]

PART 5. IDENTIFICATION

165:15-15-15. Visibility of identification

All liquid measuring devices or meters must have indicating or recording elements appropriate in design and adequate in amount. Primary indications and recorded representations must be clear, definite, accurate, and easily read under any conditions or normal operation of the device. Equipment must be installed in such a manner that all required markings are readily observable.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-16. Permanence of lettering

All required markings, instructions, graduations, indications, or recorded representations and their defining figures, words, and symbols must be easily readable and of such character that they will not easily become illegible.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-17. Identification of responsible party

A money-operated, card-operated or unattended dispenser must be legibly and permanently marked to show the name and address of the person, firm, or corporation to whom application may be made in an emergency or for adjustment

of any claim arising from failure of the device to deliver or to accurately measure an amount of petroleum product.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-18. Price and product display

There must be conspicuously displayed on each face of the liquid measuring device the identity of the product dispensed. If a liquid measuring device is designed to dispense more than one grade, brand, blend, or mixture of product, the grade, brand, blend, or mixture being dispensed must be displayed on each face of the liquid measuring device. The device must automatically and accurately compute the total money value of the petroleum product delivered at the posted unit price.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

PART 7. MONEY VALUES AND VOLUMES DISPENSED

165:15-15-25. Indication of delivery

A liquid measuring device must be constructed to show automatically its initial zero condition and the amount delivered up to the nominal capacity of the device.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-26. Repeatability of indications

A measuring device must be capable of repeating, within prescribed tolerances, its indications and recorded representations. This requirement must be met regardless of repeated manipulation of any element of the device in a manner approximating normal usage and the repeated performance of steps or operations that are part of the testing procedure.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-27. Unit price and product identity

In a computing or money-operated liquid measuring device, means must be provided for displaying on each face of the liquid measuring device the unit price at which the device is set to compute or to deliver (as the case may be). The device must automatically and accurately compute the total money value of the petroleum product delivered at the posted unit price.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-28. Position of equipment and money value divisions

(a) A measuring device equipped with a primary indicating element, as described in 165:15-15-31 and used in direct sales to the public, must be positioned so that its indications may be accurately read and the measuring operation may be observed from some reasonable "customer" position.

(b) The money value and dispensed liquid volume readings on the primary indicating elements must be the ones used for determining the money and volume amounts in any sale to the public. The device must automatically and accurately compute the total money value of the petroleum product delivered at the posted unit price.

(c) On a computing type liquid measuring device with digital indications, the money values, mathematical agreement, and the total price computation must be based on quantities not exceeding 0.001 gallon intervals for devices indicating in inch-pound units and 0.002 liters for devices indicating in metric units.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 34 Ok Reg 922, eff 9-11-17]

165:15-15-29. Digital indication and representation

Digital elements must be designed so that:

- (1) All digital values of like value in a system agree with one another.
- (2) A digital value coincides with its associated analog value to the nearest minimum graduation.
- (3) A digital value rounds off to the nearest minimum unit that can be indicated or recorded.
- (4) A digital value may be readily observable from a reasonable customer position.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-30. Values

If graduations, indications, or recorded representations are intended to have specific values, these must be adequately defined by a sufficient number of figures, words, symbols, or combinations thereof, uniformly placed with reference to the graduations, indications, or recorded representations, and as close to them as practicable, without compromising accurate reading.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-31. Primary elements

- (a) **General.** A liquid measuring device must be equipped with a primary indicating element and may also be equipped with a primary recording element.
- (b) **Units.** A liquid measuring device must be equipped to record its deliveries in terms of gallons, liter, or decimal subdivisions of the gallon or liter.
- (c) **Value of smallest unit.** The value of the smallest unit of indicated delivery, and recorded delivery if the device is equipped to record, must not exceed:
 - (1) One thousandth (.001) gallon or two thousandth (.002) liter on digital type retail devices, or one-tenth (0.1) gallon or one-tenth (0.1) liter on analog type systems.
 - (2) One gallon or one liter on wholesale devices.
- (d) **Return to zero.** Primary indicating and recording elements must advance only by the mechanical or electronic operation of the measuring device. However, a measuring device may be cleared by advancing its elements to zero, but only if:
 - (1) The advancing movement, once started, cannot be stopped until zero is reached; or
 - (2) In the case of indicating elements only, such elements are automatically obscured until the elements reach the correct zero position.
- (e) **Return to zero (key-lock).** The primary indicating elements, and primary recording elements if the device is equipped to record, must be readily returnable to a definite zero indication. However, a key-lock or other self-operated device may be equipped with cumulative indicating or recording elements, provided that it is also equipped with a zero-return indicating element. Means must be provided to prevent the return of primary indicating elements, and of primary recording

elements if the device is so equipped, beyond their correct zero position.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 34 Ok Reg 922, eff 9-11-17]

165:15-15-32. Graduations

(a) **Length.** Graduations must be varied in length so that they may be conveniently read.

(b) **Width.** In any series of graduations, the width of a graduation must not be greater than the width of the main graduations and must not be more than 50 percent greater than the width of subordinate graduations. Graduations must in no case be less than 0.008 inches in width.

(c) **Clear interval between graduations.** The clear interval must not be less than 0.04 inch. If the graduations are not parallel, the measurement must be made:

- (1) Along the line of relative movement between the graduations and the end of the indicator, or
- (2) If the indicator is continuous, at the point of widest separation of graduations.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-33. Indicators on liquid measuring devices

(a) **Symmetry.** The index of an indicator must have symmetrical graduations.

(b) **Length.** The index of an indicator must reach to the finest graduations with which it is used, unless the indicator and the graduations are in the same plane, in which case the distance between the end of the indicator and the ends of the graduations, measured along the line of graduations, must not be more than 0.04 inch.

(c) **Width.**

(1) The width of the index of an indicator in relation to the series of graduations with which it is used must not be greater than:

- (A) The width of the widest graduation, and
- (B) The width of the minimum clear interval between graduations.

(2) When the index of an indicator extends along the entire length of a graduation, that portion of the index of the indicator that may be brought into coincidence with the graduation must be of the same width throughout the length of the index that coincides with the graduation.

(d) **Clearance.** The clearance between the index of an indicator and the graduations must in no case be more than 0.06 inch.

(e) **Parallax.** Parallax effects must be reduced to the practicable minimum.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-34. Money values; mathematical agreement

Any digital money value indications and any recorded money value on a computing-type measuring device must be in mathematical agreement with its associated quantity indication or representation to one cent of money value. The readings for money value and volume of liquid dispensed on the primary indicating element, as provided in this Chapter, must be the ones used for determining the money and volume amounts in any sale to the public.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-35. Money value display and computation

- (a) **On a retail device.** Money value computations (on a retail device) must be of the full computing type in which the money value at a single unit price, or at each of a series of unit prices, is computed for every delivery within either the range of measurement of the liquid measuring device or the range of the computing elements, whichever is less. Any analog money value indication must not differ from the mathematically computed money value (Quantity X Unit Price = Sales Price), for any delivered quantity, by an amount greater than one-half the value of the money value division. Value graduations must be supplied and accurately positioned. The value of each graduated interval must be 1 cent.
- (b) **"Cash" discount.** When a discount for "cash" is offered, the discount must be paid inside the store, the discount is to be calculated, and the customer informed of the discounted amount. The cash discount price must not be posted on a marquee or remote billboards unless it is explicitly called a "cash price".
- (c) **Retail dispensing devices used in contract sales.** Those retail motor fuel dispensing devices used in contracted sales, which are normally unattended and accessed and actuated by keys, cards and/or other coding mechanisms and which are not accessible to the general public, are not required to display unit prices nor to make money value computations for every delivery.
- (d) **Airport dispensing devices.** Those retail motor fuel dispensing devices installed at airports for use in fueling aircraft are not required to display unit prices nor to make money value computations for every delivery.
- (e) **Advertised price.** The price per gallon charged at the dispenser must be the same price advertised on the facility's marquee and remote billboards. The price per gallon advertised on the facility's marquee and remote billboards must be the same price charged at the dispenser.

[Source: Amended at 9 Ok Reg 2329, eff 6-25-92; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 23 Ok Reg 1650, eff 7-1-06; Amended at 37 Ok Reg 1121, eff 10-1-20]

PART 9. EQUIPMENT AND OPERATIONS

165:15-15-40. Maintenance of equipment

All liquid measuring equipment in service and all attached mechanisms and devices or those used in connection therewith must continuously be maintained in proper operating condition throughout the period of service of the equipment. Liquid measuring devices in service at a retail facility found to be in error predominately in a direction favorable to the measuring device owner or operator and near the tolerance limits are not considered to be maintained in a proper operating condition.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-15-40.1. Dispenser Filters

- (a) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 fuel ethanol and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller pore-sized filter.
- (b) All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller sized filter.

[Source: Added at 30 Ok Reg 583, eff 7-1-13]

165:15-15-41. Vapor elimination

A liquid measuring device or metering system must be equipped with an effective vapor eliminator or other effective means automatic in operation to prevent the passage of vapor and air through the meter. Vent line from the air or vapor eliminator must be made of metal tubing or some other suitable rigid material.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-42. Provision for sealing

(a) Adequate provision must be made for applying security seals in such a manner that no adjustment may be made of:

- (1) Any measurement element, and
- (2) Any adjustable element for controlling delivery rate when such rate tends to affect the accuracy of deliveries.

(b) The adjusting mechanism must be readily accessible for purposes of affixing a security seal. This lead wire seal must be affixed by the service technician, and must be designated by the Fuel Specialist as the seal of the Corporation Commission for the purposes of this Chapter.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-43. Directional flow valves

Valves intended to prevent reversal of flow must be automatic in operation. However, on equipment used exclusively for fueling aircraft, such valves may be manual in operation.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-44. Stop mechanism

If stops or other stroke limiting elements are subject to direct pressure or impact, the security of their positions must be accomplished by positive, nonfrictional engagement of parts, and they must be adjustable to provide for deliveries within prescribed tolerances. If two or more stops or other elements may selectively be brought into operation to permit deliveries or predetermined amount, the position for the proper setting of each of such elements must be accurately defined, inadvertent displacement from position must be obstructed, and the delivery for which the device is set at any time must be conspicuously indicated.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-45. Zero-set-back interlock

A retail liquid measuring device of the meter type must be constructed so that, after a particular delivery cycle has been completed, an effective automatic interlock will prevent a subsequent delivery being started until the indicating elements and recording elements, if the device is equipped and activated to record, have been returned to their correct zero positions. Provisions must be made for the starting lever or equivalent mechanism to be in its designed shutoff position and for the zero-set-back interlock to be engaged before the discharge nozzle can be returned to its designed hanging position.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-46. Discharge hose at retail facilities

(a) A liquid measuring device that is equipped with a flexible discharge hose must be of the wet-hose type with a shutoff valve at its outlet end. This valve must be a

listed automatic type nozzle.

- (b) The discharge hose must be adequately reinforced.
- (c) At any installation where the normal flow of product may be stopped by a means other than by a hose nozzle valve, such as at pre-pay or self-service stations, the system must include listed equipment with a feature that requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser; otherwise, the hose nozzle valve must not have a latch-open device.
- (d) All discharge hoses must have a breakaway valve.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15]

165:15-15-47. Diversion of measured liquid [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-48. Gravity discharge unit [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-49. Discharge valve [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-50. Anti-drain valve [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-51. Discharge nozzle [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-52. Use limitations

If a liquid measuring device is intended to measure accurately only products having particular properties, or to measure accurately only under specific installation or operating conditions, or to measure accurately only when used in conjunction with accessory equipment, these limitations must be clearly and permanently stated on the device.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-53. Air pressures [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-54. Wholesale devices

(a) Wholesale devices must be calibrated by a certified source. The result must be mailed to the Compliance and Inspection Department with a pass or fail rating.

Upon receipt of documentation, a Fuel Specialist from the Compliance and Inspection Department will deliver a sticker on the next routine visit.

(b) These guidelines are required for wholesale meter calibrations:

(1) **Discharge rates.** A wholesale measuring device must be marked to show its designed maximum and minimum discharge rates. However, such minimum discharge rates must not exceed 20 percent of such maximum discharge rates.

(2) **Temperature compensation.** If a measuring device is equipped with an automatic temperature compensator, the primary indicating elements,

recording elements and recorded representation must be clearly and conspicuously marked to show that the volume delivered has been adjusted to the volume at 60°F.

(3) **Test liquid.** A liquid measuring device must be tested with the liquid to be commercially measured or with a liquid of the same general physical characteristics.

(4) **Evaporation and volume change.** Care must be exercised to minimize evaporation losses and volume changes resulting from changes in temperature of the test liquid.

(5) **Normal tests.** The "normal" test of a measuring device must be made at the maximum discharge rate that may be anticipated under the conditions of installation. If a wholesale device is equipped with an automatic temperature compensator, this test should be conducted with the temperature compensator deactivated.

(6) **Automatic temperature compensation on wholesale devices.** If a measuring device is equipped with an automatic temperature compensator, it must be tested by comparing the volume indicated or recorded by the device with the compensator connected and operating, with the actual delivered volume corrected to 60°F.

(7) **Temperature correction on wholesale devices.** Corrections must be made for any changes in volume resulting from the differences in liquid temperatures between time of passage through the meter and time of volumetric determination in the test measure. When adjustments are necessary, appropriate petroleum measurement tables should be used. The temperature used to make the volumetric adjustment must be recorded on the invoice.

(8) **Sticker and seal.** Upon receipt of documentation of calibration, a Fuel Specialist will place a Commission sticker upon the meter. The Fuel Specialist will ensure that the meter is sealed, so that entry to the meter is prevented. At the time the seal is broken, the Compliance and Inspection Department must be notified within one (1) day and recalibration must be completed within ten (10) days. If after ten (10) days recalibration is not completed, that device must be taken out of service until calibration is completed.

[Source: Amended at 14 Ok Reg 2448, eff 7-1-97; Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 33 Ok Reg 594, eff 8-25-16]

165:15-15-55. Temperature compensation on wholesale devices

(a) **Use of automatic compensators.** If a wholesale liquid measuring device is equipped with an automatic temperature compensator, it must be connected, operable, and in use at all times. Such automatic temperature compensator may not be removed, nor may a compensated device be replaced with an uncompensated device, without the written approval of the Fuel Specialist.

(b) **Written invoices.** Any written invoice based on a reading of a wholesale measuring device equipped with an automatic temperature compensator must show that the volume delivered has been adjusted to the volume at 60°F.

(c) **Non-automatic temperature compensation.** If the volume of the product delivered is adjusted to the volume at 60°F, the product temperature must be taken during the delivery in the liquid chamber of the meter or in the meter inlet or discharge line adjacent to the meter, or must be taken in the compartment of the receiving vehicle at the time it is loaded. The accompanying invoice must indicate

that the volume of the product has been adjusted for temperature variations to a volume of 60°F, and must also state the product temperature and API gravity used in making the adjustment.

(d) **Replacement of non-automatic temperature compensation meters.** As non-automatic temperature compensation meters are replaced, they will be replaced with equipment to provide automatic temperature compensated readout.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

165:15-15-56. Travel indicator

A wholesale device must be readily operable to deliver accurately any quantity from 50 gallons to the capacity of the device. If the most sensitive element of the indicating system utilizes an indicator and graduations, the relative movement of these parts corresponding to a delivery of one (1) gallon must not be less than 0.20 inch.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01]

PART 11. SPECIAL PERMITS [REVOKED]

165:15-15-65. Application for special permit [REVOKED]

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Revoked at 32 Ok Reg 768, eff 8-27-15]

SUBCHAPTER 17. MOTOR FUEL TRANSPORT TANKS [REVOKED]

165:15-17-1. Vehicle tank measure design [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

165:15-17-2. Compartment indicators [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

165:15-17-3. Compartment discharge manifold design [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

165:15-17-4. Vehicle tank measure test [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

165:15-17-5. Calibration fee [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

165:15-17-6. Tolerance values [REVOKED]

[Source: Revoked at 14 Ok Reg 2448, eff 7-1-97]

SUBCHAPTER 19. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:15-19-1. Penalty; violations and contempt

(a) The Commission, after notice and hearing, may fine or hold in contempt any person for each of the following violations:

- (1) Any person using a measuring device which does not meet the required tests, standards, and specifications.
 - (2) Any person who offers motor fuel for sale or resale within the State of Oklahoma and does not comply with the rules of this Chapter.
 - (3) Any person who tampers with, defaces or destroys any sign, label, lock, or seal placed by the Fuel Specialist upon any dispenser, delivery device, receptacle, container, tank, or service station used in the sale of any motor fuel.
 - (4) Any price misrepresentation.
 - (5) Any person who aids any person in the violation of any rule of this Chapter.
 - (6) Any person who interferes in any way with the Fuel Specialists in the performance of their duties as provided by law of the State of Oklahoma and the rules of the Commission.
 - (7) Any person otherwise failing to comply with the rules, regulations, specifications, standards, or requirements of the Commission.
- (b) Each day on which violation occurs will be deemed a separate and distinct offense.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 31 Ok Reg 1003, eff 9-12-14; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 35 Ok Reg 974, eff 10-1-18]

165:15-19-2. Enforcement procedure

In addition to the contempt procedures described in OAC 165:5, the following procedure for violations may be followed:

- (1) The PSTD Director or designee may issue a Field Citation for any violation or violations of the rules of this Chapter, and/or 17 O.S. §§301 et seq., and amendments thereto.
- (2) A copy of the Field Citation must be furnished to the owner or operator.
- (3) The Field Citation must be authorized by the PSTD Director.
- (4) Prior to issuing a Field Citation to an owner or operator, the approval of the Director of the Petroleum Storage Tank Division must be obtained.

[Source: Amended at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 36 Ok Reg 535, eff 8-1-19]

165:15-19-3. Notices of Violation

- (a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any statute, rule, requirement or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).
- (b) Each violation that can have an NOV issued is listed in this Chapter, OAC 165:16, 165:25, and 165:26.
 - (1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further PSTD enforcement action may occur if the violation is not corrected. If the violation cannot be corrected, the violation will be referred to the PSTD Compliance and Inspection Manager or Director's designee who may initiate Formal Enforcement Action or issue a Field Citation.
 - (2) At PSTD's discretion, serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

- (3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.
- (c) A Notice of Violation will state the following information:
- (1) A clear description of the violation(s).
 - (2) A date by which the violation(s) are required to be corrected.
 - (3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.
- (d) NOV(s) are issued to the owner or operator of the storage tank facility. If the owner or operator is not present, NOVs can be given to store personnel, but all notifications and/or correspondence will be mailed or electronically delivered to the owner and/or operator.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 33 Ok Reg 594, eff 8-25-16; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:15-19-4. Re-inspection, Formal Enforcement and Field Citation

- (a) After the date that the violation is required to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.
- (b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:
- (1) Refer the violation to the Division's Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or
 - (2) Shut down the storage tank system pending correction of the problem or a hearing on the issue.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 21 Ok Reg 2029, eff 7-1-04; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 34 Ok Reg 922, eff 9-11-17; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

165:15-19-5. Issuance of a Field Citation and payment of fine or hearing

- (a) The storage tank owner or operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.
- (b) The tank owner or operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.
- (1) A fine may be paid with cash, a money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.
 - (2) Payment of a fine within the thirty (30) day timeframe will not be considered an agreement or disagreement with the Field Citation.
- (c) If the storage tank owner or operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided in the Field Citation. If found in violation of PSTD rules at the time the Commission order is issued, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.
- (d) Refusal to comply with an order of the Commission may result in an additional fine to be levied after notice and hearing in an amount as allowed by law, and shutdown of the storage tank system for failure to pay fines.

- (e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement action.
- (f) Any exceptions to the hearing must be made in accordance with OAC 165:5.
- (g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Amended at 32 Ok Reg 768, eff 8-27-15; Amended at 35 Ok Reg 974, eff 10-1-18; Amended at 36 Ok Reg 535, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20]

APPENDIX A. TOLERANCES FOR RETAIL AND WHOLESALE DEVICES

[Figure 1](#)

[Source: Revoked and reenacted at 18 Ok Reg 1052, eff 5-11-01; Revoked and reenacted at 23 Ok Reg 1650, eff 7-1-06; Revoked and reenacted at 31 Ok Reg 1003, eff 9-12-14]

APPENDIX B. COMPLAINT FOR CONTEMPT [REVOKED]

[Source: Revoked at 18 Ok Reg 1052, eff 5-11-01]

APPENDIX C. DISTILLATION TEST LIMITS FOR DIESEL FUEL [REVOKED]

[Source: Added at 18 Ok Reg 1052, eff 5-11-01; Revoked at 31 Ok Reg 1003, eff 9-12-14]

CHAPTER 16. ANTIFREEZE

[Authority: 17 O.S., §§ 306(12), 342, and 348.5]
[Source: Codified 6-25-92]

SUBCHAPTER 1. GENERAL PROVISIONS

165:16-1-1. Purpose

The purpose of this Chapter is to implement the provisions of 17 O.S. § 301 et seq., regarding the sale of antifreeze in the State of Oklahoma.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17; Amended at 36 Ok Reg 544, eff 8-1-19]

165:16-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 303 and 348, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Antifreeze" means all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of an internal combustion engine to prevent freezing or to raise the boiling point.

"Certified" means to attest that the analysis is as represented and meets the required standards of this Chapter.

"Commission" means the Oklahoma Corporation Commission and includes its designated divisions, departments, agents or representatives.

"Ethylene glycol antifreeze" means an antifreeze containing ethylene glycol as the major component.

"Licensee" means the name and address of the person who is distributing, manufacturing, marketing, producing, selling or transporting antifreeze under a specific brand name.

"Manufacturer" means any person engaged in the manufacture of any antifreeze sold, offered for sale, displayed, distributed, produced, used, or consumed

in the State of Oklahoma.

"Methanol" means an antifreeze with an alcohol base.

"Person" means any and all persons, including any individual, firm, partnership, corporation, company, trust, LLC, LLP, and association, whether such persons are acting as owner, bailee, or agent.

"Propylene glycol antifreeze" means an antifreeze containing propylene glycol as the major component.

"Prediluted aqueous ethylene glycol" means an antifreeze containing a 50 volume percent aqueous solution.

"PSTD" means the Petroleum Storage Tank Division.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 14 Ok Reg 2494, eff 7-1-97; Amended at 34 Ok Reg 929, eff 9-11-17; Amended at 36 Ok Reg 544, eff 8-1-19]

165:16-1-3. Applicability

This Chapter shall apply to persons who display, distribute, manufacture, market, produce, store, transport, warehouse, sell, offer for sale or resale antifreeze of any brand or type in the State of Oklahoma. This Chapter does not apply to antifreeze used in manufacturing processes and consumptive use on the premises.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 34 Ok Reg 929, eff 9-11-17]

165:16-1-4. Authority of the Commission

In addition to other authority prescribed by law, the Commission shall have the authority to:

- (1) Enforce this Chapter by licensing, inspections, chemical analysis, or any other appropriate methods.
- (2) Call upon and take samples of antifreeze from the stocks of any applicant for or any holder of an antifreeze permit or any other persons suspected of distributing, displaying, manufacturing, marketing, producing, selling, storing, or transporting antifreeze.
- (3) Access, by any means, all places of businesses of such persons, including buildings, vehicles, cars, and vessels used in the display, distribution, manufacturing, marketing, producing, sale, storage, or transporting of antifreeze during regular business hours.
- (4) Open, by any means, any box, carton, parcel, or package containing or supposed to contain antifreeze, take possession of a representative container signed by receipt, for the purpose of taking samples.
- (5) Require, request, and demand a bill of lading or other proof of delivery of antifreeze that on its face appears to be unlicensed.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17]

SUBCHAPTER 3. APPLICATIONS AND PERMITS

165:16-3-1. General requirements

Before any antifreeze can be displayed, distributed, manufactured, marketed, produced, sold, used and/or offered for sale or resale, held with intent to sell, or transported within the State of Oklahoma, a permit, bearing an official permit number shall be obtained by the manufacturer of the antifreeze from PSTD.

- (1) Application for antifreeze permits shall be submitted with certified laboratory analysis, copies of the labels, and the fee amount set forth in Chapter 5 of Commission rules per brand and per type. If PSTD has

previously approved the formula, a new laboratory analysis is not needed.

(2) If antifreeze meets the specifications and standards as set out in OAC165:16-5-1, 165:16-5-2, 165:16-5-3 and 165:16-5-4 a permit shall be issued to the applicant authorizing the sale of such antifreeze until the end of the fiscal year, June 30.

(3) Renewal invoices will be sent sixty (60) days before the fiscal year expires. The renewal fee amount set forth in Chapter 5 of Commission rules is per brand and per type. Licensees do not need to resubmit information on individual brands and types each year unless the formula, name of the brand or the type has changed.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17; Amended at 36 Ok Reg 544, eff 8-1-19]

165:16-3-2. Application for variance [REVOKED]

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17; Revoked at 36 Ok Reg 544, eff 8-1-19]

165:16-3-3. Cancellation of permit [REVOKED]

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Revoked at 34 Ok Reg 929, eff 9-11-17]

SUBCHAPTER 5. TESTING OF ANTIFREEZE

165:16-5-1. Testing of ethylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standard D3306 (2014) shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze shall not be below 311°F or 155°C. When added to the cooling system of a motor vehicle, at atmospheric pressure, an antifreeze shall increase the boiling point to a degree not less than the following:

- (A) 50% antifreeze: 226° F or 108° C
- (B) 40% antifreeze: 221° F or 105° C
- (C) 33 1/3% antifreeze: 219° F or 104° C
- (D) 20% antifreeze: 214° F or 101° C

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% water, by volume. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing points of the various water antifreeze solutions shall be such as to protect according to the chart in Appendix A of this Chapter.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 14 Ok Reg 2494, eff 7-1-97; Amended at 34 Ok Reg 929, eff 9-11-17]

165:16-5-2. Testing of methanol type antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze when added to the cooling system of a motor vehicle at atmospheric pressure shall not be below 133° F or 56° C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall not be below 7.5. The pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% water, by volume.

(3) **Reserve alkalinity test.** The reserve alkalinity of an antifreeze shall be determined by the ASTM designation D-1121 (2011) test. The reserve alkalinity shall not be below 10.0.

(4) **Freezing point test.** The freezing point of an antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing point of the various water antifreeze solutions shall be such as to protect according to the chart in Appendix B of this Chapter.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 14 Ok Reg 2494, eff 7-1-97; Amended at 34 Ok Reg 929, eff 9-11-17]

165:16-5-3. Testing of prediluted aqueous ethylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM D-1120 (2016) test. The boiling point of the prediluted coolant as packaged shall be at least 226°F or 108°C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall be run by using a sample of the prediluted coolant as packaged. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing point of the concentrated antifreeze solution shall be at least to -34° F or -37° C.

[Source: Added at 14 Ok Reg 2494, eff 7-1-97; Amended at 34 Ok Reg 929, eff 9-11-17]

165:16-5-4. Testing of propylene glycol antifreeze

The American Society for Testing and Materials (ASTM) standards shall be used to make the following tests of antifreeze.

(1) **Boiling point test.** The boiling point of an antifreeze shall be determined by the ASTM designation D-1120 (2016) test. The boiling point of a concentrated antifreeze shall not be below 305° F or 152° C. When added to the cooling system of a motor vehicle, a 50% antifreeze solution at

atmospheric pressure shall increase the boiling point to a degree not less than 219° F or 104° C.

(2) **pH test.** The pH of an antifreeze shall be determined by the ASTM designation D-1287 (2011) test. The pH of an antifreeze shall be run by using a solution composed of 50% concentrated antifreeze and 50% distilled water, by volume. The pH of this antifreeze solution shall not be below 7.5.

(3) **Corrosion inhibition test.** The reserve alkalinity of antifreeze as determined by ASTM D-1121 (2011) shall be reported. The corrosion inhibitive properties of antifreeze shall be determined by ASTM D-1384 Test Method (2012). The average weight loss of each metal coupon shall not exceed the maximums stated as follows: copper 10 mg, solder 30 mg, brass 10 mg, steel 10 mg, cast iron 10 mg, and aluminum 30 mg.

(4) **Freezing point test.** The freezing point of antifreeze shall be determined by the ASTM designation D-1177 (2016) test. The freezing points of a 50% concentrated antifreeze and 50% distilled water solution shall not be above -26°F or -32°C.

[Source: Added at 14 Ok Reg 2494, eff 7-1-97; Amended at 34 Ok Reg 929, eff 9-11-17]

SUBCHAPTER 7. ADULTERATION AND MISBRANDING

165:16-7-1. Adulteration

Any antifreeze submitted to PSTD for permit approval and testing shall be deemed to be adulterated if the certified analysis or other testing indicates:

- (1) It consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.
- (2) Its strength, quality, or purity falls below the professed standard of strength, quality, or purity under which it is sold.
- (3) It is a product intended to be used without further dilution and does not provide freezing point protection to -34° Fahrenheit.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17; Amended at 36 Ok Reg 544, eff 8-1-19]

165:16-7-2. Misbranding and labeling

Any antifreeze submitted to PSTD for permit approval shall be deemed to be misbranded if:

- (1) Labeling is false or misleading in any particular manner.
- (2) In package form it does not bear a label containing the name and place of business of the distributor, manufacturer, marketer, packer, producer, seller, warehouse or wholesaler, and an accurate statement of the quantity of contents in terms of weight or volume and these facts are not stated plainly and correctly on the outside.
- (3) The product is to be diluted with another substance for use and does not bear on the label or in an accompanying instruction sheet, folder, or booklet a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of temperature down to at least thirty degrees (30°) below zero Fahrenheit.
- (4) The product is intended to be used without further dilution and the freezing point is not stated on the label and the front and back labels do not bear the words "Ready to Use" in minimum one quarter inch (1/4") high

letters.

(5) Antifreeze manufacturers and licensees must provide a copy of any new version of any label change not previously submitted and approved by PSTD.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17; Amended at 36 Ok Reg 544, eff 8-1-19]

SUBCHAPTER 9. ADVERTISING

165:16-9-1. Advertising

No advertising literature relating to any antifreeze sold, or to be sold, in the State of Oklahoma shall contain any statement that the antifreeze advertised for sale has been approved by the Commission unless a current permit from PSTD has been issued to the distributor, manufacturer, marketer, packer, producer, seller, warehouse or wholesaler, in which event such statement, together with the permit number, may be contained in any labeling and advertising literature where such brand or trademark or antifreeze is being advertised for sale.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 13 Ok Reg 2409, eff 7-1-96; Amended at 34 Ok Reg 929, eff 9-11-17]

SUBCHAPTER 11. PENALTY FOR VIOLATION

165:16-11-1. Penalty

(a) Any person who violates or fails to comply with the provisions of this Chapter or the laws of the State, or any person who aids and abets in the violation thereof, shall, in addition to the penalties provided by law, be deemed guilty of contempt of order of the Commission and be subject to a fine not to exceed \$500.00 for each offense.

(b) Each day such violation occurs shall constitute a separate offense.

(c) Each container of antifreeze not conforming to all requirements set forth in this Chapter shall constitute a separate offense.

[Source: Added at 9 Ok Reg 2333, eff 6-25-92; Amended at 34 Ok Reg 929, eff 9-11-17]

APPENDIX A. TESTING OF ETHYLENE GLYCOL ANTIFREEZE

[Figure 1](#)

[Source: Added at 13 Ok Reg 2409, eff 7-1-96]

APPENDIX B. TESTING OF METHANOL TYPE ANTIFREEZE

[Figure 1](#)

[Source: Added at 13 Ok Reg 2409, eff 7-1-96]

CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY

[Authority: 52 O.S., §§ 5 and 47.3; OKLA. CONST. art IX, §§ 4 and 18]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:20-1-1. Purpose

The purpose of this Chapter is to provide minimum safety standards for the transportation of gas and hazardous liquids and for pipeline facilities used for this

transportation.

165:20-1-2. Definitions

For proper interpretation of this Chapter, definitions are also provided in the herein adopted C.F.R. provisions. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Corporation Commission.

"Intrastate" means wholly within the boundaries of the State.

"Legal staff" means the office of General Counsel of the Commission.

"Manager of Pipeline Safety" means the Manager of the Pipeline Safety Department of the Commission.

"Pipeline Safety Department" means the Department of Pipeline Safety for the Commission.

"Secretary" means the custodian of official records of the Commission.

"State" means the State of Oklahoma and all lands within its boundaries.

"Transportation of gas or hazardous liquids" means the gathering, transmission, or distribution of gas or hazardous liquids by pipeline or its storage.

165:20-1-3. Citation

The rules embodied in this Chapter shall be cited as OAC 165:20.

165:20-1-4. Forms and documentation

(a) The Commission is empowered to prescribe necessary and proper forms in order to effectuate the purpose of this Chapter. The Manager of Pipeline Safety shall prescribe the number of copies of an appropriate form which shall be necessary to comply with the filing requirements of this Chapter.

(b) Plans, specifications, maps, and other data relative to natural gas pipeline systems, underground natural gas storage facilities, and hazardous liquid pipeline systems shall be submitted to the Commission as prescribed by the Manager of Pipeline Safety in order to effectuate the purpose of this Chapter. This subsection is applicable to the operators of pipelines regulated pursuant to Subchapters 5, 6, 7, and 17 of this Chapter.

(c) Plans and maps submitted to the Commission pursuant to subsection (b) shall be deemed confidential records or trade secrets of the operator under the Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless such records are successfully challenged or become subject matter of an enforcement action at the Commission.

[Source: Amended at 15 Ok Reg 3002, eff 7-15-98; Amended at 37 Ok Reg 1126, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-1-5. Severability

The provisions of this Chapter are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Chapter.

165:20-1-6. Office location; mailing address

(a) The office of the Commission's Pipeline Safety Department is in the Jim Thorpe Building located at 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

(b) The mailing address of the Commission is P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

[Source: Added at 19 Ok Reg 1965, eff 7-1-02]

SUBCHAPTER 3. PIPELINE ASSESSMENTS

165:20-3-1. Pipeline assessments

(a) **Application.** Each operator of a pipeline subject to Subchapters 5 and 7 shall pay a pipeline assessment to the Commission as set forth in the provisions of this Subchapter.

(b) **Calculation.** For purposes of this Subchapter, the pipeline assessment shall be determined as follows:

(1) For gas pipeline operators required to submit an annual report pursuant to 165:20-5-13(b) and 165:20-5-14(b). On the basis of the total number of miles of pipeline as reported on their annual report multiplied by the assessment rate of \$25.00 per mile of pipeline for the fiscal year starting on July 1.

(2) For hazardous liquid pipeline operators required to submit an annual report pursuant to 165:20-7-6. On the basis of the total number of miles of pipeline as reported on their annual report multiplied by the assessment rate of \$75.00 per mile of pipeline for the fiscal year starting on July 1.

(3) For master meter operators. The annual assessment shall be \$200.00.

(4) The minimum annual pipeline assessment owed by an operator is \$200.00.

(c) **Payment.**

(1) For purposes of payment of assessment, an assessable year shall be the period of time from the first day of July of any given calendar year to the 30th of June of the following year.

(2) All operators who must pay a pipeline assessment under the provisions of this Subchapter shall pay their pipeline assessment for any given assessable year on or before the 15th of August of each assessable year.

(3) Operators who purchase or acquire pipeline systems subject to a pipeline assessment are responsible for payment of the assessment.

(4) All payments of assessments shall be deposited by the Commission in the "Corporation Commission Revolving Fund".

[Source: Amended at 11 Ok Reg 3703, eff 7-11-94; Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 18 Ok Reg 2376, eff 7-1-01; Amended at 25 Ok Reg 1866, eff 7-1-08; Amended at 28 Ok Reg 1125, eff 7-1-11; Amended at 36 Ok Reg 545, eff 8-1-19]

SUBCHAPTER 5. SAFETY REGULATIONS FOR GAS PIPELINES

PART 1. GENERAL PROVISIONS

165:20-5-1. Definitions [REVOKED]

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 19 Ok Reg 1965, eff 7-1-02; Revoked at 36 Ok Reg 545, eff 8-1-19]

165:20-5-2. Scope

(a) This Subchapter prescribes requirements for the reporting of incidents, safety related condition reports, and annual reports by operators of gas pipelines facilities subject to this Subchapter.

(b) This Subchapter does not apply to onshore gathering of gas through a pipeline that operates at less than 0 psig or through a pipeline that is not a regulated onshore gathering line as determined in 49 C.F.R. § 192.8.

[Source: Amended at 28 Ok Reg 1125, eff 7-1-11]

165:20-5-3. Annual reports and incident reports; federal reporting requirements

The reporting requirements of 165:20-5-11, 165:20-5-12, 165:20-5-13, and 165:20-5-14 do not relieve the operator of its federal reporting requirements as found in 49 C.F.R. §§ 191.5, 191.7, 191.9, 191.11, 191.13, 191.15 and 191.17.

[Source: Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-5-4. Change of ownership and/or operator

Each operator, upon finalization of an agreement to purchase or sell a gas pipeline subject to the provisions of 49 C.F.R. Part 192, must within five (5) working days submit to the Pipeline Safety Department a written notification of this agreement.

[Source: Added at 14 Ok Reg 2496, eff 7-1-97; Amended at 36 Ok Reg 545, eff 8-1-19]

PART 3. TELEPHONIC NOTICE AND REPORTING REQUIREMENTS

165:20-5-11. Telephonic notice of certain incidents

(a) At the earliest practicable moment, but no more than one (1) hour following discovery, each operator shall give notice in accordance with (b) and (c) of this Section of each incident as defined in 49 C.F.R. § 191.3.

(b) Each notice required by (a) of this Section shall be made by telephone to the Pipeline Safety Department at 405-521-2258 or submitting a report online at <http://www.occeweb.com/> and shall include the information as listed in (c) of this Section.

(c) The following information will be provided:

- (1) Names of operator and person making report and their telephone numbers.
- (2) The location of the incident.
- (3) The time of the incident.
- (4) The number of fatalities and personal injuries, if any.
- (5) All other significant facts known by the operator that are relevant to the cause of the incident or extent of the damage.

[Source: Amended at 11 Ok Reg 3703, eff 7-11-94; Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 19 Ok Reg 1965, eff 7-1-02; Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-5-12. Address for written reports

Each written report required by this Subchapter must be made to the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter.

[Source: Amended at 19 Ok Reg 1965, eff 7-1-02]

165:20-5-13. Distribution system reporting requirements

(a) Except as provided in (3) of this subsection, each operator of a distribution pipeline system shall submit United States Department of Transportation Form RSPA F 7100.1 as soon as practicable but not more than 30 days after detection of

an incident required to be reported under 165:20-5-11.

(b) When additional, relevant information is obtained after the report is submitted under (1) of this subsection, the operator shall make supplementary reports as deemed necessary with a clear reference by date and subject to the original report.

(c) The incident report required by this subsection need not be submitted with respect to master meter systems.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 19 Ok Reg 1965, eff 7-1-02; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-5-14. Transmission and gathering systems reporting requirements

(a) Except as provided in (2) of this subsection, each operator of a transmission or a gathering pipeline system shall submit United States Department of Transportation PHMSA Form F 7100.2 as soon as practicable but not more than thirty (30) days after detection of an incident.

(b) When additional, relevant information is obtained after the incident report is submitted under (1) of this subsection, the operator shall make supplementary reports as deemed necessary by referencing the date and subject of the original report.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 19 Ok Reg 1965, eff 7-1-02; Amended at 28 Ok Reg 1125, eff 7-1-11; Amended at 36 Ok Reg 545, eff 8-1-19; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-5-15. Telephonic notice of an evacuation of a building [REVOKED]

[Source: Added at 14 Ok Reg 2496, eff 7-1-97; Revoked at 36 Ok Reg 545, eff 8-1-19]

165:20-5-16. Reporting safety related conditions

Pursuant to 49 C.F.R. § 191.25, each operator shall submit to the Pipeline Safety Department a duplicate of any safety related condition report filed pursuant to 49 C.F.R. § 191.23.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

PART 5. MINIMUM SAFETY STANDARDS FOR GAS

165:20-5-21. Adoption of federal safety regulations

The Commission adopts the provisions of 49 C.F.R. Part 192, with all amendments and appendices thereto, subject to the following:

(1) 49 C.F.R. § 192.1 is replaced by the following:

(A) This Part prescribes minimum safety requirements for intrastate pipeline facilities and the transportation of gas subject to the jurisdiction of the Commission.

(B) This Part shall not apply to:

(i) Interstate transmission facilities; and

(ii) Onshore gathering of gas through a pipeline that operates at less than 0 psig or through a pipeline that is not a regulated onshore gathering line as determined by 49 C.F.R. § 192.8.

(2) The definition of "Administrator" and "State" are deleted and replaced as follows:

(A) All references to the "Administrator" are replaced with the "Commission".

(B) All references to the "State" refer to the State of Oklahoma.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 28 Ok Reg 1125, eff 7-1-11; Amended at 34 Ok Reg 933, eff 9-11-17; Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 36 Ok Reg 545, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

PART 7. PIPELINE CONSTRUCTION AND CONSUMER SAFETY

165:20-5-31. Notice of construction [RESERVED]

165:20-5-32. Notice requirements for construction

(a) Each operator prior to the construction of a new pipeline, or a relocation or replacement of a pipeline, subject to the jurisdiction of the Commission as established by 165:20-5-2 shall:

(1) Complete and file Form 5001 with the Commission. Form 5001 shall be mailed seven (7) calendar days prior to the commencement of construction, relocation, or replacement; or

(2) In the event of an emergency, give telephonic notice of emergency construction, relocation, or replacement to the Pipeline Safety Department of the Commission followed by mailing Form 5001 within five (5) work days after telephonic notice is given.

(b) The requirements of (a) of this Section shall not apply to the installation of a pipeline of less than one (1) mile.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97]

165:20-5-33. Special safety standards for residential service [RESERVED]

165:20-5-34. Restrictions on connections to consumers [REVOKED]

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Revoked at 36 Ok Reg 545, eff 8-1-19]

PART 9. MANDATORY PARTICIPATION IN OKLAHOMA ONE CALL

165:20-5-41. Mandatory participation in Oklahoma One Call

(a) The Commission adopts the provisions of the Oklahoma Underground Facilities Damage Prevention Act, Title 63 O.S. §§ 142.1 through 142.13.

(b) The Commission will enforce the provisions of Title 63 O.S. §§ 142.1 through 142.13 against intrastate and interstate gas pipelines, as described in 49 C.F.R. Part 192.1.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 36 Ok Reg 545, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

SUBCHAPTER 6. SAFETY REGULATIONS FOR UNDERGROUND NATURAL GAS STORAGE FACILITIES

165:20-6-1. Adoption of federal safety regulations

The Commission adopts all of the provisions of 49 C.F.R. Parts 191 and 192, with all amendments and appendices thereto, pertaining to Intrastate Underground Natural Gas Storage Facilities.

[Source: Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

SUBCHAPTER 7. SAFETY REGULATIONS FOR HAZARDOUS LIQUIDS

165:20-7-1. Adoption of federal safety and reporting regulations

The Commission adopts the provisions of 49 C.F.R. Part 195, with all amendments and appendices thereto, subject to the following:

(1) 49 C.F.R. § 195.0 is replaced by the following: "This Part prescribes safety standards and accident reporting requirements for pipeline facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."

(2) 49 C.F.R. § 195.1(a) is replaced by the following: "Except as provided in paragraph (b) of 49 C.F.R. § 195.1(b), this Part applies to pipeline facilities and the transportation of hazardous liquids associated with those facilities used in the intrastate transportation of hazardous liquids subject to the jurisdiction of the Commission."

(3) The definition of "Administrator" shall be deleted and all references to the "Administrator" are replaced with the "Commission".

(4) 49 C.F.R. § 195.52(b) is replaced by the following: "(b) Reports made under paragraph (a) of 49 C.F.R. § 195.52(a) are made by telephone to 405-521-2258 (Pipeline Safety Department in Oklahoma City, OK) or submitting a report online at <http://www.Oklahoma.gov/OCC> and 800-424-8802 (in Washington, D.C. 202-462-2675), and must include the following information:

- (A) Name and address of the operator.
- (B) Name and telephone number of the reporter.
- (C) The location of the failure.
- (D) The time of the failure.
- (E) The fatalities and personal injuries, if any.
- (F) All other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages."

(5) 49 C.F.R. § 195.54(a) is replaced by the following: "Each carrier that experiences an accident that is required to be reported under this subpart, as soon as practicable but not later than thirty (30) days after discovery of the accident, shall prepare and file an accident report on DOT Form 7000-1, or a facsimile, with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

(6) 49 C.F.R. § 195.54(b) is replaced by the following: "Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, the operator shall submit a supplemental report within thirty (30) days with the Pipeline Safety Department, Oklahoma Corporation Commission, in accordance with OAC 165:20-1-6 of this Chapter, and the Information Resources Manager, Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590."

[Source: Amended at 19 Ok Reg 1965, eff 7-1-02; Amended at 28 Ok Reg 1125, eff 7-1-11; Amended at 34 Ok Reg 933, eff 9-11-17; Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 36 Ok Reg 545, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-7-2. Notice requirements for pipeline construction

(a) Except as provided in (b) of this Section, each operator prior to the construction of a new pipeline, or a relocation or replacement of a pipeline, subject to the

jurisdiction of the Commission as established by 165:20-7-1(2), shall:

(1) Complete and file Form 5001 with the Commission. Form 5001 shall be mailed seven (7) calendar days prior to the commencement of construction, relocation or replacement; or

(2) In the event of an emergency, give telephonic notice of emergency construction, relocation, or replacement to the Pipeline Safety Department or the Commission, followed by mailing Form 5001 within five (5) work days after telephonic notice is given.

(b) The requirements of (a) of this Section shall not apply to the installation of a line of less than one (1) mile in length.

165:20-7-3. Mandatory participation in Oklahoma One Call

(a) The Commission adopts the provisions of the Oklahoma Underground Facilities Damage Prevention Act, Title 63 O.S. §§ 142.1 through 142.13.

(b) The Commission will enforce the provisions of Title 63 O.S. §§ 142.1 through 142.13, against intrastate and interstate hazardous liquid or carbon dioxide pipelines, as described in 49 C.F.R. Part 195.1.

[Source: Added at 10 Ok Reg 2615, eff 6-25-93; Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 36 Ok Reg 545, eff 8-1-19; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-7-4. Change of ownership and/or operator

Each operator, upon finalization of an agreement to purchase or sell a hazardous liquid pipeline subject to the provisions of 49 C.F.R. Part 195, must within five (5) working days submit to the Pipeline Safety Department a written notification of this agreement.

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-7-5. Reporting safety related conditions

Each operator who is required to report a safety related condition as detailed in 49 C.F.R. § 195.55, shall file a duplicate written report as detailed in 49 C.F.R. § 195.56, with the Pipeline Safety Department.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-7-6. Annual report [REVOKED]

[Source: Added at 28 Ok Reg 1125, eff 7-1-11; Amended at 36 Ok Reg 545, eff 8-1-19; Revoked at 38 Ok Reg 1746, eff 10-1-21]

SUBCHAPTER 9. RURAL GAS GATHERING AND HAZARDOUS LIQUID PIPELINES, AND FLOWLINES [REVOKED]

165:20-9-1. Definitions [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-2. Scope [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-3. General operating restrictions [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-4. Minimum cover [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-5. Line markers [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-6. Notice of certain incidents [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-7. Notice of construction [REVOKED]

[Source: Revoked at 18 Ok Reg 2376, eff 7-1-01]

165:20-9-8. Change of ownership [REVOKED]

[Source: Amended at 14 Ok Reg 2496, eff 7-1-97; Revoked at 18 Ok Reg 2376, eff 7-1-01]

SUBCHAPTER 10. NON-DOT REGULATED GAS GATHERING PIPELINES

165:20-10-1. Authority

Pursuant to 52 OKLA. STAT. Section 5.B., the Commission has adopted this Subchapter establishing rules relating to incidents on a gathering pipeline unit that is not subject to the U.S. Department of Transportation Pipeline Safety Regulations at 49 C.F.R. Parts 191 and 192.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-10-2. Definitions

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

"DOT" means the United States Department of Transportation,

"Gathering pipeline unit" means the portion of the nonregulated gathering pipeline involved in the incident not to exceed one mile of pipeline.

"Non-DOT gathering pipeline incident" means any of the following events:

(A) An event that involves a release of gas from a gathering pipeline unit and that results in one or more of the following consequences:

(i) A death, or personal injury necessitating in-patient hospitalization;

(ii) Estimated property damage of \$50,000.00 or more, including loss to the operator and others, or both, but excluding cost of gas lost; or

(iii) Unintentional estimated gas loss of three million cubic feet or more.

(B) Any other event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph A.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-10-3. Telephonic notice of certain non-DOT gathering pipeline incidents

- (a) At the earliest practicable moment, but no more than 24 hours following determination of a non-DOT gathering pipeline incident, an operator shall give notice of each non-DOT gathering pipeline incident.
- (b) Notice shall be made by telephone to the Pipeline Safety Department at 405-521-2258, and shall include the following information:
- (1) Name of the operator.
 - (2) Name and telephone number of the person making the report.
 - (3) The location of the non-DOT gathering pipeline incident.
 - (4) The time of the non-DOT gathering pipeline incident.
 - (5) The number of fatalities and personal injuries, if any.
 - (6) All other significant facts known by the operator that are relevant to the cause of the non-DOT gathering pipeline incident or extent of the damages.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-10-4. Non-DOT gathering pipeline incident reports

- (a) Each operator that experiences a non-DOT gathering pipeline incident shall, as soon as practicable but not later than 30 days after discovery, prepare and file a report on DOT PHMSA Form F 7100.2 with the Pipeline Safety Department, In addition to the information required on For m F 7100.2, the report shall contain:
- (1) In the narrative description of the event, the remedial action taken and any action taken to mitigate a similar non-DOT gathering pipeline incident on the gathering pipeline unit: and
 - (2) A map depicting the location of the non-DOT gathering incident.
- (b) Whenever an operator receives any changes in the information reported on the original report, it shall file a supplemental report within 30 days. Where additional relative information is obtained after a report is submitted under paragraph (a) of this Section, the operator shall make a supplemental report as soon as practicable with a clear reference by date and subject to the original report.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-10-5. Remedial action

Each operator that experiences a non-DOT gathering pipeline incident shall make all repairs in accordance with 49 C.F.R. §§ 192.309, 192.311, 192.711, 192.713, 192.715, 192.717, and 192.719.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

165:20-10-6. Record confidentiality

- (a) Except as provided in (b) of this Subchapter, all reports, data, maps or other information which the Commission may be authorized to obtain under the provisions of this Subchapter may be filed as confidential and the Commission shall maintain them as confidential and such records
- (b) Notwithstanding the above, the following information will be available upon request from the Pipeline Safety Department:
- (1) Date and time of the non-DOT gathering pipeline incident.
 - (2) Location of the non-DOT gathering pipeline incident.
 - (3) Name of the operator.

- (4) External diameter of the gathering pipeline unit involved in the non-DOT gathering pipeline incident.
- (5) Number of fatalities and injuries.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

SUBCHAPTER 11. DRUG TESTING

165:20-11-1. Control of drug use in pipeline operations

The Commission adopts the provisions of 49 C.F.R. Part 199 with all amendments and appendices thereto.

[Source: Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 37 Ok Reg 1121, eff 10-1-20; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-11-2. Reporting of anti-drug testing results

Each operator who is required to submit anti-drug testing results pursuant to 49 C.F.R. § 199.119 shall file a duplicate with the Pipeline Safety Department.

[Source: Added at 28 Ok Reg 1125, eff 7-1-11]

SUBCHAPTER 13. ENFORCEMENT

PART 1. GENERAL

165:20-13-1. Scope and fines

This Subchapter prescribes the procedures utilized by the Oklahoma Corporation Commission in carrying out its responsibilities regarding pipeline safety under Title 52 O.S. §5 and 52 O.S. §§47.1 through 47.8, Title 63 O.S. § 142.13 of the Oklahoma Underground Facilities Damage Prevention Act, Title 63 O.S. §§ 142.1 et seq., and is designed to utilize enforcement procedures already in place by hereby adopting the Commission's Rules of Practice, OAC 165:5, that are pertinent and necessary to carry out the enforcement of pipeline safety rules and regulations.

- (1) For each violation of a Commission rule in Subchapters 5 and 10, the Commission may issue an order pursuant to Title 17 O.S. §1 et seq., fining an operator up to the maximum amount provided by Title 17 O.S. §6.1.
- (2) For each violation of a Commission rule for hazardous liquid pipelines, the Commission may issue an order pursuant to Title 52 O.S. §47.1 et seq., fining an operator up to the maximum amount provided by Title 52 O.S. §47.6.

[Source: Amended at 10 Ok Reg 2615, eff 6-25-93; Amended at 28 Ok Reg 1125, eff 7-1-11; Amended at 34 Ok Reg 933, eff 9-11-17; Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-13-2. Service

- (a) Each notice of probable violation, warning letter, notice of hearing, order of the Commission, or other document required to be served under this Subchapter shall be served personally or by registered or certified mail to all respondents.
- (b) Service upon a person's duly authorized representative or agent shall constitute service upon that person.
- (c) Service by registered or certified mail is complete upon mailing. An official U.S. Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of mailing.

[Source: Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-13-3. Subpoenas; witness fees

The issuance of subpoenas and payment of witness fees shall be in accordance with the provisions of the Commission's Rules of Practice, OAC 165:5-11-3.

PART 3. PROCEDURE

165:20-13-11. General enforcement authority and sanctions

(a) This Subchapter describes the enforcement authority and sanctions exercised by the Oklahoma Corporation Commission Pipeline Safety Department for achieving and maintaining pipeline safety. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions, all of which include and supplement the applicable Commission Rules of Practice, OAC 165:5.

(b) A person who is the subject of action pursuant to this Subchapter may be represented by legal counsel at all stages of the proceeding.

(c) If respondent does not submit a response prior to the hearing date or does not enter an appearance at the hearing, a confession of the allegations may be rendered in accordance with OAC 165:5-19-1(c) (5), and judgment may be rendered in accordance with OAC 165:5-19-1(f).

[Source: Amended at 36 Ok Reg 545, eff 8-1-19]

165:20-13-12. Inspections and accident investigations

(a) The Pipeline Safety Department and its agents are authorized to inspect and examine the records and/or properties of any pipeline subject to the jurisdiction of the Commission, as established by 165:20-5.21, and 165:20-7-1, to determine the operator's compliance with this Chapter or orders issued thereunder.

(b) Inspections are ordinarily conducted pursuant to one of the following:

- (1) Routine scheduling by the Manager of Pipeline Safety.
- (2) A complaint received from a member of the public.
- (3) Information obtained from a previous inspection.
- (4) Pipeline incident or accident.
- (5) Whenever deemed appropriate by the Commission, Manager of Pipeline Safety, or his designee.

(c) If, after an inspection, the Manager of Pipeline Safety believes that further information is needed to determine appropriate action, the Manager of Pipeline Safety may send the owner or operator a "Request for Specific Information" to be answered within 30 days after receipt of the letter.

(d) To the extent necessary to carry out the responsibilities under this Chapter, the Manager of Pipeline Safety may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Manager of Pipeline Safety, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

(e) If a representative of the Commission investigates an incident involving a pipeline facility, the Manager of Pipeline Safety may request that the operator make available to the representative all records and information that pertain to the incident in any way, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.

(f) When the information obtained from an inspection or from other appropriate sources indicates that further Commission action is warranted, the Manager of Pipeline Safety may issue a notice of probable violation letter under 165:20-13-13.

[Source: Amended at 28 Ok Reg 1125, eff 7-1-11]

165:20-13-13. Notice of probable violations

(a) The Commission begins enforcement proceedings by serving a notice of probable violation of this Chapter or any regulation or order issued thereunder. This notification shall advise the operator that a written response is required and that failure to respond may result in enforcement action in accordance with 165:20-13-15.

(b) A notice of probable violation issued under this Section shall include:

- (1) Statement of the provisions of the laws, regulations, or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based.
- (2) Notice of response options available to the respondent under 165:20-13-14.

165:20-13-14. Response options

Within thirty (30) days of receipt of a notice of probable violation, the respondent shall respond to the Manager of Pipeline Safety in the following ways:

- (1) Indicate that the probable violation listed in the notice of probable violation is a violation of this Chapter and that it has been corrected. The response shall indicate how the violation was corrected.
- (2) Indicate that the probable violation listed in the notice of probable violation is a violation of this Chapter and request a reasonable period of time to correct the violation. Each request for an extension of time to correct the violation must be accompanied by a detailed reason(s) as to why compliance cannot be accomplished by the original suspense date and the date the operator believes the necessary compliance actions can be completed.
- (3) Object to the probable violation and submit written explanations, information, or other material in answer to the allegations in the notice of probable violations.
- (4) Request a conference under 165:20-13-16.

165:20-13-15. Warning letter, complaint, or contempt citation

(a) If after the expiration of the thirty (30) day response period prescribed in 165:20-13-14 the owner or operator of the probable violation has not responded to the notice of probable violation, the Manager of Pipeline Safety may issue a warning letter advising the owner or operator of the probable violation to correct the violations or be subject to further Commission enforcement action under (b) of this Section.

(b) The Commission legal staff may issue a complaint or contempt citation notifying the owner or operator of the probable violation and that a hearing has been set before the Commission to address the owner's or operator's violation of this Chapter, the prosecution of which shall be in accordance with the applicable Commission Rules of Practice, OAC 165:5.

(c) The severity of the probable violation or the conduct of the owner or operator in responding to the notice of probable violation as interpreted by the Commission, may be considered in determining the type of complaint or contempt citation issued

by the Commission. These warning letters, complaints, and contempt citations shall be served as provided in 165:20-13-2.

165:20-13-16. Conference

- (a) A request for conference in response to a notice of probable violation issued under 165:20-13-13 must be accompanied by a statement of the issues which the respondent intends to raise at the conference. The issues may relate to the alleged violations, new information, or the required corrective action.
- (b) The conference is conducted informally without strict adherence to the Commission's Rules of Practice, OAC 165:5. The respondent may submit any relevant information and materials on his behalf. He may also examine the complaints against him. No detailed record of the conference is prepared.
- (c) At the outset of the conference, the complaints shall be presented by the Manager of Pipeline Safety or his designee. The respondent may examine and respond to or rebut the complaints.
- (d) After the presentation of the complaints, the respondent may offer facts, statements, explanations, documents, testimony, or other items which are relevant to the issues under consideration.
- (e) At the close of the respondent's presentation, the Manager of Pipeline Safety may present or allow the presentation of any Pipeline Safety Department rebuttal information. The respondent may then respond to that information.
- (f) The respondent may also request an opportunity to submit further written material for inclusion in the case file. The Manager of Pipeline Safety shall allow a reasonable time for submission of the material and shall specify the date by which it must be submitted.
- (g) After submission of all material during and after the conference, the Manager of Pipeline Safety shall determine if further Commission enforcement action is necessary.

PART 5. MISCELLANEOUS PROVISIONS

165:20-13-21. Cooperation with federal authorities

The Pipeline Safety Department, the Commission legal staff and all other agents of the Commission shall cooperate with the United States Department of Transportation in the investigation and prosecution of any violation of 49 C.F.R. Parts 192 and 195 occurring within this State.

165:20-13-22. Administrative enforcement

Whenever the Manager of Pipeline Safety, after inspection, finds a pipeline facility which is subject to the jurisdiction of the Commission to be hazardous to life or property, he is authorized to require the operator operating such facility to take such corrective measures as are reasonably necessary to remove such hazards.

165:20-13-23. Request for exception to rule or order

- (a) An operator may request an exception to a requirement of an order or rule of the Commission. Such a request shall be made by application conforming to the requirements of the Commission Rules of Practice, OAC 165:5.
- (b) After notice and hearing conforming to the requirements of the Commission's Rules of Practice, OAC 165:5, and the laws of this State, the Commission shall issue an order specifying such relief as it deems appropriate.

(c) Any Commission order that grants relief from the requirements of any rule as listed in 49 C.F.R. §§ 191, 192, or 195 shall be subject to the review and approval of the Office of Pipeline Safety in Washington D.C. The Commission, upon granting relief, shall submit request pursuant to the requirements of the Natural Gas Pipeline Safety Act of 1979, Section 3 (d).

(d) Neither the Pipeline Safety Department nor the Commission legal staff shall grant relief from the requirements of any rule of the Commission, unless so ordered by the Commission.

SUBCHAPTER 15. REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

165:20-15-1. Regulations for grants to aid state pipeline safety programs

The Commission adopts the provisions of 49 C.F.R. Part 198, with all amendments and appendices thereto as such exist on January 1, 2019.

[Source: Added at 26 Ok Reg 1127, eff 7-1-09; Amended at 34 Ok Reg 933, eff 9-11-17; Amended at 35 Ok Reg 983, eff 10-1-18; Amended at 36 Ok Reg 545, eff 8-1-19]

SUBCHAPTER 17. OBLIGATIONS UNDER THE OKLAHOMA UNDERGROUND FACILITIES DAMAGE PREVENTION ACT SUBJECT TO COMMISSION ENFORCEMENT

165:20-17-1. Scope

(a) This Subchapter applies to Commission enforcement pursuant to 63 O.S. § 142.13 of the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq., with respect to those facilities described by the currently effective definition of "pipeline" in 49 C.F.R. § 192.3 and "pipeline" and "pipeline system" in 49 C.F.R. § 195.2. This Subchapter does not apply to any other underground facility, except to the extent it may qualify as a "pipeline" or "pipeline system" under the referenced regulations.

(b) This Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained in this Subchapter unless otherwise precluded by law.

(c) Nothing in this Subchapter shall be construed to modify or limit any private right of action arising under the Oklahoma Underground Facilities Damage Prevention Act and enforceable in the district courts of this State.

[Source: Added at 32 Ok Reg 779, eff 8-27-15]

165:20-17-2. Definitions

In addition to terms defined in 63 O.S. § 142.2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq.

"Pipeline" means "pipeline" as defined in 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2.

"Pipeline system" means "pipeline system" as defined in 49 C.F.R. § 195.2.

[Source: Added at 32 Ok Reg 779, eff 8-27-15]

165:20-17-3. Statutory citation

Citations to the Act, 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2 in this Subchapter refer to the most recent codifications of the Act and such sections of the Code of Federal Regulations.

[Source: Added at 32 Ok Reg 779, eff 8-27-15]

165:20-17-4. Compliance with the Act required

(a) Compliance with the provisions of the Act applicable to a pipeline or pipeline system is required.

(b) The Commission may enforce any violation of the Act against any person to the extent:

- (1) the violation occurs with respect to a pipeline or pipeline system; and
- (2) the person against whom enforcement action is taken is subject to the provisions of the Act, including without limitation operators and excavators.

[Source: Added at 32 Ok Reg 779, eff 8-27-15]

165:20-17-5. Emergencies

An excavator shall immediately call the local 911 emergency telephone number and report any incident that results in an unintentional and uncontrolled release of flammable, toxic or corrosive gas or liquid from a pipeline or pipeline system. In this context, intentional acts refer to operator maintenance or repairs and not vandalism or other similar acts.

[Source: Added at 32 Ok Reg 779, eff 8-27-15]

165:20-17-6. Positive notification of size and material

In addition to the provisions of Title 63, O.S. § 142.6, each operator served with a notice in accordance with subsection A of Title 63, O.S. § 142.6, shall notify the excavator of the size and material of an active underground facility.

[Source: Added at 36 Ok Reg 545, eff 8-1-19]

165:20-17-7. Immediate notice of excavation damages caused by excavator to gas distribution mains, gas transmission pipelines, gas gathering pipelines, and all hazardous liquid pipelines

(a) At the earliest practicable moment following discovery, but no later than one hour after confirmed discovery, each operator must give notice in accordance with paragraph (b) of this section of excavation damage occurring to gas distribution mains, gas transmission pipelines, gas gathering pipelines and hazardous liquid pipelines that exceeds Ten Thousand dollars (\$10,000) in property damage. Property damage shall include cost to excavator, operator, property owner and lost product.

(b) Each notice required by paragraph (a) of the section must be made to the Commission's Pipeline Safety Department either by telephone to 405-521-2258 or electronically at TRPipelinesafety@occ.ok.gov and must submit the following information:

- (1) Names of operator and person making report and their telephone numbers.
- (2) The location of the excavation damage.
- (3) The time operator confirmed the excavation damage.

- (4) The number of fatalities and personal injuries, if any.
- (5) Name, contact number, and address of party causing excavation damage, if known at the time of notification.
- (6) All other significant facts that are known by the operator that are relevant to the cause of the excavation damage.

[Source: Added at 36 Ok Reg 545, eff 8-1-19; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-17-8. Written report of all excavation damages

(a) Each operator shall submit a semiannual damage summary report to the Commission's Pipeline Safety Department. The report shall contain the following information on all damage resulting from excavation activity:

- (1) Name and address of operator;
- (2) Name, contact number, and address of party causing excavation damage;
- (3) The type of excavator equipment;
- (4) The location in which the damage occurred;
- (5) The type of facility damaged;
- (6) The date of the damage(day, month and year);
- (7) The primary cause of the damage.

(b) The semiannual damage summary reports shall be due on March 1 and September 1. For semiannual damage summary reports due on September 1, the reporting period shall be from January 1 through June 30. For semiannual damage summary reports due on March 1, the reporting period shall be from July 1 through December 31.

(c) The report referenced in paragraph (b) can be submitted on a spreadsheet, single pages for each occurrence of excavation damage, or if the operator participates in the Common Ground Alliance's Damage Reporting Tool (DIRT) they may submit a copy of the report which reflects their data.

(d) If no damages have occurred during the reporting period, a report is still required indicating "No Damages Occurred".

(e) Reports can be submitted via TRPipelines safety@occ.ok.gov.

(f) Should any of the information required in 165:20-17-8(a) not be available, the operator shall, prior to the next semiannual report, supply the missing data. An explanation of what actions were taken to secure the information must be supplied if after a good faith effort to secure the information is performed the information remains unavailable.

[Source: Added at 36 Ok Reg 545, eff 8-1-19; Amended at 38 Ok Reg 1746, eff 10-1-21]

165:20-17-9. Submitting a complaint about failure to follow the Oklahoma Underground Facilities Damage Prevention Act

Anyone can submit a complaint against an excavator or pipeline operator for failing to comply with any portion of the Oklahoma Underground Facilities Damage Prevention Act by calling the Commission's Pipeline Safety Department at 405-521-2258 or submit the complaint online at the <http://www.occeweb.com/AspxForms/PipeLineForm.aspx>. The complaint must include at a minimum the following information:

- (1) First Name;
- (2) Last Name;
- (3) E-mail address;
- (4) Contact Phone Number;
- (5) Alternate Phone Number;

- (6) Mailing address;
- (7) City;
- (8) State;
- (9) Zip Code;
- (10) Date of Complaint or excavation damage;
- (11) Name of Pipeline Company or Excavating Company;
- (12) Location of Complaint (Section, Township, Range, GPS Coordinates or Street Address).

[Source: Added at 36 Ok Reg 545, eff 8-1-19]

CHAPTER 25. UNDERGROUND STORAGE TANKS

[Authority: 42 U.S.C. §§ 6991 et seq.; OKLA. CONST. art IX, §§ 18, 19; 17 O.S., §§ 306(12), 307, 322, 342, and 347; 27A O.S., §§ 1-3-101 et. seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE

165:25-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program for the safe operation of underground storage tank systems containing PSTD regulated substances in Oklahoma and to prevent and contain contamination caused by leaking underground storage tank systems and to reduce the hazards of fire and explosion.

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-2. Contents [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-3. Authority [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. §§ 303 and 348, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Airport hydrant system" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

"ATG" means automatic tank gauge.

"Ball float functionality" means the ball float is operational as designed.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Compatible" means the ability of two (2) or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Corrosion expert" means an individual having the requisite knowledge, experience, certification, and training to design, install, test, and maintain corrosion protection systems.

"EPA" means the United States Environmental Protection Agency.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed in the field such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

"Financial responsibility" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

"Financial security" means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under

the contempt procedure in Oklahoma Administrative Code (OAC) 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Gathering lines" means a gathering line or gathering system as defined in OAC 165:45-1-2.

"Important building" means a building that is considered not expendable in an exposure fire.

"Inert material" means a solid, motionless substance that is neither chemically nor biologically reactive, is denser than water, and will not decompose. Examples of inert material include sand and concrete, or as otherwise approved by PSTD staff.

"Lender liability" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Observation well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Owner" means any person as set forth in 17 O.S. § 303(27), including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"OWRB" means the Oklahoma Water Resources Board.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PSTD" means Petroleum Storage Tank Division.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement, or order.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas or propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on real property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention in an attempt to deceive, cheat or misrepresent facts to the public. Tampering also presents a risk to the environment as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of an underground storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST"** "storage tank" as defined in 17 O.S. § 303(40) that has ten percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or a delivery truck that is connected to the storage tank system.

"Used Motor Oil" is any spent motor oil removed from a motor vehicle.

[Source: Amended at 9 Ok Reg 849, eff 1-6-92 (emergency); Amended at 9 Ok Reg 2731, eff 7-13-92; Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Amended at 15 Ok Reg 3003, eff 7-15-98; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended at 21 Ok Reg 2036, eff 7-1-04; Added at 22 Ok Reg 488, eff 1-10-04 (emergency); Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 121, eff 9-8-16 (emergency); Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

PART 5. SCOPE OF RULES

165:25-1-21. Overview of applicability and enforcement

This Chapter applies to owners, operators, their employees and agents of all underground storage tank systems for which the Commission has been given

regulatory responsibility by 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq.

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15]

165:25-1-22. Interim prohibition [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-23. Partial deferrals [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-23.1. Specified applications

The following classes of underground storage tanks or systems are subject to specific regulations of this Chapter as follows:

- (1) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks are subject to all of the EPA requirements in 40 CFR 280 Subpart K.
- (2) Emergency power generator tank owners and operators are subject to all requirements of this Chapter.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16]

165:25-1-24. Exclusions

The following classes of underground storage tanks or systems are specifically excluded from all provisions of this Chapter:

- (1) Farm and residential tanks with an individual capacity of 1,100 gallons or less used for storing regulated substances for non-commercial purposes.
- (2) Tanks used for storing heating oil for consumptive use on the premises where stored.
- (3) Pipeline facilities (including gathering lines) regulated under:
 - (A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., § 1671 et seq.);
 - (B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App., § 2001 et seq.); or
 - (C) Intrastate pipeline facilities regulated under State law comparable to the provisions of law referred to in (A) or (B) of this paragraph.
- (4) Flow-through process tanks.
- (5) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- (6) Tanks with a capacity of less than 110 gallons.
- (7) Tanks storing diesel fuel at plants regulated by the Atomic Energy Commission.
- (8) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-1-24.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's Rules and Regulations Governing Underground Storage Tanks and is to be cited as Chapter 25 of Commission rules or abbreviated as OAC 165:25.

[Source: Renumbered from 165:25-1-25 at 23 Ok Reg 2261, eff 7-1-06; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18]

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-25. Citation of rules [RENUMBERED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Renumbered to 165:25-1-24.1 at 23 Ok Reg 2261, eff 7-1-06]

165:25-1-26. Effective date of rules [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-26.1. Hearings, orders and exceptions

(a) The Commission will issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the public health and safety, and the environment.

(b) Hearings to enforce or exceptions to the provisions of this Chapter or PSTD enabling statutes will be conducted in accordance with OAC 165:5.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-1-26.2. Public participation

PSTD shall provide for public participation in the enforcement process by:

- (1) Providing notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);
- (2) Investigating and providing responses to citizen complaints about violations; and
- (3) Not opposing citizen intervention when permission intervention is allowed by statute, rule or regulation.
- (4) PSTD hearings are open to the public and interested parties are encouraged to attend.

[Source: Added at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-1-27. Changes to rules [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-1-28. Variances

A variance to any provision of this Chapter may be granted by the Commission after application and administrative review by staff. A variance is effective on the date of order issuance. Instructions on the variance process can be found at OAC 165:5-21-3.1.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-29. Notices [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Revoked at 32 Ok Reg 780, eff 8-27-15]

165:25-1-30. Severability

If any part of this Chapter is ruled invalid by a court of competent jurisdiction, the remainder of the Chapter will remain in full force and effect.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-30.1.¹ Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 23 Ok Reg 2261, eff 7-1-06 ¹; Amended at 25 Ok Reg 1867, eff 7-1-08; Revoked at 36 Ok Reg 551, eff 8-1-19]

EDITOR'S NOTE: ¹Editorially renumbered from 165:26-1-31 to 165:25-1-30.1, to avoid duplication in numbering.

PART 7. CODES AND STANDARDS [REVOKED]

165:25-1-31. Sources of standards [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-32. Incorporated codes and standards [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Amended at 15 Ok Reg 3003, eff 7-15-98; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-33. Other standards and regulations [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 8. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-1-34. Approved tanks, tank design [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-35. Storage tank spacing [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-36. Fill pipe requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-37. Spill and overflow protection [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-38. Corrosion protection [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-39. Underground storage tank piping materials [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-40. Electrical equipment [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

PSTD requires owners or operators of underground storage tank systems to provide information it deems necessary for the protection of human health, safety, property and the environment. Use of the designated PSTD online format is required for reporting, scheduling, tank registration, change in ownership, release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes or tank status changes. Owners and operators of underground petroleum storage tank systems must notify PSTD at least thirty (30) days prior to switching to regulated substances containing greater than ten percent (10%) ethanol or regulated substances containing greater than twenty percent (20%) biodiesel in the online format established by PSTD. Required release detection forms are available on the Commission website. Failure to notify and/or submit PSTD paperwork in the online format established by PSTD within the timeframe required may result in an enforcement action.

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least forty-eight (48) hours before the tank and/or lines are to be installed by submitting the PSTD scheduling notification in the online format established by PSTD and receiving confirmation of the installation from PSTD. If events require a change in the date of installation, PSTD shall be given forty-eight (48) hours notice of the new date. Any underground storage tank system permanent removal or a removal associated with replacement of tanks or lines requires at least fourteen (14) day notification prior to the removal activity.

(b) Upon receipt of the scheduled installation an authorization letter giving temporary approval to receive fuel into an un-permitted tank **FOR TESTING PURPOSES ONLY** will be sent to the owner. This letter is site specific and will expire ninety (90) days after the date of issuance. After the tank installation is complete, the PSTD registration must be submitted to PSTD in the online format established by PSTD along with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within thirty (30) days. The tank owner and Licensed UST Installer are both responsible for timely submittal of all installation paperwork. The registration must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and Commission-licensed UST Installers must certify on the registration that the installation of tanks and piping meet the requirements of this

Chapter.

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-1-43. Existing tanks [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-44. Abandoned tanks [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-45. Partially deferred tanks [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-46. Tank removal and closure [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-1-47. Releases [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-48. Tank and line tightness testing

(a) Tank and line tightness testing results in which any part of the tank system tested does not pass must be reported to the PSTD within twenty-four (24) hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of testing.

(b) Tank tests must include both the wetted portion and ullage portion of the tank.

(c) Hydrostatic line tightness tests and line leak detector tests must be conducted by a certified tester, if applicable, in accordance with manufacturer's instructions, and reported on the prescribed PSTD form.

(d) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

(e) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.

(f) Tank and line tightness testing must be scheduled by submitting the PSTD scheduling form and PSTD staff may be present.

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-1-49. Sampling, testing, and monitoring results [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-50. Corrective action [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-1-51. Transfer of ownership

When the owner of an underground storage tank transfers ownership of the facility or tank to another person, the new owner must notify PSTD within 30 days of the transfer, by submitting the appropriate PSTD form. The former owner must advise the Commission of the name and address of the new owner. All records required by PSTD must be transferred at no cost to the new owner. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes.

[Source: Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17]

PART 11. RECORDKEEPING

165:25-1-53. Availability of records

- (a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with PSTD requests for submission of records.
- (b) Each owner/operator must provide written notice of any address change within thirty (30) days to the PSTD office.
- (c) All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available on site for each tank for the preceding three (3) years.
- (d) Copies of the following records must be readily available to the PSTD Fuel Specialist:
 - (1) Tank tightness tests, thirty (30) day inventory reconciliation, statistical inventory reconciliation, vapor or groundwater monitoring, automatic tank gauge tests, and interstitial monitoring results that demonstrate compliance with release detection for tanks.
 - (2) Line tightness tests, electronic line tests, all sensor and alarm history results, and line leak detector function tests that demonstrate compliance with release detection for lines.
 - (3) Installation and repair records for spill containment, overfill prevention, tank and piping construction must be maintained for three (3) years and readily available to PSTD.
 - (4) Cathodic protection records specified in this Subchapter (OAC 165:25-1-56), tank lining certificates, and any other records that demonstrate compliance with corrosion protection for the tank system must be maintained and readily available to PSTD.
 - (5) Current owner and tank system registration and current permit for all tanks located at the facility.
 - (6) Current certificate(s) of training for all classes of operators.
 - (7) Records that document compatibility with underground petroleum storage tank systems storing regulated substances containing greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel. These records must be maintained at the facility for as long as the tank system is used to store these substances.
 - (8) Beginning October 13, 2018, owners and operators must maintain records of annual operation and maintenance tests on the electronic and mechanical components of release detection equipment. Records must be maintained for three (3) years and at a minimum must list each component tested, indicate whether each component needed to have action taken and

describe any action taken to correct the issue.

(9) A copy of the site assessment for groundwater or vapor monitoring must be kept at the facility for as long as this method is used as release detection.

(e) Failure to have the required records available upon request by PSTD may result in enforcement action.

(f) Release detection records, overfill prevention equipment inspection records, spill prevention equipment testing records, and containment sump testing records must be maintained on Commission forms.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain documentation that identifies the location and nature of all repairs as follows:

(1) Tank system repairs meant to restore a tank, pipe, secondary containment, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release or a suspected release of product from the UST system or has failed to function properly must be scheduled using the OCC scheduling form.

(2) These records shall include a complete description of all repairs made, photographs before and after repair, sample results if required, an updated site map, and testing following repairs.

(3) The records must be readily available at the facility, submitted to PSTD within thirty (30) days of repair completion, and kept for the remaining operating life of the storage tank system.

(4) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system or dispensers.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 30 Ok Reg 584, eff 7-1-13; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-1-55. Tank installation, closure and removal records

(a) Owners and operators of underground storage tank systems must maintain records regarding the installation for the lifetime of the system or provide copies of installation records to PSTD for retention in the Division's files.

(b) Owners and operators of underground storage tank systems must maintain records demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed at operating facilities.

(c) The owner, operator or Commission licensee hired by the owner and/or operator must submit the PSTD Closure Report Form and all required attachments to PSTD within forty-five (45) days from the date the tanks are permanently taken out of service or removed.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-56. Release detection and cathodic protection records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain release detection records for three (3) years.

- (b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain the following records.
- (1) Original cathodic protection design with drawings, plans, description of materials used, and suitability study depicting all of the cathodic protection system components in accordance with National Association of Corrosion Engineers (NACE) RP0285.
 - (2) Rectifier readings for impressed current systems conducted at least every 60 days on the appropriate OCC form.
 - (3) Results of the last three inspections or cathodic protection system tests completed by a corrosion tester.
- (c) If observation wells are used as release detection, the PSTD approved site assessment must be maintained on site.
- (d) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three (3) years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five (5) years from the date of installation.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-1-57. Spill and overflow records

- (a) Owners and operators of underground storage tank systems must keep records of spills and overfills for review and inspection by PSTD for a period of 3 years from date of such spill or overflow.
- (b) On new installations, records must be maintained that document overflow prevention inspections and records that document spill prevention equipment testing were performed at installation and at least once every three (3) years thereafter. Existing tank systems must maintain records documenting overflow prevention inspections and records documenting spill prevention equipment testing by October 13, 2018 and at least once every three (3) years thereafter.
- (c) Records demonstrating compliance with overflow inspections and spill prevention equipment testing, including double walled spill buckets that are interstitially monitored at least every thirty (30) days, must be maintained for a minimum of three (3) years.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16]

165:25-1-58. Piping records

Tank owners shall maintain a current map of their underground tank system and update it within 30 days of any changes.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-1-60. Walkthrough inspections and records

- (a) Owners and operators must conduct walkthrough inspections according to the requirements in 40 CFR 280.36. Owners and operators of underground storage tank systems must maintain a record of 30-day and annual walkthrough inspections according to EPA requirements with the first inspection due by October 13, 2018.
- (1) Every 30 days all spill prevention equipment and release detection equipment must be inspected (except spill prevention equipment at UST

systems receiving deliveries at intervals greater than 30 days may be checked prior to delivery). Containment sumps and any hand-held release detection equipment, such as tank gauge sticks, must be inspected annually. (2) Records should include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of any actions taken to correct issues, and delivery records if spill prevention equipment is checked less frequently.

(b) In addition, airport hydrant systems must meet the additional walkthrough inspection requirement in 40 CFR 280.252(c).

(c) All walkthrough inspection records must be on Commission forms and maintained on site for three (3) years.

[Source: Added at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

PART 13. FEES

165:25-1-64. Fees

This Chapter requires fees according to the schedule set out in Chapter 5 of Commission rules.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18]

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) PSTD may close (shut down) a UST system:

- (1) If the system poses an imminent threat to health, safety, or the environment.
- (2) If the owner or operator is operating tanks for which permit fees have not been paid.
- (3) If the owner or operator fails to comply with a Commission requirement or order.
- (4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to correct the problem.
- (5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to correct the problem.
- (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) thirty (30) day periods.
- (7) Failure to have a Class A, B, or C operator on premises during business hours.
- (8) Tampering with equipment.
- (9) If a Fuel Specialist issues a Notice of Violation (NOV) and the violation(s) is/are not corrected.

(b) PSTD must close (shut down) a UST system:

- (1) If required spill prevention equipment is not installed.
- (2) If required overfill protection equipment is not installed.
- (3) If required leak detection equipment is not installed.
- (4) If required corrosion equipment is not installed.

- (5) If two inches (2") or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if one-half inch (1/2") or more of water is found in the tank of gasoline blended with alcohols, E85, fuel ethanol, or diesel blended with biodiesel.
- (6) If a meter is found to be off in calibration by more than minus fifteen (-15) cubic inches per every five (5) gallons.
- (c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) or (b) of this Section. The PSTD employee must explain in writing to the owner or operator the reason the UST system is being locked or sealed.
- (d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).
- (e) Any person who removes a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.
- (f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, the owner and/or operator of the facility is in compliance with PSTD rules, permit fees paid, violation(s) corrected, Commission order or requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:
- (1) Written permission from the PSTD employee who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the lock or seal; or
 - (2) Verbal or written permission from the Director or Director's designee; or
 - (3) Application to and order of the Commission.
- (g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 30 Ok Reg 584, eff 7-1-13; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

PART 17. LICENSING PROCEDURES

165:25-1-101. Licensing procedure for UST Installers

- (a) Any individual who would like to become a licensed UST Installer must:
- (1) Complete the OCC UST Installer application form.
 - (2) Provide sufficient proof of two (2) years related work experience, completed within the last five (5) years. Applicants must have active participation in the completion of at least three (3) UST installations. If applicant is a current UST installer license holder in another state, the work experience from another state may be substituted for each confirmed year he or she held the license.
 - (3) The individual must pass an examination approved by PSTD.
 - (4) UST Installers must pay fees for applications, examinations, and licensing prior to examination and license issuance as set forth in OAC 165:5.
 - (5) UST Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks, and applicable Occupational Safety and Health Administration (OSHA) 29 CFR

1910.120 Hazardous Waste Operations and Emergency Response (HAZWOPER) standards.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete the exam and licensing procedures will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Installer license; this consists of four (4) hours of continuing education through a PSTD accredited program every year. Licensees may request to rollover a maximum of four (4) credit hours from the current year to satisfy the following year's continuing education requirements. Approval of any rollover hours will be at the discretion of PSTD after evaluating the class, course, or seminar.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 30 Ok Reg 584, eff 7-1-13; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-102. Licensing procedure for UST Removers

(a) Any individual who would like to become a licensed UST Remover must:

- (1) Complete the OCC UST Remover application form.
- (2) Provide sufficient proof of two (2) years related work experience, completed within the last five (5) years Applicants must have active participation in the completion of at least three (3) UST removals. If applicant is a current UST remover license holder in another state, the work experience from another state may be substituted for each confirmed year he or she held the license.
- (3) Pass an examination approved by the PSTD.
- (4) Pay fees for applications, examinations, and licensing prior to examination and license issuance as set forth in OAC 165:5.
- (5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks, and applicable Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response (HAZWOPER) standards.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Removers license; this consists of four (4) hours of continuing education through a Commission approved program every year. Licensees may request to rollover a maximum of four (4) credit hours from the current year to satisfy the following year's continuing education requirements. Approval of any rollover hours will be at the discretion of PSTD after evaluating the class, course, or seminar.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 30 Ok Reg 584, eff 7-1-13; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-103. Licensing procedure for Vapor Monitor Well Technician

(a) Monitoring of vapor wells for the purpose of thirty (30) day release detection must be performed by an individual licensed by PSTD. An individual who applies to become a licensed Vapor Monitor Well Technician must:

- (1) Complete the OCC application form.
- (2) Demonstrate competence in the use of the monitoring equipment to PSTD. The use of new or different monitoring equipment will require the

user to display competence in the use of the new or different equipment.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with OAC 165:5.

(b) Individuals who are monitoring vapor observation wells for release detection purposes must report readings that exceed established levels in OAC 165:25-3-6.23 to the owner or operator and PSTD within forty-eight (48) hours.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-104. Licensing procedure for Groundwater Monitor Well Technician

(a) Monitoring of groundwater wells for the purpose of thirty (30) day release detection must be performed by an individual licensed by PSTD. An individual who applies to become a licensed Groundwater Monitor Well Technician must:

(1) Complete the OCC application form.

(2) Demonstrate competence by submitting, in writing, the procedures followed when checking groundwater monitoring wells.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with OAC 165:5.

(b) Individuals who are monitoring groundwater observation wells for release detection purposes must report readings that exceed established levels in OAC 165:25-3-6.24 to the owner or operator and PSTD within forty-eight (48) hours.

[Source: Added at 36 Ok Reg 551, eff 8-1-19]

165:25-1-105. Licensee disciplinary action procedure

A license issued by PSTD is a designation of competence to the public in the area of licensee expertise. PSTD is not limited to, but may use the following disciplinary action for PSTD licensees:

(1) **Informal reprimand.** The Manager of the appropriate PSTD department will call offending licensee for an informal discussion addressing the recent infraction and place a memo in the licensee's file documenting the discussion and nature of the violation.

(2) **Formal reprimand.** The Manager of the appropriate PSTD department will prepare a letter of reprimand to the licensee addressing the offense. The letter of reprimand will provide the licensee an opportunity to formally dispute alleged violation(s). The reprimand letter, licensee's response, all recourse actions following licensee rebuttal, if any, and the Manager's final decision(s) will be placed in the licensee's file and maintained by PSTD.

(3) **License suspension, revocation and/or refusal to renew a license.** If the Director elects to pursue suspension, revocation, or refusal to renew, a notice of such action will be sent to the licensee by certified mail/return receipt requested. The notice will state the date and time of the hearing scheduled before an Administrative Law Judge.

[Source: Added at 36 Ok Reg 551, eff 8-1-19]

165:25-1-107. License penalties

(a) The PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any licensee who is found in violation of:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
 - (2) Any gross negligence, incompetence or misconduct in work performed pursuant to this Chapter.
 - (3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients.
 - (4) Aiding or assisting another person in violating any provision of this Chapter.
 - (5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.
 - (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
 - (7) Failure to comply with this Chapter, OAC 165:26, 165:27, 165:29, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.) may result in PSTD seeking a suspension and/or revocation of the license.
 - (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.
- (b) Failure to submit required PSTD paperwork, test results, and/or reports in the online format established by PSTD within the required timeframe may result in enforcement action.
- (c) Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.
- (d) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

PART 19. OPERATOR TRAINING

165:25-1-120. Training requirements

Each underground storage tank system or group of underground storage tank systems at a facility must have a Class A, Class B, and Class C operator designated. Separate individuals may be designated for each class of operator or an individual may be designated to more than one of the operator classes. A Class A and Class B operator are required for TOU tanks.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-1-121. [RESERVED]

[Source: Reserved at 25 Ok Reg 1867, eff 7-1-08]

165:25-1-122. Operator Class designations

- (a) A Class A operator has primary responsibility to operate and maintain the underground storage tank system in the broader aspects of the statutory and regulatory requirements to achieve and maintain compliance.
- (b) A Class B operator implements applicable requirements and standards for one or more facilities to monitor day-to-day aspects of operation and recordkeeping.

(c) A Class C operator is an onsite employee responsible for responding to alarms or emergencies caused by spills or release from underground storage tank systems. An operator with at least a Class C Certification must be onsite during fueling operations at attended facilities.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16]

165:25-1-123. [RESERVED]

[Source: Reserved at 25 Ok Reg 1867, eff 7-1-08]

165:25-1-124. Frequency and proof of training

(a) Each operator class must obtain initial certification from a PSTD-approved training provider no later than July 1, 2011. A Class A or Class B operator may train a Class C operator.

(b) Class A and Class B operators must be trained within 30 days after assuming operation and maintenance responsibilities for an underground storage tank system. Class C operators must be trained before assuming responsibility for responding to emergencies.

(c) Class A and Class B operators must be recertified every 3 years.

(d) Class B operators must be recertified within 30 days in any areas (e.g. spill, overfill, corrosion protection) that are determined to be out of compliance with EPA and PSTD requirements for release prevention and/or release detection.

(e) Owners or operators must provide PSTD with documentation for all operator classes.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 32 Ok Reg 780, eff 8-27-15]

165:25-1-125. [RESERVED]

[Source: Reserved at 25 Ok Reg 1867, eff 7-1-08]

165:25-1-126. Enforcement of operator training requirements

Failure to have in place any active certified operator class or comply with requirements of this Part will result in fines and/or formal enforcement action.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-1. Sources of standards

The standards referenced in this Chapter are available for inspection at the offices of the Petroleum Storage Division during regular business hours and from the following sources. New editions of codes and standards supersedes all previous editions.

- (1) American Petroleum Institute (API), 1220 L. Street, N.W., Washington, D.C. 20005. Telephone (202) 682-8375.
- (2) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218. Telephone (713) 492-0535, ext. 810.
- (3) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269. Telephone (800) 344-3555.

- (4) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103. Telephone (610) 832-9500.
- (5) Underwriter's Laboratory (UL), 333 Pfingston Road, Northbrook, Illinois 60062. Telephone (708) 272-8800, ext. 42612.
- (6) Petroleum Equipment Institute (PEI), P.O. Box 2380, Tulsa, Oklahoma 74101. Telephone (918) 464-9696.
- (7) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois, 60047. Telephone (847) 438-8265.
- (8) American Society of Mechanical Engineers (ASME/ANSI), 22 Law Drive, Fairfield, New Jersey 07007. Telephone (800) 843-2763.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04]

165:25-2-2. Incorporated codes and standards

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2017, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding Tanks and Containers for Entry, Cleaning and Repair."
 - (E) Standard Number 30A, 2018, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards
 - (A) Recommended Practice 1615, (2011), "Installation of Underground Hazardous Substances or Petroleum Storage Systems, Sixth Edition."
 - (B) Recommended Practice 1632, (R2010), "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, (R2010), "Closure of Underground Petroleum Storage Tanks, Third Edition."
 - (D) Recommended Practice 1631, (2001), "Interior Lining and Periodic Inspection of Underground Storage Tanks."
 - (E) Recommended Practice 1621, (R2012), "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, (2010), "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, (R2000), "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, (1996), "A Guide to the Assessment and Remediation of Underground Petroleum Releases."

- (I) Publication 2200, (2015), "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, Fourth Edition."
 - (J) Publication 2015, (2018), "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
 - (K) Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals, Third Edition."
- (3) National Association of Corrosion Engineers:
- (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
 - (D) International Test Method, TM 0101 2012, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems."
 - (E) International Test Method, TM 0497 2012, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems."
- (4) Underwriter's Laboratory Standards:
- (A) Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL1316 Bulletin 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
 - (C) Standard UL1746 Bulletin 2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
 - (D) Standard UL567 Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
 - (E) Standard UL971 Bulletin 2011, "Nonmetallic Underground Piping for Flammable Liquids."
- (5) American Society for Testing Materials:
- (A) ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
 - (B) ASTM G158-98 (2016), "Three Methods of Assessing Buried Steel Tanks."
- (6) Petroleum Equipment Institute:
- (A) PEI/RP 100-17 (2017 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems."
 - (B) PEI/RP 400-18 (2018 Edition), "Recommended Practices for Equipment Testing Electrical Continuity of Fuel Dispensing Hanging Hardware."
 - (C) PEI/RP 500-11 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment."
 - (D) PEI/RP 900-17 (2017 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems."

(E) PEI/RP 1200-17 (2017 Edition), "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(F) PEI/RP 1700 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."

(7) Steel Tank Institute:

(A) STIP3[®], "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks."

(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

(C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks."

(D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs."

(E) STI-ACT-100-U[®], F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks".

(F) STI-F841, "Standard for Dual Wall Underground Steel Storage Tanks."

(G) STI-F922, "Specification for Permatank[®]."

(H) RP-R051, "Cathodic Protection Testing Procedures for STI-P3[®] Underground Storage Tank Systems."

(8) Factory Mutual 1920, "Flexible Pipe Couplings."

(9) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."

(10) National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

(11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

(12) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-2-3. Other standards and regulations [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-2-4. Financial responsibility

An owner/operator must satisfy the requirements of Title 40 Code of Federal Regulations (CFR) 280, Subpart H by use of the Oklahoma Petroleum Storage Tank Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 § 327.3). Compliance may also be satisfied by use of any of the mechanisms outlined in 40 CFR 280, Subpart H, including, but not limited to Self-insurance, Guarantee, Insurance, Surety Bond, Letter of Credit, Trust fund or standby trust fund, Securities pledge, Cash or cash equivalent pledge. Use of the Indemnity Fund requires a co-pay.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-6. Lender liability

PSTD incorporates by reference the lender liability requirements specified in 40 CFR 280, Subpart I.

[Source: Added at 34 Ok Reg 935, eff 9-11-17]

PART 3. DESIGN AND INSTALLATION

165:25-2-31. Underground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a UST installation shall be installed by personnel possessing appropriate skills, experience, manufacturer's certification, and required PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. A licensed UST installer must be present at all times during the installation. The PSTD Fuel Specialist monitoring the installation must be contacted before underground piping is backfilled so piping and sump tests may be observed and/or inspected. Photos of the installation of tank(s) and line(s) must accompany a completed registration form within thirty (30) days of installation and tanks fees must be paid before a permit is issued.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-32. Compatibility

(a) Owners and operators of all underground storage tank systems must use an underground storage tank system that is made of or lined with materials that are compatible with the substance stored in the system.

(b) Owners and operators of underground storage tanks that contain regulated substances greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel must demonstrate compatibility of the tank system, piping, containment sumps, pumping equipment, release detection equipment, as well as spill and overfill equipment by using one of the following methods:

(1) Certification or listing of underground petroleum storage tank system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(2) Manufacturer's approval. The manufacturer's approval must be in writing, indicating an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and originate from the equipment or component manufacturer.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-33. Approved tanks, tank design

(a) Tanks must be properly designed and constructed, and any portion underground that routinely contains a regulated substance must be protected from corrosion as specified in referenced codes and standards. All new or replacements tanks except those excluded by regulation in this Chapter must be double wall or jacketed secondarily contained in construction to prevent the release of regulated substances to the environment during the operational life of the system.

- (1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.
- (2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746, ACT-100 F894, ACT-100-U F961, or STI F922.
- (3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 58, UL 1746, STI-P3[®], STI F841, and NACE RP-0285 and must be protected in the following manner:
 - (A) The tank must be coated with a suitable dielectric material.
 - (B) Field-installed cathodic protection systems must be designed by a corrosion expert.
 - (C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.
 - (D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.
- (b) PSTD may permit alternative types of tank construction, design, and corrosion protection if the owner demonstrates to PSTD's satisfaction that the proposed system will prevent the release of any stored regulated substance to the environment during the operational life of the system.
- (c) All underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-2-34. Compliance with nationally recognized code of practice and manufacturer's instructions [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-2-35. Pre-installation

All installers of underground storage tank systems must perform an analysis of the installation site prior to the system's construction and installation and submit with the scheduling form. The analysis must include, at a minimum, the following:

- (1) A determination of local soil conditions.
- (2) The level of the water table in the area.
- (3) Drainage conditions.
- (4) The presence of any underground utility lines or conduits.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 32 Ok Reg 780, eff 8-27-15]

165:25-2-36. Tank system installation

(a) **Backfill material.** Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. The Licensed UST Installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

(b) **UST installation.**

- (1) Owners/operators of all underground storage tank systems must notify PSTD at least forty-eight (48) hours prior to the installation of underground

storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the installation and the Temporary Authorization for Receipt of Fuel from PSTD. Following the required forty-eight (48) hour notification of new UST installations, an on-site inspection may be required at critical junctures. The PSTD Fuel Specialist monitoring the installation must be contacted prior to initiating the following so it may be observed or inspected:

- (A) The air/soap test of tanks.
- (B) The tank pit prior to the placement of tank(s).
- (C) The backfilling of the lower quadrant of tank(s).
- (D) The air/soap test, layout of piping, and hydrostatic testing of sumps prior to backfilling.
- (E) The tightness test of tanks and piping, and leak detector tests prior to startup.
- (F) Backfilling of all piping.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, factory specifications must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank and must be buried below ground a minimum of eighteen inches (18").

(5) If a tank is installed in an area subject to a high water table or flooding, anchoring must be used to prevent tank flotation. Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

(6) The tank pit must contain a smooth, evenly graded bed of manufacturer approved material extending the full length of the tank bottom.

(7) The Licensed UST Installer must follow PEI RP-100 recommended practice for ballasting to prevent tank flotation during installation.

(8) Licensed UST Installers must be certified by the tank and line manufacturer, if applicable, and must be on site during all installation activities, including preparation for and placement of concrete over any part of the tank system.

(9) Photos of installation and other required documentation must be submitted with the PSTD registration form within thirty (30) days and tank fees must be paid before a permit will be issued.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-37. Storage tank spacing

(a) Underground storage tanks must be at least thirty-six inches (36") from a property line boundary of the property on which they are installed.

(b) Fiberglass and steel underground storage tanks must be spaced in accordance with manufacturer's instructions.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-38. Fill pipe requirements

- (a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.
- (b) Fill pipes should be installed or arranged so that vibration is minimized.
- (c) Each fill pipe must be labeled by a permanent marking to identify the product stored. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding of the tank fill riser lids set forth in OAC 165:15-13-1 must also be used.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-39. Spill and overflow protection

- (a) Owners and operators of underground storage tank systems, their employees or agents, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.
- (b) Owners, operators, their employees or agents, or transporters must ensure that the volume available in the tank (ullage) is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.
- (c) Tight fill connections must be used on all deliveries made to underground storage tanks.
- (d) Tampering with overflow protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter resulting in fines, contempt proceedings, and/or shutdown of operations as provided by law.
- (e) Except as provided in (e) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:
 - (1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket).
 - (2) Overflow prevention equipment that will automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full.
 - (A) A drop tube with overflow device is required on all tank systems installed after July 1, 2001.
 - (B) Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless equipped with an operational ball float overflow device. Use of ball floats is prohibited with suction systems. Staff may require a ball float functionality test.
 - (C) Ball float valves that are inoperable cannot be repaired and instead must be replaced with a drop tube with flapper valve, or
 - (D) A mechanism to prevent overfilling by sounding an alarm when the liquid level in the tank reaches ninety percent (90%) of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches ninety-five percent (95%) of capacity.

(f) On new installations, overfill prevention equipment must be inspected for proper operation at installation and at least once every three (3) years thereafter. Existing systems must inspect overfill prevention equipment for proper operation by October 13, 2018 and at least once every three (3) years thereafter. When inspecting, owners and operators must at a minimum ensure the overfill prevention equipment is set to activate at the correct level in the tank and will activate when regulated substances reach that level.

(g) On new installations, spill prevention equipment must be tested for liquid tightness at installation and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days. Existing systems must test spill prevention equipment for liquid tightness by October 13, 2018 and at least once every three (3) years thereafter or use a double-walled spill bucket with periodic interstitial monitoring that is monitored at least every thirty (30) days.

(h) The spill and overfill prevention equipment specified in (d) of this Section is not required if the underground storage tank system is filled by transfers of no more than twenty-five (25) gallons at one time.

(i) Owners and operators must contain and immediately clean up any spill or overfill of regulated substances less than twenty-five (25) gallons within twenty-four (24) hours of incident occurrence. If the spill or overfill cannot be cleaned up within twenty-four (24) hours, is more than twenty-five (25) gallons, or it causes a sheen on nearby surface water, then owners and operators must report to the PSTD within twenty-four (24) hours and begin corrective action in accordance with Part 5 (Corrective Action Requirements) in Chapter 29 of Commission rules.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-40. Installation testing

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.

(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:

(1) The piping must be subjected to an air test of at least 50 psi for a period of one hour.

(2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(3) As an alternative to the preceding methods in (1) and (2) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.

(c) Pressurized piping must be tested while connected to tanks and pumps. The piping must be subjected to an air test of at least 50 psi.

(1) Air test secondary piping for a period of one hour, using the test pressure prescribed by the piping manufacturer.

(2) Apply soap solution to all joints and piping surfaces and inspect for leaks.

(d) All piping should be air tested and monitored continuously during the installation.

(e) Tightness (also called precision) testing of the entire system must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation:

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) A certified ATG capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank and

(B) A precision tightness test of the ullage portion of the tank must be completed.

(3) Testing of both interstice and primary tank of a double wall tank as specified by tank manufacturer must be performed.

(4) Primary tank openings, manways and risers must be tested during the installation of all double wall tanks.

(5) The product line(s) must be hydrostatically tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1½ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(6) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's specifications.

(7) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

(8) Containment sumps must be tested after all piping and conduit has been installed along with spill prevention equipment (spill buckets) by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 23 Ok Reg 3211, eff 9-11-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-2-41. Installation drawing

As built drawings, showing the location(s) of tanks, piping and associated underground storage tank equipment, monitoring wells and dispensing units, must be prepared by the installer and submitted to the Commission with the tank registration form.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-42. Certification of installation [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 2261, eff 7-1-06; Revoked at 25 Ok Reg 1867, eff 7-1-08]

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be designed by a corrosion expert, installed and maintained in accordance with recognized standards of design. One of the following codes of practice shall be used to comply with this section:

- (1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- (2) NACE International Test Method TM 0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
- (3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3[®] Underground Storage Tanks";
- (4) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or
- (5) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-2-52. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems shall be operated and maintained in accordance with manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that routinely contain regulated substances and are in contact with the ground.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-2-53. Frequency and criteria of inspections and tests

- (a) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every three (3) years thereafter.
- (b) Cathodic protection testing, repair, or three (3) year recertification must be scheduled at least 24 hours before by submitting the PSTD scheduling form and PSTD staff may be present.
- (c) Every 60 days impressed current cathodic protection systems must be inspected by the owner or owner's designated representative to ensure the equipment is working properly.
- (d) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP-0285.
- (e) All personnel performing cathodic protection system testing must have the required education, current corrosion certification, experience, knowledge and competence to correctly perform testing services in accordance with a certified course and applicable industry standards or codes.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-53.1. Underground storage tank internal lining requirements

- (a) A previously lined steel tank that fails precision tightness testing or an internal lining inspection shall not be repaired and must be removed.
- (b) Tank lining may not be used as a method of repair for an unlined tank.
- (c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound, with the lining still performing in accordance with original design specifications.
- (d) Standards that must be referenced during the periodic inspection of lined USTs:
 - (1) American Petroleum Institute (API) Publication 1631.
 - (2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.
 - (3) National Leak Prevention Association Standard 631.
 - (4) PSTD Internal Tank Lining Guidance document and PSTD Interior Lining Inspection Form are available on the Commission website.
- (e) UST owners/operators must submit to PSTD a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements cannot be relined. Minor imperfections may be repaired and the tank must be upgraded with a cathodic protection system within six months of the lining repair, or be removed.
- (f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.
- (g) Tank owners or their representative must provide 48 hour notification for all lining inspections to PSTD in the online format established by PSTD.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-2-54. Underground storage tank piping materials [AMMENDED AND RENUMBERED TO 165:25-2-55.1]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended and renumbered to 165:25-2-55.1 at 23 Ok Reg 2261, eff 7-1-06]

165:25-2-55. Underground storage tank internal lining requirements [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

- (a) All new or replacement underground pressurized piping must be installed as follows:
 - (1) Nonmetallic;
 - (2) Double-walled;
 - (3) A tracer locator wire must be installed in all piping trenches; and
 - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

- (b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:
- (1) Nonmetallic;
 - (2) Double-walled;
 - (3) A tracer locator wire must be installed in all piping trenches; and
 - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (c) Existing facilities that are replacing the lesser of twenty feet (20') or fifty percent (50%) of underground piping must upgrade pursuant to (a) or (b) of this Section. If a metallic line fails due to structural failure or corrosion, all metallic product lines at the facility must be immediately removed, and cannot be repaired.
- (d) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant 165:25-3-6.29.
- (e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.
- (f) Existing facilities that are replacing underground storage tanks or making repairs at a submersible pump that require excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.
- (g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.
- (h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.
- (i) Ball valves must be installed on new safe suction lines to isolate lines for testing purposes.

[Source: Amended and renumbered from 165:25-2-54 at 23 Ok Reg 2261, eff 7-1-06; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-55.2. Vent piping requirements

- (a) Where vent pipes installed prior to July, 2003, from tanks storing gasoline are adjacent to buildings or public ways, they must be located not less than twelve feet (12') (3.6 meters) above the adjacent ground level or three feet (3') above the roof line at the highest point of attachment. Newly installed vent pipes must be five feet (5') above the roof or canopy. All vent pipes buried below ground must be a minimum of eighteen inches (18").
- (b) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not accumulate to an unsafe location or trapped under eaves and shall be at least five feet (5') (1.5 meters) from building openings and fifteen feet (15') (4.5 meters) from powered ventilation air intake devices).
- (c) All new or replacement underground vent piping must be non-metallic. Aboveground vent risers must be steel pipe.
- (d) Vent risers must be located or protected and anchored, to prevent damage from traffic, wind, or testing procedures.

[Source: Added at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 37 Ok Reg 1128, eff 10-1-20]

PART 7. DISPENSERS

165:25-2-71. Dispensers

- (a) A control must be provided that will permit the dispenser to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually activated. This control must also stop the dispenser when all nozzles have been returned either to their brackets or to the normal non-dispensing position.
- (b) A Underwriter's Laboratory ("UL") listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.
- (c) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.
- (d) Liquids must be transferred from storage tanks by means of fixed dispensers designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (e) Dispensing devices for Class I and Class II liquids must be listed.
- (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise pre-approved by PSTD.
 - (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD for approval prior to installation.
- (f) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a ten (10) micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a thirty (30) micron or smaller nominal pore-sized filter.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 30 Ok Reg 584, eff 7-1-13; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-72. Dispenser hose

- (a) Underwriters Laboratory (UL) Listed hose assemblies must be used to dispense fuel.
- (1) Hose length at facilities must not exceed eighteen feet (18', or 5.5 m).
 - (2) Hose at facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings. If any of the defects are present, the defective hose must be removed from service immediately.
- (b) At least once each month the hose must be completely extended and inspected.
- (1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined for structural weakness.
 - (2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be removed immediately.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-73. Nozzles

At any installation where the normal flow of product may be stopped other than by the hose nozzle valve e.g., at pre-pay stations, the system must include UL listed equipment with a feature that causes or requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-75. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

- (1) WARNING
- (2) It is unlawful and dangerous to dispense gasoline into unapproved containers.
- (3) No smoking.
- (4) Stop motor.
- (5) No filling of portable containers in or on a motor vehicle.
- (6) Place container on ground before filling.
- (7) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(b) If blended ethanol or biodiesel product is dispensed, an OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the dispenser from which a blended ethanol or biodiesel product is dispensed.

(c) A sign or label must be displayed in a clear, conspicuous and prominent manner when two different types of gasoline are being dispensed from a single hose, e.g., one hundred percent (100%) gasoline and ten percent (10%) ethanol blend gasoline. The sign must be displayed in close proximity to the one hundred percent (100%) gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of one hundred percent (100%) gasoline.

(d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-75.1. Display on dispenser

(a) Every dispenser or delivery device regulated by the Commission used for the sale of motor fuel to the public must legibly display the type of motor fuel offered for sale.

(b) Any motor fuel must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

[Source: Added at 37 Ok Reg 1128, eff 10-1-20]

165:25-2-76. Sources of ignition

(a) Smoking materials, including but not limited to matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.

(b) At least one fire extinguisher must be readily accessible in the pump area, as well as at the service bay(s), where applicable.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-2-77. Electrical equipment [AMMENDED AND RENUMBERED TO 165:25-2-91]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended and renumbered to 165:25-2-91 at 23 Ok Reg 2261, eff 7-1-06]

PART 9. ELECTRICAL

165:25-2-91. Electrical requirements

(a) All electrical work must be performed by a licensed electrician.

(b) All electrical wiring and electrical equipment must be of a type specified by and must be installed in accordance with NFPA 30A and NEC 70, National Electrical Code.

(c) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

(d) Electrical equipment that was installed in compliance with an earlier state or national code will not require modification unless the equipment is hazardous to people or property.

[Source: Amended and renumbered from 165:25-2-77 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-111. Repairs to underground storage tank systems

(a) Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(b) Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.

(c) Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system.

(e) Following completion of repairs, a tank or line tightness test must be performed by a certified tester and is required prior to returning tank or line to service.

(f) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and repairs to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness within thirty (30) days following completion of the repair. This testing must be conducted according

to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

(g) A tightness test of spill prevention equipment must be performed within thirty (30) days following repairs to such spill prevention equipment. This testing must be conducted according to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

(h) Overfill prevention equipment must be inspected within thirty (30) days following repairs to it to ensure it is operating properly. This inspection must be conducted according to the manufacturer's instructions or a code or practice developed by a nationally recognized association or independent testing laboratory.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16]

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-131. Tank removal and closure

(a) Owners/operators of all underground storage tank systems must notify PSTD at least fourteen (14) days prior to the removal or permanent closure of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, PSTD shall be given forty-eight (48) hours notice prior to the new date.

(b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless a Commission order grants a variance that allows the tanks and/or lines to be closed in place. Tank systems that are removed from the ground must be transported from the site and whether sold to a scrap dealer or disposed of at an acceptable facility, sufficient holes should be made in the tanks to render the tank(s) unfit for further use. A certificate of destruction must be submitted to PSTD with the UST Closure Report. After closure activities are completed, the excavation must be backfilled no later than seven (7) days upon completion of tank removal.

(d) The Licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete. This includes Licensed UST Remover presence during cutting and removing concrete over any part of the tank system.

(e) Photos must be taken of tank(s), line(s) and soil at removal. In the event there is a hole in tank(s) or line(s), further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-132. Compliance with removal and closure requirements [REVOKED]

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-2-133. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service for three (3) months or less, the owner or operator must meet the following requirements:

- (1) Continue the operation, testing, and maintenance of corrosion protection as required by this Chapter. Electricity must be maintained for an impressed current CP system to be operational.
- (2) Continue to monitor for leaks by performing release detection and release detection testing as required by this Chapter.
- (3) Perform annual inspections and testing of release detection equipment.
- (4) Perform thirty (30) day walkthrough inspections.
- (5) Perform three (3) year containment sump testing on containment sumps used for interstitial monitoring of piping.
- (6) Comply with the requirements of this Chapter concerning release reporting and corrective action.
- (7) Notify PSTD of a change in service within thirty (30) days on the prescribed TOU form.

(b) Tank systems that are temporarily closed for three (3) months or less are not required to meet spill prevention equipment testing and overfill prevention equipment inspections.

(c) When an underground storage tank system is taken out of service for three (3) months or more, the owner/operator must meet the following requirements:

- (1) All tanks must be drained to less than one inch (1") of residue remaining in the tank.
- (2) Release detection, annual release detection equipment testing and inspections, spill prevention equipment testing, overfill prevention equipment inspections, thirty (30) day walkthrough inspections, and three (3) year containment sump testing on containment sumps used for interstitial monitoring of piping, is not required as long as the underground storage tank is emptied to less than one inch (1") of residue remaining in tank.
- (3) All vent lines must be left open and functioning.
- (4) All other lines, pumps, manways, and ancillary equipment must be capped and secured.
- (5) Lock all fill caps.
- (6) Continue the operation, testing, and maintenance of corrosion protection as required by this Chapter. Electricity must be maintained for an impressed current CP system to be operational.
- (7) Comply with the requirements of this Chapter concerning release reporting and corrective action.
- (8) Notify PSTD of a change in service within thirty (30) days on the prescribed TOU form.

(d) Any facility with an underground storage tank registered as currently in use where the business is no longer open for regular business and has an underground storage tank system that is not in active use for greater than 180 days or two (2) consecutive semiannual inspections shall have the tank system deemed temporarily out of use and will be subject to OAC 165:25-2-133. PSTD will notify the current registered owner in writing of the change in tank status within ten (10) days of the date of change. The facility shall have sixty (60) days to comply with all requirements in this section.

(e) Tanks must be permanently closed if they do not meet PSTD requirements in OAC 165:25-2-133 as set forth above.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-2-134. Requirements for returning to service/use

When an underground storage tank system is returned to service/use a tank tightness test, line tightness test, and a leak detector test must be performed by a certified tester, and must be completed on the underground portion of temporarily closed systems prior to returning the system to service if it has been out of service/use for more than twelve (12) months. Any system failure will require either closure or upgrade of the failed portion. Additional testing shall be required on any portion of the tank system considered detrimental to release detection depending upon the type of tank system installed. Notify PSTD on the prescribed "Return to Service" form when returning a system to service/use along with copies of all testing and the tank registration fees.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-2-135. Permanent closure

All underground storage tanks and associated piping out of service/use for more than twelve (12) months must be removed if they do not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134. A variance to close a tank and/or associated piping in place with a PSTD approved inert material must be made by application and administrative review in accordance with OAC 165:5-21-3.1. For a closure in place variance solely on the basis of financial concerns between the cost to remove and the cost to close in place, applicant must submit three (3) bids to remove and three (3) bids to close in place with their variance application. A variance is effective on order issuance.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-2-136. Assessing the site at closure or change in service

- (a) When a change in service, tank or line repair, and/or replacement is completed, the owner/operator must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site.
- (b) Please refer to the PSTD removal/closure/change of service sampling document on PSTD's website.
- (c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with Chapter 29 of Commission rules.
- (d) All sampling at closures must be under the supervision of a Licensed Environmental Consultant.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-2-137. Applicability to previously closed underground storage tank systems

- (a) When directed by PSTD, the owner/operator of an underground storage tank system closed before April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. PSTD may direct the owner/operator to assess the site or may assess the site itself if a potential for a

suspicion of release from the underground storage tank system may, in the judgment of PSTD, pose a current or potential threat to human health, safety or the environment.

(b) Petroleum storage tank systems closed after April 21, 1989 and not upgraded to meet December 23, 1998 upgrade deadline must be removed and the site assessed in accordance with 165:25-2-136 of Commission rules.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15]

165:25-2-138. Closure records

Owners/Operators must maintain records that demonstrate compliance with all tank closure requirements. Records of the results of the required site assessments must be maintained for at least three (3) years after completion of permanent closure or change in service in one of the following ways:

- (1) By the owner or operator who took the UST system out of service.
- (2) By the current owner or operator of the UST system site.
- (3) Mailing these records to PSTD if they cannot be maintained at the closed facility.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08]

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 1. RELEASE PROHIBITION REQUIREMENTS

165:25-3-1. Release prohibition

The intentional release of regulated substances from an underground storage tank or system is strictly prohibited. No person shall knowingly allow a confirmed or suspected release of regulated substances from an underground storage tank or system to continue without investigation and reporting as required by this Chapter. Owners, operators, their employees or agents of underground storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur.

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-3-2. Release reporting [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-3. Release investigation and confirmation [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-4. Activation of a case [REVOKED]

[Source: Added at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-5. General monitoring requirements [AMMENDED AND RENUMBERED TO 165:25-3-6.20]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended and renumbered to 165:25-3-6.20 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.1. General release detection methods and devices [AMMENDED AND RENUMBERED TO 165:25-3-6.21]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended and renumbered to 165:25-3-6.21 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.2. Tank system tightness testing with inventory control [AMMENDED AND RENUMBERED TO 165:25-3-6.22]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended and renumbered to 165:25-3-6.22 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.3. Testing or monitoring for vapors [AMMENDED AND RENUMBERED TO 165:25-3-6.23]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended and renumbered to 165:25-3-6.23 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.4. Testing or monitoring for liquids on the groundwater [AMMENDED AND RENUMBERED TO 165:25-3-6.24]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended and renumbered to 165:25-3-6.24 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.5. Interstitial monitoring [AMMENDED AND RENUMBERED TO 165:25-3-6.25]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended and renumbered to 165:25-3-6.25 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.6. Automatic tank gauging systems [AMMENDED AND RENUMBERED TO 165:25-3-6.26]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended and renumbered to 165:25-3-6.26 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-5.7. Manual tank gauging [AMMENDED AND RENUMBERED TO 165:25-3-6.27]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended and renumbered to 165:25-3-6.27 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-6. Monitoring requirements for piping [AMMENDED AND RENUMBERED TO 165:25-3-6.29]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 137, eff 10-6-5 (emergency); Amended and renumbered to 165:25-3-6.29 at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-6.1. Commission-approved alternative methods [RENUMBERED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Renumbered to 165:25-3-6.30 at 23 Ok Reg 2261, eff 7-1-06]

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.20. General monitoring requirements

Tanks, including any compartments within a compartmentalized tank that are not in use, must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter.

[Source: Amended and renumbered from 165:25-3-5 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17]

165:25-3-6.21. General release detection methods and devices

(a) Owners/operators of new and existing underground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

- (1) Capable of detecting a release of regulated substances from any portion of the underground storage tank system that routinely contains product.
- (2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.
- (3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.
- (4) Sampled, tested, or checked for a release at least once every 30 days.
- (5) If more than one (1) release detection method is present on a petroleum storage tank system, the owner and/or operator must notify PSTD in writing which method is designated as the primary method of release detection. In the event the owner and/or operator switches or utilizes another method of release detection as the primary method, the owner and/or operator must notify PSTD in writing within thirty (30) days of selecting a new primary release detection method.

(b) Owners/operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

(c) Interstitial monitoring must be used as the method of release detection for secondarily contained tanks and/or piping installed after July 1, 2008.

(d) Beginning October 13, 2018, the electronic and mechanical components of release detection equipment must be tested for proper operation in accordance with manufacturer's instructions or use a code of practice developed by a nationally recognized association or independent testing laboratory. A test of proper operation must be performed at least annually and, at a minimum, cover the following components and criteria as applicable to the facility:

- (1) Automatic tank gauge and other controllers: test alarm, verify system configuration; test battery backup;
- (2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller;
- (3) Automatic line leak detector: test operation to meet criteria in 40 CFR §280.44(a) by simulating a leak;
- (4) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

- (5) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.
- (e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component needed to have action taken and describe any action taken to correct the issue.

[Source: Amended and renumbered from 165:25-3-5.1 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 26 Ok Reg 1826, eff 7-1-09; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.22. Tank system tightness testing with inventory control [REVOKED]

[Source: Amended and renumbered from 165:25-3-5.2 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Revoked at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.23. Testing or monitoring for vapors

- (a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for thirty (30) day release detection a site-specific site assessment must be conducted to determine the following:
- (1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.
 - (2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the observation wells (i.e., sand, pea gravel or crushed rock).
 - (3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.
 - (4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc. above the tank burial depth, a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected. Approval for the use of vapor monitor wells for thirty (30) day release detection at a location where there has previously been a confirmed release will be at PSTD's discretion.
 - (5) Volatility of the stored product and its compatibility with the monitoring device that will be used.
- (b) Individuals performing this site assessment must be a PSTD Licensed Environmental Consultant and a copy of the site assessment must be maintained at the facility.
- (c) The vapor observation wells must be installed within the tank excavation. A minimum of two (2) wells are required for multi-tank excavations, with at least one (1) of the wells on the downgradient side. Wells must be spaced such that any given well is capable of detecting a release from within at least a twenty foot (20') radius of that monitoring point and no greater. One (1) well is acceptable for single tanks of 3,000 gallons or less capacity, or for not more than two (2) 2,000 gallon tanks in one excavation, provided the well is near the center of the excavation.
- (d) Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB) rules. OWRB rules allow a PSTDlicensed UST

Installer to install observation wells during tank installations only. An OWRB licensed driller must perform all other well installations.

(e) In addition to (a) through (d) above, vapor observation wells must meet these minimum requirements:

- (1) Be constructed from two inch (2") or four inch (4") polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.
- (2) The well screen section should begin approximately two feet (2') below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet (2') below the tank bottom.
- (3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.
- (4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least twelve inches (12") from within the observation well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.
- (5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of three feet (3') in diameter by three and a half inches (3.5") thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.
- (6) The well(s) must be installed within manholes competent to withstand anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with appropriate identification such as "test well" or "monitoring well" and/or may also be identified with an equilateral triangle to identify the well as an observation well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to PSTD before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all observation wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(g) All vapor observation wells must be checked at least every thirty (30) days by a PSTD Licensed Vapor Monitor Well Technician and a copy of the results must be maintained at the facility and readily available to the PSTD Fuel Specialist.

(h) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance (in a range of 0 to 10,000 units/ppm) or a tracer placed in the tank system above background levels.

(i) Observation well readings above 4,000 units/ppm for gasoline and above 1,500 units/ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to PSTD by telephone at (405) 521-4683 or toll free at 1-888-621-5878 within twenty-four (24) hours of the owner, operator, any of their employees, or agents knowing the reading.

(j) An increase in vapor levels of 500 units/ppm above background or historical levels detected by thirty (30) day monitoring, even though below twenty-four (24) hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within twenty-four (24) hours of the owner or operator, their employees or agents knowing the second month's monitoring results.

(k) If a monitoring report under the circumstances above is not made within twenty-four (24) hours, the owner or operator, their employees or agents, may be subject to formal enforcement action.

[Source: Amended and renumbered from 165:25-3-5.3 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.24. Testing or monitoring for liquids on the groundwater

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for thirty (30) day release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow migration of product from a release to the observation wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases.

(4) The location and historical levels of groundwater at the site.

Groundwater monitoring cannot be used if the water table is less than three feet (3') below ground surface or more than twenty feet (20') below ground surface.

(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.

(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an inch (1/8") of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be a PSTD Licensed Environmental Consultant and a copy of the site assessment must be maintained at the facility.

(c) The groundwater observation wells must be installed in the tank excavation. Two (2) wells are sufficient for single tanks of 3,000 gallons or less capacity or for not more than two (2) 2,000 gallon tanks in one excavation. For multiple tanks, a

minimum of three (3) wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that a release from any given tank within the tank excavation can be detected. Wells must be spaced such that any given well is capable of detecting a release from within at least at twenty foot (20') radius of that monitoring point and no greater. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the associated time required to detect a leak.

(d) Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB) rules. OWRB rules allow a PSTD licensed UST Installer to install observation wells during tank installations only. An OWRB licensed driller must perform all other well installations.

(e) Groundwater observation wells must meet these minimum requirements:

- (1) Be constructed from two inch (2") or four inch (4") polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.
- (2) The well screen section should begin approximately two feet (2') below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet (2') below the tank bottom.
- (3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.
- (4) The well screen must begin no less than eighteen inches (18") below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least twelve inches (12") from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.
- (5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of three feet (3') in diameter by three and a half inches (3.5") thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.
- (6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with appropriate identification such as "test well" or "monitoring well" and may also be identified with an equilateral triangle to identify the well as an observation well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to PSTD before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

- (1) Any indication of free product floating on the water table must be reported to PSTD by telephone at (405) 521-4683 within twenty-four (24) hours of the owner/operator or any of their employees or agents discovering

the product.

(2) If a monitoring report under the circumstances of above is not made within twenty-four (24) hours, the owner or operator, their employees or agents, may be subject to an enforcement action.

(g) All groundwater observation wells must be checked at least every thirty (30) days by a PSTD Licensed Groundwater Monitor Well Technician and a copy of the results must be maintained at the facility and readily available to the PSTD Fuel Specialist.

[Source: Amended and renumbered from 165:25-3-5.4 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.25. Interstitial monitoring

(a) For double-walled underground storage tank systems, the sampling or testing method must be capable of detecting a leak at least every thirty (30 days) through the inner wall in any portion of the tank that routinely contains product in accordance with the manufacturer instructions.

(b) On new installations, the containment sumps used for interstitial monitoring of piping must be tested at installation using a PSTD approved testing method that tests the sump above the highest penetration or sump sidewall seam. After initial testing, sumps must be tested at least once every three (3) years for liquid tightness or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Records demonstrating compliance must be maintained for three (3) years.

(c) Existing systems must have the containment sumps tested for liquid tightness by October 13, 2018, and at least once every three (3) years thereafter or use double-walled containment sumps with periodic interstitial monitoring of the space between the two (2) walls of the sump at least every thirty (30) days. Owners and operators using a low liquid level test must ensure that when the sensor is activated the alarm activates, and verify the submersible pumps automatically shut off when the liquid activates the sensors. Sensors must be mounted and positioned at the lowest point in the sumps. Low liquid level UST sump testing must be performed according to the procedures set forth on the Commission's Containment Sump Alternative Test form. Records demonstrating compliance must be maintained for three (3) years.

(d) Beginning October 13, 2018, owners and operators must perform operation and maintenance tests on electronic and mechanical components of release detection equipment. This testing must be conducted according to the manufacturer's instructions or a code of practice developed by a nationally recognized association or independent testing laboratory. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(1) Automatic tank gauge and other controllers: test alarm, verify system configuration, test battery backup.

(2) Probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller.

(3) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

(4) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(e) Owners and operators must maintain records of the annual operation tests for three (3) years. At a minimum, records must list each component tested, indicate whether each component meets the criteria listed above or needed to have action taken, and describe any action taken to correct an issue.

[Source: Amended and renumbered from 165:25-3-5.5 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-3-6.26. Automatic tank gauging systems

(a) Automatic tank gauging systems (ATG's) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour (gph) leak rate for any portion of the tank that routinely contains product.

(b) The test must be performed with the system operating in one of the following modes:

- (1) Passing 0.1 gph test at least every thirty (30) days; or
- (2) Passing 0.2 gph test at least every thirty (30) days along with inventory reconciled at thirty (30) days; or
- (3) Passing continuous statistical leak detection ("CSLD") test at least every thirty (30) days along with inventory reconciled at thirty (30) days.

(c) ATGs must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at NWGLDE Web Site, will be accepted (www.nwglde.org).

[Source: Amended and renumbered from 165:25-3-5.6 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.27. Manual tank gauging

(a) **Restrictions.** Manual tank gauging may be used as an approved method of release detection if the tank has a nominal capacity of 1,000 gallons or less.

(b) **Requirements.**

- (1) Tank liquid level measurements are taken at the beginning and ending of the period appearing in Appendix Q, during which no liquid is added to or removed from the tank.
- (2) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the period.
- (3) The equipment used is capable of measuring the product over the full range of the tank's height to the nearest one-eighth inch (1/8").
- (4) A leak is suspected and subject to the release reporting requirements of Subchapter 3, Part 3 of this Chapter if the variation between beginning and ending measurements exceeds the weekly or thirty (30) day standards in the table in Appendix Q.

[Source: Amended and renumbered from 165:25-3-5.7 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day and data must be reconciled every thirty (30) days. Product deliveries must be reconciled with an appropriate device and data must be reconciled every thirty (30) days.

- (b) SIR records must demonstrate the following:
- (1) Report a quantitative result with a calculated leak rate;
 - (2) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days, with a probability of detection of 0.95 and a probability of false alarm of 0.05; and
 - (3) Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate.
- (c) The tank must be equipped with a drop tube and measured for water at least every thirty (30) days.
- (d) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").
- (e) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.
- (f) Records must be submitted to a certified SIR vendor for evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE Web Site, will be accepted (nwglde.org).
- (g) SIR analysis reports must include a summary report of the quantitative results.
- (h) Results of SIR analysis must be on premises for inspector review every thirty (30) days.
- (i) This method is approved as release detection for tanks only.

[Source: Added at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 121, eff 9-8-16 (emergency); Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-3-6.29. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) Pressurized piping.

(A) All underground piping that conveys regulated substances under pressure must be equipped with a mechanical or electronic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) Suction piping.

(A) Suction piping installed after July 1, 2008 must be double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) Mechanical line leak detectors and annual line tightness testing.

(i) An annual function test of the operation of the leak detector must be conducted by simulating a leak.

(ii) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter.

(B) Sump sensors with automatic line leak detectors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually. Sensors status and alarm history reports must be printed and retained or use an interstitial monitoring form every thirty (30) days for systems installed after July 1, 2008.

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of a mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of three (3) gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 or 0.1 gallons per hour at least once every thirty (30) days; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is function tested annually by simulating a leak, and if necessary, calibrated.

(4) **Methods of release detection for suction piping.**

(A) Safe Suction Piping. No release detection is required for suction piping installed on or prior to July 1, 2008 if it is designed and constructed to meet (i) through (iv) below:

(i) The below-grade piping operates at less than atmospheric pressure.

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) One (1) check valve is included in each suction line.

(iv) The check valve is located directly below and as close as is practical to the suction pump.

(B) Tri-annual Line Tightness Testing. Underground piping that conveys regulated substances under suction must have a line

tightness test conducted at least every three (3) years by a certified tester.

(C) Sump sensors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of tri-annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained or use an interstitial monitoring form every thirty (30) days for systems installed after July 1, 2008.

[Source: Amended and renumbered from 165:25-3-6 at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-3-6.30. Commission -approved alternative methods [REVOKED]

[Source: Renumbered from 165:25-3-6.1 at 23 Ok Reg 2261, eff 7-1-06; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-3-7. Release reporting [AMMENDED AND RENUMBERED TO 165:25-3-7.1]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended and renumbered to 165:25-3-7.1 at 32 Ok Reg 780, eff 8-27-15]

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-7.1. Release reporting

(a) The reporting requirements of this Part do not relieve the owner/operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release reporting tab on PSTD's webpage on the Commission website; by email at PSTReleaseReporting@occ.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must provide written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter. Events indicating a release include, but are not limited to, the following:

(1) The discovery of released regulated substances at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water) whether on-site or off-site.

(2) Any unusual operating conditions observed, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of

product from the underground storage tank system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(A) In the case of inventory control, two consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD by the owner, operator, or agent within twenty-four (24) hours of discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within seven (7) days.

(C) An "Inconclusive" report from an SIR analysis must be reported by the owner, operator, or agent within twenty-four (24) hours of report generation. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month thirty (30) day period.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor observation well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to PSTD within twenty-four (24) hours by the owner/operator, their employees, or agents discovering the monitoring results. Within ten (10) days, the owner/operator must submit to PSTD all vapor monitoring well data for the last twelve (12) thirty (30) day periods. Upon examination of the submitted data, PSTD will advise the owner/operator what action, if any, is needed.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by thirty (30) day monitoring, even though below the twenty-four (24)-hour reporting level, must be reported if the increase does not correct itself in the second thirty (30) day period of monitoring and it must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the monitoring results.

(5) Monitoring results, including investigation of an alarm, from a release detection method required by this Chapter that indicate a release may have occurred unless:

(A) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(B) The leak is contained in the secondary containment and;

(i) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(ii) Any defective system equipment or component is immediately repaired or replaced.

(C) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing.

(c) While aboveground releases of petroleum of less than twenty-five (25) gallons need not be reported to PSTD, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD electronically or by telephone within twenty-four (24) hours of discovery, by the owner, operator, their employees, or agents, with a written confirmation to PSTD within twenty (20) days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than twenty-five (25) gallons.

(3) Any aboveground release of petroleum which is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.

(d) All owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for three (3) years following the date of the event.

(e) If any of the possible, probable or definite release conditions set forth above are not reported within twenty-four (24) hours, the owner/operator may be subject to fines, Formal Enforcement Action or shutdown of operations.

(f) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405) 823-0994.

[Source: Renumbered from 165:25-3-7 at 32 Ok Reg 780, eff 8-27-15; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless PSTD specifically waives any part of this Section in writing.

(b) Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within seven (7) days of receipt of notice from PSTD using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners/operators must conduct tightness tests and if applicable, secondary containment testing, that will determine whether a leak exists in the storage tank system or a breach of either wall of the secondary containment has occurred.

(A) Owners/operators must repair, replace or permanently closed as defined in OAC 165:25-2-135, the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, delivery piping or the interstice indicates that a release exists.

(B) Further investigation is not required if the test results for the system, tank, delivery piping and interstice do not indicate that a release exists and chemical concentrations of regulated substances

detected in soil or water are not the basis for a suspicion of a release.

(C) Owners/operators must conduct a site check as described in (b) (2) of this Section if the test results for the system, tank, delivery piping and interstice do not indicate that a release exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners/operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately five feet (5') from the outside of the UST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg

(B) Groundwater - 10.0 mg/l

(5) TPH

(A) Native Soils - 50.0 mg/kg

(B) Groundwater - 2.0 mg/l

(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the discretion of PSTD.

(d) Within twenty (20) days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) through (c) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the

report must be submitted in accordance with a format established by the PSTD, after which corrective action may be required under the provisions of Chapter 29 of Commission rules. Failure to submit reports in a format established by PSTD within the timeframe required may result in an enforcement action.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 31 Ok Reg 1007, eff 9-12-14; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-3-9. [RESERVED]

[Source: Reserved at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-10. [RESERVED]

[Source: Reserved at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-11. Availability and confidentiality of records [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 14 Ok Reg 2500, eff 7-1-97; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-12. Cathodic protection system records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-13. Release detection records [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-14. Repair records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-15. Tank removal and closure records [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 14 Ok Reg 2500, eff 7-1-97; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-16. Inventory records [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-17. Spill and overfill records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-18. Corrective action records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-19. Installation records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-20. Financial responsibility records [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS
[REVOKED]**

165:25-3-25. General spill and overfill prevention requirements [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-26. Spill and overfill prevention equipment [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 7. COMPATIBILITY [REVOKED]

165:25-3-31. Compatibility [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

**PART 9. LICENSING OF UNDERGROUND STORAGE TANK
INSTALLERS [REVOKED]**

**165:25-3-41. Compliance with nationally recognized code of practice and
manufacturer's instructions [REVOKED]**

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-42. Pre-installation [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-43. Tank system installation [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-44. Tank system testing [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-45. Associated equipment [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-46. Installation drawing [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-47. Certification of installation [REVOKED]

[Source: Amended at 13 Ok Reg 2945, eff 7-11-96; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-48. Licensing of Underground Storage Tank Installers [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 13 Ok Reg 2945, eff 7-11-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-49. Underground storage tank installation [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-50. Licensing procedure for UST Installers [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-51. Licensing procedure for UST Removers [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-52. Licensing procedure for Monitoring Well Technician [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Revoked at 23 Ok Reg 2261, eff 7-1-06]

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-3-55. Repairs to underground storage tank systems [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Revoked at 23 Ok Reg 2261, eff 7-1-06]

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-3-60. Tank removal and closure [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-61. Compliance with removal and closure requirements [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-62. Temporary removal from service [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-63. Temporary closure; requirements for returning to service [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-64. Permanent closure [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-64.1. Underground storage tank removal [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-65. Assessing the site at closure or change in service [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 14 Ok Reg 2500, eff 7-1-97; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok

Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-66. Applicability to previously closed underground storage tank systems [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-3-67. Closure records [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 23 Ok Reg 2261, eff 7-1-06]

PART 15. CORRECTIVE ACTION REQUIREMENTS

165:25-3-70. Corrective action

Corrective action must be conducted in accordance with Chapter 29 of Commission rules.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15]

165:25-3-71. General applicability; exception [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-71.1. Prescribed forms [REVOKED]

[Source: Added at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-72. Initial response [REVOKED]

[Source: Amended at 13 Ok Reg 3237, eff 9-1-96; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-73. Initial abatement measures and site check [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-73.1. Initial site characterization and corrective action plan [REVOKED]

[Source: Added at 14 Ok Reg 2500, eff 7-1-97; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-74. Tier 1 and Tier 1A ORBCA [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-74.1. Classification and prioritization [REVOKED]

[Source: Added at 9 Ok Reg 849, eff 1-6-92 (emergency); Added at 9 Ok Reg 2731, eff 7-13-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-75. Free product removal [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-76. Tier 2 and Tier 3 ORBCA [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-77. Remedial action plan [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-78. Public participation [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 14 Ok Reg 2500, eff 7-1-97; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-79. Closure of a case [REVOKED]

[Source: Added at 9 Ok Reg 2305, eff 6-25-92; Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 769, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 3237, eff 9-1-96; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-80. Laboratory analysis [REVOKED]

[Source: Added at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 17. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS [REVOKED]

165:25-3-81. Compliance with corrosion protection requirements and manufacturer's specifications [REVOKED]

[Source: Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-82. Frequency and criteria of inspections and tests [REVOKED]

[Source: Added at 9 Ok Reg 2305, eff 6-25-92; Amended at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-3-83. Impressed current systems [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-84. Recordkeeping [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-3-85. Qualifications and training for conducting inspections and tests [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 19. LICENSING FOR UST CONSULTANTS [REVOKED]

165:25-3-90. Licensing for Underground Storage Tank consultants involved with closures, investigations, removals, and remediations of releases from either underground storage tanks or aboveground storage tank [REVOKED]

[Source: Added at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 3237, eff 9-1-96; Amended at 17 Ok Reg 547, eff 11-30-99 (emergency); Amended at 17 Ok Reg 2315, eff 6-26-00; Revoked at 18 Ok Reg 2378, eff 7-1-01]

SUBCHAPTER 5. UPGRADES

165:25-5-1. Alternatives allowed

No later than December 23, 1998, owners/operators of existing underground storage tank systems shall:

- (1) Comply with the requirements for new underground storage tank systems under Subchapter 2 of this Chapter; or
- (2) Comply with the upgrading requirements in OAC 165:25-5-2 and 165:25-5-3; or
- (3) Permanently close the underground storage tank system and take any necessary corrective action, in accordance with this Chapter.

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01; Added at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-5-2. Tank upgrading requirements

Existing steel tanks must be upgraded (by December 23, 1998) to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory:

- (1) Interior lining. A tank may be upgraded by interior lining if:
 - (A) The tank is repaired in accordance with 165:25-2-111 of this Chapter and the liner is installed in accordance with a recognized association or an independent testing laboratory.
 - (B) Within 10 years after lining and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
- (2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets PSTD requirements and the integrity of the tank is ensured using one of the following methods:
 - (A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion.
 - (B) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with PSTD requirements.
 - (C) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet PSTD requirements. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between 3 and 6 months following the first operation of the cathodic protection system.
 - (D) The tank is assessed for corrosion holes by a method that is determined by PSTD to prevent releases in a manner that is no less protective of human health and the environment than (A), (B), or

(C) of this paragraph.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(A) The lining is installed in accordance with the requirements of Subchapter 2, Part 5 of this Chapter.

(B) The cathodic protection system meets PSTD requirements.

(C) The following codes and standards may be used to comply with 165:25-5-2: API 1631, API 1632, NLP A 631, and NACE RP-0285.

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01; Added at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-5-3. Piping upgrading requirements

Metal piping of an existing underground storage tank system that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet PSTD requirements.

[Source: Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 13 Ok Reg 1163, eff 9-11-95 (emergency); Amended at 13 Ok Reg 3159, eff 9-11-95 (emergency); Amended at 13 Ok Reg 2945, eff 7-11-96; Revoked at 18 Ok Reg 2378, eff 7-1-01; Added at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-5-4. Spill and overflow prevention requirements

Existing underground storage tank systems shall be in compliance with the specific spill and overflow requirements by December 23, 1998.

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01; Added at 22 Ok Reg 1730, eff 7-1-05]

165:25-5-5. Release detection methods and devices [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

SUBCHAPTER 6. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-6-1. Application

(a) This Subchapter contains provisions that particularly apply to storage tank systems for aircraft fuel at airports. A storage tank system consists of an underground storage tank and the pipes, pumps, dispensers and transport truck attached to it. Aircraft fuel servicing vehicles are not included.

(b) This Subchapter governs airport operations only insofar as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.

(c) Subchapters 1. General Provisions, 2. General Requirements for UST's, 3. Release Prohibition and Detection, and 5. Upgrades shall also apply in addition to this Subchapter.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

PART 3. CODES AND STANDARDS

165:25-6-7. Codes and standards

The Commission adopts NFPA 407, which serves as a basis for the standards in this Subchapter. A copy of NFPA 407 is available for inspection at the Petroleum Storage Tank Division during regular business hours.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 5. DISPENSER REQUIREMENTS

165:25-6-13. Dispenser hose

(a) Aircraft fueling hose that is frequently used must be inspected before use each day.

(1) The hose must be checked for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material, and for slippage, misalignment or leaks at couplings.

(2) If coupling slippage or leaks are found, the cause of the problem must be determined.

(b) Defective hoses must be removed immediately from service.

(c) At least once each month the hose must be thoroughly inspected.

(1) The hose couplings and the hose must be examined for a length approximately 12 inches (12", or 305 mm) adjacent to the couplings.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be immediately removed from service.

(4) The nozzle screens must be examined for rubber particles. The presence of rubber particles indicates possible deterioration of the interior, and the hose must be immediately removed from service.

(5) A hose assembly that has been subjected to abuse, such as severe end-pull, flattening or crushing by a vehicle, or sharp bending or kinking, must be immediately removed from service.

(6) If inspection shows that a portion of a hose has been damaged, the hose must be immediately replaced. Two lengths of hose must not be coupled together.

(7) Before any hose assembly is placed in service, it must be visually inspected for evidence of damage or deterioration.

(8) Kinks or short loops in fueling hose must be avoided.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05]

165:25-6-14. Dispenser location at airports

(a) Fueling hydrants, cabinets and pits must be located at least 50 feet (50', or 15.2 m) from any terminal building, hangar, service building, or enclosed passenger concourse (other than loading bridges).

(b) Pumps must be located at or below ground level.

(c) Relay pumping is not allowed.

(d) Pumps installed outside of buildings must be located at least 5 feet (5', or 1.5 m) from any building opening. They must be substantially anchored and protected against physical damage from collision.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-6-15. Specific requirements for airport dispensers

- (a) The valve controlling the flow of fuel to an aircraft must have a deadman control. The deadman control device must be arranged to accommodate the operational requirements. The fuel flow control valve must be one of the following:
- (1) The hydrant pit valve; or
 - (2) On the hose nozzle for overwing servicing.
- (b) Deadman controls must be designed to preclude defeating their intended purpose.
- (c) The deadman flow control in the nozzle may be used for overwing fueling.
- (1) Notches or latches in the nozzle handle that could allow the valve to be locked open are prohibited.
 - (2) Each overwing servicing nozzle must have a cable with a plug or clip for bonding to the aircraft.
 - (3) Nozzles for underwing fueling must be designed to be attached securely to the aircraft adapter before the nozzle can be opened. It must not be possible to disengage the nozzle from the aircraft adapter until the nozzle is fully closed.
- (d) Fuel servicing pump mechanisms must be designed and arranged so that failure or seizure does not cause rupture of the pump housing, a tank, or of any component containing fuel. Fuel pressure must be controlled within the stress limits of the hose and plumbing by means of an in-line pressure controller, a system pressure relief valve, or other suitable means. The working pressure of any system component must equal or exceed any pressure to which it could be subjected.
- (e) UL listed or approved dispensing devices must be used.
- (f) Access to dispensing equipment must be controlled by means of mechanical or electronic devices designed to resist tampering and to prevent access or use by unauthorized persons.
- (g) Dispensing devices must have a UL listed or approved emergency shutoff valve, incorporating a fusible link or other thermally actuated device designed to close automatically in case of fire.
- (1) This valve must also incorporate a shear section that automatically shuts off the flow of fuel upon severe impact.
 - (2) This valve must be rigidly mounted at the base of the dispenser in accordance with the manufacturer's instructions.
 - (3) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-6-17. Emergency controls

- (a) Each fuel system must have means for quickly and completely shutting off the flow of fuel in an emergency. This requirement is in addition to the requirement for a deadman control of fuel flow.
- (b) The emergency fuel shutoff system must include shutoff stations located outside of probable spill areas and near the route that normally is used to leave the spill area or to reach the fire extinguishers provided for the protection of the area.

[Source: Added at 21 Ok Reg 2036, eff 7-1-04]

PART 7. TANK FILLING PROCEDURES

165:25-6-21. Tightfill connection requirements

All tanks must be filled through a liquid tight connection.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 9. DISPENSING PROCEDURES

165:25-6-27. Dispensing fuel into aircraft

Aircraft being fueled from a stationary dispenser must be positioned so that aircraft fuel system vents or fuel tank openings are not closer than 25 feet (25', or 8 m) from any terminal building, hangar, service building or enclosed passenger concourse other than a loading walkway. Aircraft being fueled must not be positioned so that the vent or tank openings are within 50 feet (50', or 15 m) of any combustion and ventilation air intake to any boiler, heater or incinerator room.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-6-28. Static protection and bonding

(a) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

(b) Conductive hose must be used to prevent electrostatic discharge but not to accomplish required bonding.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-6-34. Required signs

Entrances to fueling areas must be posted with signs that read:

- (1) NO SMOKING.
- (2) SHUT ENGINES OFF.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-6-35. Fire extinguishers

(a) Extinguishers specified for protection of fuel servicing operations should be located along the fence, near dispensers or at emergency remote control stations of airport fixed-fuel systems.

(b) Extinguishers should be located near but not in probable spill areas.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-6-36. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 23 Ok Reg 2261, eff 7-1-06]

SUBCHAPTER 7. REQUIREMENTS FOR NEW UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

PART 1. DESIGN, CONSTRUCTION, AND INSTALLATION REQUIREMENTS [REVOKED]

165:25-7-1. General standards [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-2. Construction and design standards for tanks [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 12 Ok Reg 2047, eff 7-1-95; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-3. Construction and design standards for new underground piping [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 12 Ok Reg 2047, eff 7-1-95; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-4. Installation standards for new underground storage tank systems [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 3. GENERAL RELEASE DETECTION METHODS AND DEVICES [REVOKED]

165:25-7-11. General release detection methods and devices [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 5. RELEASE DETECTION METHODS AND DEVICES FOR PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-7-21. General monitoring requirements [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-22. Tank system tightness testing with inventory reconciliation controls [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-23. Testing or monitoring for vapors [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-24. Testing and monitoring for liquids on the groundwater [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-25. Interstitial monitoring [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-26. Automatic tank gauging [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-27. Commission approved alternative methods [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-28. Piping for petroleum underground storage tank systems [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-29. Release detection requirements for hazardous substance underground storage tank systems [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-7-30. Release detection records required [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-8-1. Application

- (a) This Subchapter contains provisions that particularly apply to the storage, handling and dispensing of gasoline and diesel fuel at marinas.
- (b) Subchapters 1. General Provisions, 2. General Requirements for UST's, 3. Release Prohibition and Detection, and 5. Upgrades shall also apply in addition to this Subchapter.
- (c) The tank and piping system must come in compliance with the rules of this subchapter before July 1, 2009. Compliance may be required earlier for any part of a system that poses a threat to property, people, or to the environment.
- (d) A PSTD Licensed UST Installer must be on the jobsite at all times during the installation of an underground storage tank and/or piping.
- (e) All dock or pier product piping from the shoreline to the dispensers at new or existing facilities must be installed according to 165:25-8-3 "Over-water piping at marinas" and 165:25-8-4 "Installation requirements for over-water piping".

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-8-2. Release detection requirements for marinas

Monitoring requirements for product lines, at a minimum, must consist of an annual line tightness test conducted no later than April 1st of each year.

[Source: Added at 23 Ok Reg 137, eff 10-6-05 (emergency); Added at 23 Ok Reg 2261, eff 7-1-06]

PART 3. OVER-WATER PIPING REQUIREMENTS

165:25-8-3. Over-water piping at marinas

- (a) The design, fabrication, assembly, test, and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30 and NFPA 30A.
- (b) The piping must be installed according to the manufacturers installation recommendations and instructions.
- (c) Piping must be listed and approved by the manufacturer for aboveground installations.

165:25-8-4. Installation requirements for over-water piping

(a) Steel piping.

(1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.

(3) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.

(4) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(5) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.

(6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.

(7) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

(b) Double walled piping.

(1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.

(2) All double walled piping installed above the water shall be installed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

(3) Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and

primary pipe fittings.

(4) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(6) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.

(7) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel. It must be installed so that it is accessible to the operator at all water levels.

(8) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(9) A transition sump must be rigidly anchored in place either on the dock or at the shoreline. The transition sump must contain the ball valve, solenoid valve, and emergency breakaway device. The transition sump must be either monitored with a sensor or a bypass tube must be used in order to divert a leak from the transition sump to the dispenser sump where it would be detected by a sensor.

[Source: Added at 23 Ok Reg 137, eff 10-6-05 (emergency); Added at 23 Ok Reg 2261, eff 7-1-06]

165:25-8-5. Underground piping materials [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 137, eff 10-6-05 (emergency); Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-8-7. Aboveground piping at marinas [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 137, eff 10-6-05 (emergency); Revoked at 23 Ok Reg 2261, eff 7-1-06]

165:25-8-8. Installation and monitoring requirements for piping [REVOKED]

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Revoked at 23 Ok Reg 137, eff 10-6-05 (emergency); Revoked at 23 Ok Reg 2261, eff 7-1-06]

PART 5. DISPENSER REQUIREMENTS

165:25-8-13. Dispensers [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-8-14. Dispenser hose

Listed hose assemblies must be used to dispense fuel. Where hose length exceeds 18 ft (5.5m), the hose shall be secured so as to protect it from damage, such as a hose reel, and in no case shall the hose exceed 50 ft (15m) in length.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06]

165:25-8-15. Nozzles

Dispensing nozzles used at marine service stations must be the automatic closing type. Hold-open latch devices from nozzles intended for marina service are not allowed.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-8-16. Dispenser location at marinas

Dispensing devices at marine service stations may be located on open piers, wharves, floating docks, shore or on piers of the solid-fill type, but must be located apart from other structures to provide room for safe ingress and egress of watercraft for fueling. Dispensing devices must be in all cases at least 20 feet (20', or 6 m) from any activity involving fixed sources of ignition.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-8-17. Specific requirements for dispensers at marinas; maintenance

When maintenance of a Class I dispenser is necessary, the following precautions must be taken before maintenance begins:

- (1) Only persons knowledgeable in performing the required maintenance may perform the work.
- (2) All electrical power to the dispenser, the dispensing pump, and all associated circuits must be shut off at the main electrical panel.
- (3) The emergency shutoff valve at the dispenser, if installed, must be closed.
- (4) All unauthorized persons are prohibited from coming within 20 feet (20', or 6 m) of the dispenser while the maintenance work is being done.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 7. TANK FILLING PROCEDURES [REVOKED]

165:25-8-23. Tightfill connection requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 9. DISPENSING PROCEDURES

165:25-8-29. Attendants at marinas

(a) Marinas may have an attendant or supervisor on duty when the marina is open for business. The attendant's primary function will be to supervise, observe, and control the dispensing of fuels to ensure that all safety requirements are met, and to ensure that the waters of the state are not contaminated by fuel.

(b) At unattended marine facilities an emergency shut off device must be installed to meet the following requirements:

- (1) Installed between 20 to 100 feet from the fuel dispensing devices that they serve;
- (2) Device must shut down the fuel dispensing system in the event of an emergency;
- (3) Must be readily accessible to patrons; and

(4) Emergency instructions must be conspicuously posted.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06]

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-8-35. Required signs

All marinas must have a sign printed in one-fourth inch (1/4") to one-half inch (1/2") text in black or red block capital letters on a white background conspicuously posted and easily readable from the dispensing area, which reads:

- (1) BEFORE FUELING:
 - (A) Stop all engines and auxiliaries.
 - (B) Shut off all electricity, open flames and heat sources.
 - (C) Check all bilges for fuel vapors.
 - (D) Extinguish all smoking materials.
 - (E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.
- (2) DURING FUELING:
 - (A) Maintain nozzle contact with the fill pipe.
 - (B) Wipe up spills immediately.
 - (C) Avoid overfilling.
 - (D) Fuel filling nozzle must be attended at all times.
- (3) AFTER FUELING:
 - (A) Inspect bilges for leakage and fuel odors.
 - (B) Ventilate until odors are gone.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 35 Ok Reg 985, eff 10-1-18]

165:25-8-36. Fire extinguishers

- (a) Each marina must have a 40B:C fire extinguisher.
- (b) A minimum of three extinguishers must be located at the fuel dock, and one or more must be located within 50 feet (50' or 15 meters) of each pump, dispenser, and underground fill pipe opening.
- (c) Piers that extend more than 500 feet (500' or) one hundred fifty-two meters (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.
- (d) There must be a knife readily accessible at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 137, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-8-37. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 9. INSPECTIONS, TESTING, AND MONITORING [REVOKED]

PART 1. INSPECTIONS [REVOKED]

165:25-9-1. Owner/operator cooperation [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-2. Authority of the Commission [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-3. Completion of inspections [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-4. Recordkeeping [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-5. Inspection for compliance [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-6. Assistance from other state agencies [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 3. FEES [REVOKED]

165:25-9-11. Fees [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 5. PENALTIES [REVOKED]

165:25-9-21. Penalties [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 7. FIELD CITATIONS [REVOKED]

165:25-9-25. Purpose of field citations [REVOKED]

[Source: Added at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 2945, eff 7-11-96; Amended at 16 Ok Reg 2823, eff 7-15-99; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-26. Warning Citations and Fine Citation [REVOKED]

[Source: Added at 10 Ok Reg 2823, eff 7-15-99; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-27. Re-inspection and Fine Citation [REVOKED]

[Source: Added at 16 Ok Reg 2823, eff 7-15-99; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-9-28. Payment of fine or hearing [REVOKED]

[Source: Added at 16 Ok Reg 2823, eff 7-15-99; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 9. SHUT DOWN OF OPERATIONS [REVOKED]

165:25-9-30. Shut down of operations [REVOKED]

[Source: Added at 10 Ok Reg 2617, eff 6-25-93; Amended at 13 Ok Reg 2945, eff 7-11-96; Revoked at 18 Ok Reg 2378, eff 7-1-01]

**SUBCHAPTER 10. SPECIAL REQUIREMENTS FOR UNDERGROUND
STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES
[REVOKED]**

**PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS
[REVOKED]**

165:25-10-1. Application [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 3. DISPENSER REQUIREMENTS [REVOKED]

165:25-10-7. Dispensers [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 19 Ok Reg 1609, eff 6-13-02; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-10-8. Dispenser hose [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-10-9. Nozzles [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 5. TANK FILLING PROCEDURES [REVOKED]

165:25-10-10. Tightfill connection requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 7. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-10-16. Required signs [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-10-17. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 11. ADMINISTRATIVE PROVISIONS [REVOKED]

165:25-11-1. Hearings, orders and appeals [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-11-2. Changes to rules [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-11-3. Notices [REVOKED]

[Source: Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-11-4. Severability [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

SUBCHAPTER 12. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-12-1. Application [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 3. DISPENSER REQUIREMENTS [REVOKED]

165:25-12-7. Dispensers [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 5. TANK FILLING PROCEDURES [REVOKED]

165:25-12-13. Tightfill connection requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 7. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-12-19. Required signs [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-12-20. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 13. FINANCIAL RESPONSIBILITY REQUIREMENTS [REVOKED]

PART 1. APPLICABILITY [REVOKED]

165:25-13-1. Applicability [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 3. DEFINITIONS [REVOKED]

165:25-13-11. Definitions [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 5. AMOUNT AND SCOPE OF COVERAGE [REVOKED]

165:25-13-21. Purpose of coverage [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-22. Coverage amounts [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-23. Dates for compliance [REVOKED]

[Source: Amended at 9 Ok Reg 2305, eff 6-25-92; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-24. Other coverage requirements [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 7. FINANCIAL ASSURANCE [REVOKED]

165:25-13-31. Mechanisms permitted [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-32. Limitations on use of guarantees or surety bonds [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-33. Combinations of self-insurance and guarantees [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 9. FINANCIAL TEST OF SELF-INSURANCE [REVOKED]

165:25-13-41. General financial test of self-insurance [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-42. Self-insurance requirements [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-43. Additional self-insurance requirements [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-44. Demonstrating compliance; letter from chief financial officer [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-45. Failure to meet financial test of self-insurance [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 11. GUARANTEE [REVOKED]

165:25-13-51. General requirements for guarantees [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-52. Guarantor requirements [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-53. Demonstrating compliance; guarantee document [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-54. Failure to comply with financial test criteria [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-55. Standby trust for payment under the guarantee [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**PART 13. INSURANCE AND RISK RETENTION GROUP COVERAGE
[REVOKED]**

165:25-13-61. General requirements for insurance and risk retention group coverage [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-62. Demonstrating compliance; endorsement or certificate of insurance [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 15. SURETY BOND [REVOKED]

165:25-13-71. General requirements for surety bond [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-72. Surety liability [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-73. Demonstrating compliance; bond [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-74. Standby trust for surety bond payments [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 17. LETTER OF CREDIT [REVOKED]

165:25-13-81. General requirements for letter of credit [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-82. Demonstrating compliance; letter of credit [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-83. Standby trust for amounts paid pursuant to Commission draft [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 19. STATE FUND OR OTHER STATE ASSURANCE [REVOKED]

165:25-13-91. General requirements for use of state funds or other state assurance [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-92. EPA evaluation of funds [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-93. Acceptability of fund [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-94. Notification by EPA; Commission letter or certificate [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 21. TRUST FUND [REVOKED]

165:25-13-101. General requirements for trust fund [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-102. Demonstrating compliance; trust agreement; certificate of acknowledgement [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-103. Scope of fund [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-104. Request for release of excess coverage [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-105. Release of funds [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 23. STANDBY TRUST FUND [REVOKED]

165:25-13-111. General requirements for standby trust fund [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-112. Demonstrating compliance; standby trust agreement; certificate of acknowledgement [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-113. Surplus funds [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-114. Depository mechanism [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 25. SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS [REVOKED]

165:25-13-121. Substitution of financial assurance mechanisms [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 27. CANCELLATION OR NONRENEWAL [REVOKED]

165:25-13-131. General requirements for cancellation or nonrenewal [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-132. Notification [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 29. REPORTING [REVOKED]

165:25-13-141. Reporting [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 31. RECORDKEEPING [REVOKED]

165:25-13-151. General requirements for recordkeeping [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-152. Evidence of financial responsibility [REVOKED]

[Source: Amended at 10 Ok Reg 2617, eff 6-25-93; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 33. DRAWING ON FINANCIAL ASSURANCE MECHANISM [REVOKED]

165:25-13-161. Standby trust funding [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-162. Drawing on standby trust funds [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-163. Priority payments from standby trust funds [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 35. RELEASE FROM SUBCHAPTER 11 REQUIREMENTS [REVOKED]

165:25-13-171. Release from requirements [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**PART 37. BANKRUPTCY OR OTHER INCAPACITY OF
OWNER/OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE
[REVOKED]**

165:25-13-181. Owner or operator bankruptcy [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-13-182. Guarantor bankruptcy [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**165:25-13-183. Bankruptcy of financial assurance provider; obtaining
alternate coverage [REVOKED]**

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**PART 39. REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT,
OR SURETY BONDS [REVOKED]**

**165:25-13-191. Replenishment of guarantees, letters of credit, or surety bonds
[REVOKED]**

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**SUBCHAPTER 14. SPECIAL REQUIREMENTS FOR UNDERGROUND
STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES**

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-14-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances at bulk plant facilities. Bulk plants built after July 1, 2001 must comply with all provisions of this Chapter and Subchapter.

(b) Subchapters 1 General Provisions, 2 General Requirements for UST's, 3 Release Prohibition and Detection, and 5 Upgrades shall also apply in addition to this Subchapter.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15]

PART 3. DISPENSER REQUIREMENTS

165:25-14-7. Dispensers

Bulk plants which have, in addition to their distribution business, a facility for dispensing fuel directly into the fuel tanks of automobiles and trucks must comply with the dispenser requirements of retail facilities.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 5. LOADING FACILITIES

165:25-14-13. Location of loading facilities

Tank vehicle and tank car loading and unloading facilities must be separated from warehouses, other plant buildings or the nearest line of adjoining

property that can be built upon by a distance of at least 25 feet (25', or 7.6 m) for Class I liquids and at least 15 feet (15', or 4.6 m) for Class II and Class III liquids, measured from the nearest fill spout or transfer connection.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-14-14. Specific requirements for loading facilities

- (a) Loading and unloading facilities must be provided with drainage systems or other means to contain spills.
- (b) A loading or unloading facility that has a canopy or roof that does not limit the dissipation of heat or dispersion of flammable vapors and does not restrict fire-fighting access and control will be treated as an outdoor facility.
- (c) Loading and unloading facilities at bulk plants that are used to load motor fuel into tank vehicles through open domes must be provided with a means for electrically bonding to protect against static electricity hazards.
 - (1) It must consist of a metal wire that is permanently and electrically connected to the bulk plant's fill pipe assembly or to some part of the bulk plant's rack structure that is in electrical contact with the fill pipe assembly.
 - (2) The free end of this wire must have a clamp for convenient attachment to some metallic part of the vehicle that is in electrical contact with the cargo tank of the tank vehicle.
 - (3) All parts of the fill pipe assembly, including the drop tube, must form a continuous electrically conductive path.
- (d) Bulk plants where motor fuel or blending materials are loaded or unloaded through open domes of railroad tank cars must be protected against stray electrical current by permanently bonding the bulk plant's fill pipe and the individual storage tanks to at least one rail of the railroad.
- (e) Equipment such as piping, pumps, and meters used for the transfer of Class I liquids between storage tanks and the fill stem of the loading facility cannot be used for the transfer of Class II or Class III liquids.
 - (1) This provision does not apply to water-miscible liquid mixtures where the class of the mixture is determined by the concentration of liquid in water.
 - (2) This provision does not apply where the equipment is cleaned between transfers.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 7. TANK FILLING PROCEDURES

165:25-14-20. Switch loading

- (a) All tanks must be filled through a liquid tight connection.
- (b) To prevent hazards due to a change in flash point of liquids, no tank or tank vehicle that has previously contained a Class I liquid may be loaded with a Class II or Class III liquid unless proper precautions are taken.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 9. DISPENSING PROCEDURES

165:25-14-26. Dispensing fuel into tank vehicles

Tank vehicles must be loaded and unloaded as follows:

- (1) Liquids can only be loaded into cargo tanks whose material of construction is compatible with the chemical characteristics of the liquid.
- (2) The liquid being loaded must also be chemically compatible with the liquid hauled on the previous load unless the cargo tank has been cleaned.
- (3) When transferring Class I liquids, engines of tank vehicles or motors of auxiliary or portable pumps must be shut down while making and breaking hose connections.
- (4) If loading or unloading is done without requiring the use of the motor of the tank vehicle, the vehicle's motor must be shut down throughout any transfer operations involving Class I liquids.
- (5) Filling through open domes into the tanks of tank vehicles must be by means of a downspout that extends to within 6 inches (6") of the bottom of the tank.
- (6) When top loading a tank vehicle with Class I or Class II liquids without a vapor control system, valves used for the final control of flow must be of the self-closing type and must be manually held open except where automatic means are provided for shutting off the flow when the vehicle is full.
 - (A) Automatic shutoff systems must be provided with a manual shutoff valve located at a safe distance from the loading nozzle to stop the flow if the automatic system fails.
 - (B) When bottom loading a tank vehicle, a positive means must be provided for loading a predetermined quantity of liquid, together with a secondary automatic shutoff control to prevent overflow.
 - (C) The connecting components between the loading rack and the tank vehicle that are required to operate the secondary control must be functionally compatible.
 - (D) The connection between the liquid loading hose or pipe and the truck piping must be by a dry disconnect coupling.
- (7) When bottom loading a tank vehicle that is equipped for vapor control, but when vapor control is not used, the tank must be vented to the atmosphere, at a height not lower than the top of the cargo tank of the vehicle, to prevent pressurization of the tank. Connections to the facility's vapor control system must be designed to prevent the escape of vapor into the atmosphere when not connected to a tank vehicle.
- (8) When bottom loading is used, reduced flow rates (until the fill opening is submerged), splash deflectors or other devices must be used to prevent splashing and to minimize turbulence.
- (9) To allow for the relaxation of charge, metal or conductive objects, such as gauge tapes, sample containers and thermometers must not be lowered into a compartment while the compartment is being filled or immediately after pumping stops.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

165:25-14-27. Static protection and bonding

Before loading tank vehicles through open domes, a bonding connection must be made to the vehicle or tank before dome covers are raised and must remain in place until filling is completed and all dome covers have been closed and secured.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01]

PART 11. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-14-33. Required signs [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 25 Ok Reg 1867, eff 7-1-08]

165:25-14-34. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 15. CIRCLE K SETTLEMENT FUND [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

165:25-15-1. Purpose [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 3. DEFINITIONS [REVOKED]

165:25-15-11. Definitions [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 5. ELIGIBILITY REQUIREMENTS [REVOKED]

165:25-15-13. Conditions of eligibility [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 2945, eff 7-11-96; Amended at 15 Ok Reg 3003, eff 7-15-98; Revoked at 18 Ok Reg 2378, eff 7-1-01]

PART 7. REIMBURSEMENT [REVOKED]

165:25-15-15. Limits of reimbursement [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-15-16. Conditions for reimbursement [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Amended at 12 Ok Reg 2047, eff 7-1-95; Revoked at 18 Ok Reg 2378, eff 7-1-01]

165:25-15-17. Reimbursement priority [REVOKED]

[Source: Added at 11 Ok Reg 3705, eff 7-11-94; Revoked at 18 Ok Reg 2378, eff 7-1-01]

SUBCHAPTER 16. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY BACKUP GENERATORS AT HOSPITALS, AND MUNICIPAL WATER AND SEWAGE TREATMENT PLANTS [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-16-1. Application [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 3. TANK FILLING PROCEDURES [REVOKED]

165:25-16-7. Tightfill connection requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 5. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-16-13. Sources of ignition [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 17. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED ON FARMS [REVOKED]

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:25-17-1. Application [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 3. STORAGE TANK SYSTEM REQUIREMENTS [REVOKED]

165:25-17-7. Storage tank location [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-17-8. Storage tanks no longer in use [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

165:25-17-9. Venting requirements [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

PART 5. LEAK DETECTION REQUIREMENTS [REVOKED]

165:25-17-15. Leak detection [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

PART 1. INSPECTIONS

165:25-18-1. Owner/operator cooperation

(a) Owners/operators of storage tank systems regulated by this Chapter must cooperate with inspections, monitoring, and testing requested by or conducted by PSTD.

(b) Upon the request of PSTD, owners and operators must, at all reasonable times:

- (1) Furnish information relating to the owners/operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.

- (2) Conduct monitoring or testing of storage tank facilities.
- (3) Provide PSTD access to the facility to review, inspect, and copy records relating to storage tank facilities.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-18-2. Authority of the Commission

PSTD has the responsibility and authority at any reasonable time to:

- (1) Enter any facility or other place where a storage tank system is located within the State.
- (2) Inspect and obtain samples of any regulated substances stored in a storage tank system at any regulated facility.
- (3) Conduct monitoring, sampling and testing of the tanks, piping, associated equipment, contents, observation well, or the environment at these facilities.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-18-3. Completion of inspections

All inspections, whether done by PSTD or ordered by PSTD to be conducted by the owner or operator, must be started and completed with reasonable promptness, and the results submitted to PSTD consistent with the provisions of this Chapter.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08]

165:25-18-4. Inspection for compliance

(a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.

(b) These inspections may include, but not necessarily be limited to, review of:

- (1) Records of installation.
- (2) Records of repair and retrofit operations including required tightness testing.
- (3) Release containment practices.
- (4) Release detection practices.
- (5) Compliance with prior Commission orders to perform corrective action.
- (6) Records of removal and closure.
- (7) Records that document compatibility with underground storage tank systems storing regulated substances greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel.
- (8) Records of annual operation and maintenance tests on the electronic and mechanical components of release detection equipment.
- (9) Site assessments for groundwater or vapor monitoring
- (10) Current permit for all tanks located at the facility
- (11) Current operator training certificates for all classes of operators.

(c) In addition, PSTD may perform any other inspection, testing, or monitoring necessary to ensure compliance with this Chapter and to protect property, human health, safety and welfare and the environment.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 34 Ok Reg 935, eff 9-11-17]

PART 3. NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:25-18-10. Notices of Violation, Field Citations, and Formal Enforcement Actions

The purpose of this Section is to create a procedure that allows the PSTD Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of Compliance and Inspection to issue Field Citation(s) or refer to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action for any violation(s) found during PSTD Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of a Notice of Violation or Field Citation may allow petroleum storage tank owners and operators to promptly address and correct storage tank violation(s) before a Formal Enforcement Action is initiated.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 36 Ok Reg 551, eff 8-1-19]

165:25-18-11. Notices of Violation

(a) When a PSTD Fuel Specialist finds a violation of any statute, rule, requirement or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further PSTD enforcement action may occur if the violation is not corrected. If the violation cannot be corrected, the violation will be referred to the PSTD Compliance and Inspection Manager or Director's designee who may initiate Formal Enforcement Action or issue a Field Citation.

(2) At PSTD's discretion, serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

(3) The NOV must explain what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the PSTD Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the PSTD Fuel Specialist questions.

(c) NOV(s) are issued to the owner/operator of the storage tank facility. If the owner/operator is not present, NOV(s) can be given to store personnel.

(d) All notifications and/or correspondence will be mailed or electronically delivered to the owner and/or operator.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-18-12. Re-inspection, Field Citation and Formal Enforcement Action

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Refer the violation to the PSTD Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or

- (2) Shut down the storage tank system pending correction of the problem or a hearing on the issue.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 33 Ok Reg 604, eff 8-25-16; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

165:25-18-13. Issuance of a Field Citation and payment of fine or hearing

- (a) The storage tank owner/operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.
- (b) The tank owner/operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.
 - (1) A fine may be paid with cash, money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.
 - (2) Payment of a fine within the thirty (30) day timeframe will not be considered an agreement or disagreement with the Field Citation.
- (c) If the storage tank owner/operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided in the Field Citation. If found in violation of PSTD rules at the time the Commission order is issued, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.
- (d) Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the tank system for failure to pay fines.
- (e) Failure of a tank owner/operator to appear at the hearing may result in additional enforcement action.
- (f) Any exceptions to the hearing must be made in accordance with OAC 165:5.
- (g) A tank owner/operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 21 Ok Reg 2036, eff 7-1-04; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 32 Ok Reg 780, eff 8-27-15; Amended at 34 Ok Reg 935, eff 9-11-17; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

PART 5. PENALTIES

165:25-18-19. Penalties

- (a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for a fine not to exceed \$10,000.00 for each day that the violation continues.
- (b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, they may appear at the hearing at the Commission. If found in violation of PSTD rules at the time the Commission order is issued, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Amended at 22 Ok Reg 1730, eff 7-1-05; Amended at 23 Ok Reg 2261, eff 7-1-06; Amended at 25 Ok Reg 1867, eff 7-1-08; Amended at 35 Ok Reg 985, eff 10-1-18; Amended at 36 Ok Reg 551, eff 8-1-19; Amended at 37 Ok Reg 1128, eff 10-1-20]

**APPENDIX A. LETTER FROM CHIEF FINANCIAL OFFICER
[REVOKED]**

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX B. GUARANTEE [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX C. ENDORSEMENT [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX D. CERTIFICATE OF INSURANCE [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX E. PERFORMANCE BOND [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**APPENDIX F. IRREVOCABLE STANDBY LETTER OF CREDIT
[REVOKED]**

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX G. TRUST AGREEMENT [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

**APPENDIX H. CERTIFICATION OF FINANCIAL RESPONSIBILITY
[REVOKED]**

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX I. CERTIFICATION OF VALID CLAIM [REVOKED]

[Source: Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX J. PRIORITIZATION INDEX [REVOKED]

[Source: Added at 9 Ok Reg 849, eff 1-6-92 (emergency); Added at 9 Ok Reg 2731, eff 7-13-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked and reenacted at 13 Ok Reg 3237, eff 9-1-96; Revoked at 18 Ok Reg 2378, eff 7-1-01]

**APPENDIX K. SOIL AND GROUNDWATER CLEANUP LEVELS
[REVOKED]**

[Source: Added at 9 Ok Reg 849, eff 1-6-92 (emergency); Added at 9 Ok Reg 2731, eff 7-13-92; Amended at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked and reenacted at 12 Ok Reg 2047, eff 7-1-95; Revoked at 13 Ok Reg 3237, eff 9-1-96]

APPENDIX L. MEAN ANNUAL PRECIPITATION [REVOKED]

[Source: Added at 9 Ok Reg 849, eff 1-6-92 (emergency); Added at 9 Ok Reg 2731, eff 7-13-92; Revoked at 13 Ok Reg 3237, eff 9-1-96]

APPENDIX M. HYDROLOGICALLY SENSITIVE AREAS [REVOKED]

[Source: Added at 9 Ok Reg 849, eff 1-6-92 (emergency); Added at 9 Ok Reg 2731, eff 7-13-92; Amended at 11 Ok Reg 3705, eff 7-11-94; Revoked at 13 Ok Reg 3237, eff 9-1-96]

APPENDIX N. FIELD CITATION FINES [REVOKED]

[Source: Added at 10 Ok Reg 2617, eff 6-25-93; Amended at 11 Ok Reg 3705, eff 7-11-94; Amended at 13 Ok Reg 2945, eff 7-11-96; Revoked and reenacted at 14 Ok Reg 2500, eff 7-1-97; Revoked and reenacted at 15 Ok Reg 3003, eff 7-15-98; Revoked at 16 Ok Reg 2823, eff 7-15-99]

APPENDIX O. FIELD CITATIONS TABLE [REVOKED]

[Source: Added at 16 Ok Reg 2823, eff 7-15-99; Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX P. WARNING AND FINE CITATIONS TABLE [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 18 Ok Reg 2378, eff 7-1-01]

APPENDIX Q. MANUAL TANK GAUGING GUIDE

[Figure 1](#)

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked and reenacted at 35 Ok Reg 985, eff 10-1-18; Revoked and reenacted at 36 Ok Reg 551, eff 8-1-19]

APPENDIX R. MANUAL TANK GAUGING GUIDE FOR FARM TANKS [REVOKED]

[Source: Added at 18 Ok Reg 2378, eff 7-1-01; Revoked at 21 Ok Reg 2036, eff 7-1-04]

APPENDIX S. FIELD CITATIONS TABLE

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Figure 5](#)

[Source: Added at 21 Ok Reg 2036, eff 7-1-04; Revoked and reenacted at 23 Ok Reg 2261, eff 7-1-06; Revoked and reenacted at 25 Ok Reg 1867, eff 7-1-08; Revoked and reenacted at 34 Ok Reg 935, eff 9-11-17; Revoked and reenacted at 36 Ok Reg 551, eff 8-1-19; Revoked and reenacted at 37 Ok Reg 1128, eff 10-1-20]

CHAPTER 26. ABOVEGROUND STORAGE TANKS

[Authority: OKLA. CONST. art IX, §§ 18, 19; 17 O.S., §§ 306(12), 307, 322, 342, and 347; 27A O.S., §§ 1-3-101 et seq.]

[Source: Codified 7-13-93]

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-1. Purpose

The purpose of this Chapter is to provide a regulatory program for the safe operation of aboveground storage tanks in Oklahoma and to prevent and contain pollution caused by leaking aboveground storage tank systems and to reduce the hazards of fire and explosion. PSTD adopts NFPA 30 and 30A, which serves as a basis for the standards in this Chapter. A copy of NFPA 30 and 30A is available for inspection at PSTD during regular business hours.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or **"AST"** means a "Storage tank" as defined in 17 O.S. § 303(40) that has more than ninety percent (90%) of its volume above the surface of the ground.

"Aboveground storage tank system" means a closed-plumbed system including, but not limited to, the aboveground storage tank(s), the individual storage tank compartments, the lines, the dispenser for a given product, containment sump, if any, ancillary equipment or a delivery truck that is connected to the storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in piping excavation to support and separate the piping from the natural environment.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system

"Change in service" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Compatible" means the ability of two (2) or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Corrosion expert" means an individual having the requisite knowledge, experience, certification, and training to design, install, test, and maintain corrosion protection systems.

"Emergency venting" means a construction method or device that relieves excessive internal pressure due to fire exposure.

"EPA" means the United States Environmental Protection Agency.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids*, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistant protection from exposure to a high-intensity liquid pool fire.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in OAC 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"Important building" means a building that is considered not expendable in an exposure fire.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Mobile or Temporary Tank at Construction Site" means a fuel tank used for less than twelve (12) months at a construction site.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means any person as set forth in 17 O.S. § 303(27), including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system. However, a real property owner who has a storage tank system located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from a petroleum storage tank

system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunication services for public use.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas or propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank system into the environment or into the interstitial area between the storage tank system and its secondary barrier.

"Residential tank" is a tank located on real property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling a PSTD regulated substance that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"TPH" means total petroleum hydrocarbons.

"Tampering" means willful intention in an attempt to deceive, cheat or misrepresent facts to the public. Tampering also presents a risk to the environment as well as public health, safety, and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing a petroleum storage tank system's integrity.

"Temporary out of use" or **"TOU"** means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Total venting capacity" means the sum of the normal and emergency vent capacities and is determined by the wetted area of the tank as provided in Appendix I.

"Used Motor Oil" is any spent motor oil removed from a motor vehicle.

"Vault" means an enclosure consisting of four (4) walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

"Wetted area of cylindrical tank" means seventy-five percent (75%) of the total exposed area of the tank ends and shell.

"Wetted area of rectangular tank" means one hundred percent (100%) of the surface area of the bottom, sides, and ends of the tank.

"Wetted area of vertical tank" means the first thirty feet (30') above grade of the exposed shell and floor.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners, operators, their employees and agents of aboveground storage tanks which PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. §§ 301 et seq., which gives PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, or the transport truck attached to it, whether above the ground or below. PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, 2018, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2018, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-1-22. Exclusions

(a) The following classes of aboveground storage tanks or systems are specifically excluded from all provisions of this Chapter:

- (1) All tanks used in the exploration or production of oil and gas, including well service equipment and natural gas compression equipment.
- (2) All mobile or temporary tanks used at construction sites.
- (3) All farm and ranch tanks.
- (4) All tanks used by public utilities in the generation of electric power for public use.
- (5) All tanks used by manufacturers in the production of goods.
- (6) Emergency generator tanks.
- (7) All tanks that contain motor oil, used motor oil or antifreeze located at retail motor vehicle lubrication facilities or automotive service centers.
- (8) Tanks used for storing heating oil for consumptive use on the premises where stored.

(b) These exclusions do not extend to permanently located fuel storage tanks used to fuel company vehicles, even though the vehicles may be driven to production or construction sites.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-1-23. Citation of rules [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Renumbered to 165:26-1-25.1 at 23 Ok Reg 2297, eff 7-1-06]

165:26-1-24. Other standards and regulations [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Renumbered to 165:26-1-32 at 23 Ok Reg 2297, eff 7-1-06]

165:26-1-25. Local jurisdiction [RENUMBERED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00; Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-1-33 at 23 Ok Reg 2297, eff 7-1-06]

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-25.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing Aboveground Storage Tanks and are to be cited as Chapter 26 of Commission rules.

[Source: Renumbered from 165:26-1-23 at 23 Ok Reg 2297, eff 7-1-06; Amended at 32 Ok Reg 794, eff 8-27-15]

165:26-1-26. Hearings, orders and exceptions

(a) The Commission will issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the public health and safety, and the environment.

(b) Hearings to enforce or exceptions to the provisions of this Chapter or PSTD enabling statutes will be conducted in accordance with OAC 165:5.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-1-26.1. Public participation

PSTD shall provide for public participation in the enforcement process by:

- (1) Providing notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);
- (2) Investigating and providing responses to citizen complaints about violations;
- (3) Not opposing citizen intervention when permissive intervention is allowed by statute, rule or regulation; and
- (4) PSTD hearings are open to the public and interested parties are encouraged to attend.

[Source: Added at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-1-27. Changes to rules [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 25 Ok Reg 2187, eff 7-11-08]

165:26-1-28. Variances

A variance to any provision of this Chapter may be granted by the Commission after application, notice and hearing and administrative review by staff. A variance is effective on the date of order issuance. Instructions on the variance process can be found at OAC 165:5-21-3.1.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-1-29. Notices [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 2297, eff 7-1-06; Revoked at 32 Ok Reg 794, eff 8-27-15]

165:26-1-30. Severability

If any part of this Chapter is ruled invalid, by a court of competent jurisdiction, the remainder of the Chapter will remain in full force and effect.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-1-30.2. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Revoked at 36 Ok Reg 576, eff 8-1-19]

165:26-1-30.3. Licensing procedure for aboveground storage tank licensee [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Renumbered to 165:26-1-110 at 25 Ok Reg 2187, eff 7-11-08]

165:26-1-30.4. Fees [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-70 at 23 Ok Reg 2297, eff 7-1-06]

PART 5. STANDARDS AND CODES

165:26-1-31.¹ Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

(A) ASME B31.3 2016, "Process Piping."

(B) ASME B31.4- 2016, "Pipeline Transportation Systems for Liquids and Slurries."

(2) American Petroleum Institute (API) Standards:

(A) API RP 652, "Lining of Aboveground Petroleum Storage Tank Bottoms," Second Edition, April, 2014.

(B) API 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."

(C) API 653, "Tank Inspection, Repair, Alteration, and Reconstruction, 2018."

(3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

- (4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
- (5) National Fire Protection Association (NFPA) Standards:
 - (A) Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 30A, 2018, "Motor Fuel Dispensing Facilities and Repair Garages."
- (6) Underwriter's Laboratory (UL) Standards:
 - (A) Standard UL142, 2006, "Steel Aboveground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL842, 2015, "Valves for Flammable Fluids."
 - (C) Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."
- (7) Petroleum Equipment Institute: Publication PEI/RP 200-13, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling." (2013 Edition)
- (8) "Spill Prevention, Control and Countermeasure Regulation," 40 CFR 112

(b) The standards set forth in (a) of this Section are also available from the following sources:

- (1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.
- (2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.
- (3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.
- (4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.
- (5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.
- (6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.
- (7) National Groundwater Association (NGWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.
- (8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.
- (9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

[Source: Added at 9 Ok Reg 3739, eff 8-27-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 36 Ok Reg 576, eff 8-1-19]

EDITOR'S NOTE: *In 2006, the agency promulgated a new rule called "Consultation of Petroleum Storage Tank Division" at this Section number (165:26-1-31) in Chapter 26 [See 23 Ok Reg 2260, effective 7-1-06], creating a duplication in numbering. However, the new rule was promulgated in a Chapter 25 rulemaking action rather than a Chapter 26 action. To correct this scrivener's error and to avoid a duplication in numbering, the rule was editorially renumbered to an unused Section number in Chapter 25 (165:25-1-30.1) prior to codification.*

165:26-1-32. Other standards and regulations [REVOKED]

[Source: Renumbered from 165:26-1-24 at 23 Ok Reg 2297, eff 7-1-06; Revoked at 25 Ok Reg 2187, eff 7-11-08]

165:26-1-33. Local jurisdiction

Local jurisdictions, including but not limited to municipalities or rural fire districts, are allowed to adopt their own codes regarding aboveground storage tanks as long as they do not conflict with and are at least as stringent as the state's rules. Some local jurisdictions may prohibit aboveground storage tanks through zoning and/or ordinances.

[Source: Renumbered from 165:26-1-25 at 23 Ok Reg 2297, eff 7-1-06]

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

- (a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.
- (b) Federal government entities whose debts and liabilities are the debts and liabilities of the United States are exempt from the requirements of this Subchapter.
- (c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."
- (d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.
- (e) An owner or operator may satisfy the requirements of this Subchapter by use of the Oklahoma Petroleum Storage Tank Indemnity Fund (ref: Okla. Stat. Title 17 § 327.3). There is a co-pay for use of this mechanism. Compliance may also be satisfied by use of any of the mechanisms listed in 165:26-1-37.

[Source: Renumbered from 165:26-18-1 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-1-37. Evidence of financial responsibility

Owners and operators of AST systems will provide evidence of financial responsibility through the mechanisms set forth below, or any other mechanism that is pre-approved by the Division Director of the PSTD:

- (1) Self insurance
- (2) Guarantee
- (3) Insurance
- (4) Surety bond
- (5) Letter of Credit
- (6) Trust fund or standby trust fund
- (7) Securities pledge
- (8) Cash or cash equivalent pledge

[Source: Renumbered from 165:26-18-3 at 23 Ok Reg 2297, eff 7-1-06]

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

PSTD requires owners and/or operators of aboveground storage tank systems to provide information it deems necessary for the protection of human health, the environment and to assure the safety of people and property. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes or when the status of the aboveground storage tank system changes. Use of the designated PSTD online format is required for reporting, scheduling, tank registration, change in ownership, thirty (30) day release detection, testing, temporary change in service, permanent closure, or return to service. Owners and operators of aboveground storage tanks must notify PSTD at least thirty (30) days prior to switching regulated substances containing greater than ten percent (10%) ethanol or twenty percent (20%) biodiesel in the online format established by PSTD. Required release detection forms are available on the Commission website. Failure to notify and/or submit PSTD paperwork in the online format established by PSTD within the timeframe required may result in an enforcement action.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-1-42. New tank systems

(a) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give PSTD notification of the installation at least forty-eight (48) hours before the tank and/or lines are to be installed in the online format established by PSTD and receiving confirmation of the scheduled installation and the Temporary Authorization for Receipt of Fuel from PSTD. If events require the owner to change the date of installation, the Division should be given forty-eight (48) hours notice of the new date. Any storage tank system permanent removal or a removal associated with replacement of tanks or lines requires at least fourteen (14) day notification prior to the removal activity.

(b) After the tank installation is complete, the PSTD registration must be submitted to PSTD in the online format established by PSTD along with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within thirty (30) days. The tank owner and the AST Licensee are both responsible for timely submittal of all installation paperwork. The registration must be approved and tank fees paid in order to receive a tank permit to dispense fuel. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and AST Licensees must certify on the PSTD Registration that the installation of tanks and piping meet the requirements of this Chapter. A PSTD Certification of Installation Inspection Form may also be submitted to satisfy certification of tank and piping installation.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-1-43. Existing tanks [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify PSTD at least fourteen (14) days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require the owner to change the date of removal, the Division should be given forty-eight (48) hours notice of the new date. An authorized agent of PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal. All UST's currently being used as AST's must be destroyed upon closure. A certificate of destruction must be included with the AST Closure Report and submitted to PSTD within forty-five (45) days of closure.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-1-45. Releases [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-1-46. Corrective action [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-1-47. Transfer of ownership

When the owner of an aboveground storage tank transfers ownership of the facility or tank to another person, the new owner must notify the Commission within thirty (30) days of the transfer. The notice must specify at a minimum, the name of the new owner, the location of the facility and the date of the transfer of ownership. In addition, the former owner must advise PSTD of the name and address of the new owner. All records required by PSTD must be transferred at no cost to the new owner. Owners and operators must notify PSTD within thirty (30) days when their mailing address changes.

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-1-48. Tank and line tightness testing

- (a) Tank and line tightness test results in which any part of the tank system tested does not pass must be reported to PSTD within twenty-four (24) hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within seven (7) days of the testing.
- (b) Hydrostatic line tightness tests must be conducted by a certified tester, if applicable, in accordance with manufacturer's instructions, and reported on the required PSTD form.
- (c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.
- (d) All personnel performing tank and line testing must have the required education, experience, applicable certification, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.
- (e) Tank and line tightness testing must be scheduled by submitting the PSTD scheduling form and PSTD staff may be present.

[Source: Renumbered from 165:26-3-17 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18]

PART 9. RECORDKEEPING

165:26-1-55. Availability of records

- (a) Owners and operators of regulated aboveground storage tank systems must cooperate with PSTD requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required pursuant to this Chapter must be kept at the facility and available for immediate inspection by the PSTD Fuel Specialist or be readily available upon request.
- (b) Failure to have the required records available when requested by PSTD may result in an enforcement action.
- (c) Release detection records must be maintained for a minimum of three (3) years on forms specified by PSTD.
- (d) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by PSTD must be transferred at no cost to the new owner or operator.
- (e) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.

[Source: Renumbered from 165:26-3-11 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-1-56. Repair records

Owners and operators of regulated aboveground storage tank systems must maintain records that identify the location and nature of the repair, as follows:

- (1) Tank system repairs meant to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other AST system component that has caused a release or a suspected release of product from the AST system or has failed to function properly must be scheduled using the OCC scheduling form.
- (2) These records shall include a complete description of all repairs made, photographs before and after repair, sample results if required, an updated site map, and testing following repairs.
- (3) The records must be readily available at the facility, submitted to PSTD within thirty (30) days of repair completion, and kept for the remaining operating life of the storage tank system.
- (4) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system or dispensers.

[Source: Renumbered from 165:26-3-12 at 23 Ok Reg 2297, eff 7-1-06; Amended at 30 Ok Reg 586, eff 7-1-13; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-1-57. Tank installation, closure and removal records

- (a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to PSTD for retention in the Division's files. Owners who have purchased systems must maintain the installation

information if it is available.

(b) Owners and operators of aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed at operating facilities.

(c) The owner, operator or Commission licensee hired by the owner and/or operator must submit the PSTD Closure Report Form and all required attachments to PSTD within forty-five (45) days from the date the tanks are permanently closed.

[Source: Renumbered from 165:26-3-13 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-1-58. Release detection and corrosion protection records

(a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of three (3) years.

(b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") must maintain the following records:

(1) Original cathodic protection design created in accordance with National Association of Corrosion Engineers (NACE) recommended practices with drawings depicting all of the CP system components and a description of the materials used.

(2) Suitability study performed to determine if a tank could be upgraded with corrosion protection.

(3) Rectifier readings for impressed current systems conducted at least every 60 days.

(4) Results of the last three inspections or CP system tests completed by a corrosion tester.

[Source: Renumbered from 165:26-3-14 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-1-59. Spill and overflow records

Owners and operators of aboveground storage tank systems must keep records of spills and overfills for review and inspection by PSTD for a period of 3 years.

[Source: Renumbered from 165:26-3-15 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-1-60. Piping records

Tank owners must maintain a current map of their underground piping if that information is available to them and update it within 30 days of any changes.

[Source: Renumbered from 165:26-3-16 at 23 Ok Reg 2297, eff 7-1-06]

165:26-1-61. Inventory records [REVOKED]

[Source: Renumbered from 165:26-3-18 at 23 Ok Reg 2297, eff 7-1-06; Revoked at 25 Ok Reg 2187, eff 7-11-08]

PART 11. FEES

165:26-1-70. Fees

This Chapter requires fees according to the schedule set out in Chapter 5 of Commission rules.

[Source: Renumbered from 165:26-1-30.4 at 23 Ok Reg 2297, eff 7-1-06; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18]

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

(a) PSTD may close (shut down) a system:

- (1) If the system poses an imminent threat to health, safety, or the environment.
- (2) If the owner or operator is operating tanks for which permit fees have not been paid.
- (3) If the owner or operator fails to comply with a Commission requirement or order.
- (4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written Notice of Violation ("NOV") and has failed to correct the problem.
- (5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written Notice of Violation ("NOV") and has failed to correct the problem.
- (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) thirty (30) day periods.
- (7) Tampering with equipment.
- (8) If a Fuel Specialist issues a Notice of Violation ("NOV") and the violation(s) is not corrected.

(b) PSTD must close (shut down) a system:

- (1) If required spill prevention equipment is not installed.
- (2) If required overfill protection equipment is not installed.
- (3) If required leak detection equipment is not installed.
- (4) If required corrosion equipment is not installed.
- (5) If two inches (2") or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if one-half inch (1/2") or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.
- (6) If meter is found to be off in calibration by more than minus fifteen (-15) cubic inches per every five (5) gallons.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain in writing to the owner or operator the reason the AST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Any person who removes a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, the owner and/or operator of the facility is in compliance with PSTD rules, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

- (1) Written permission from the PSTD employee who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the lock or seal; or

- (2) Verbal or written permission from the Director or Director's designee; or
 - (3) Application to and order of the Commission.
- (g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Amended at 30 Ok Reg 586, eff 7-1-13; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

PART 15. LICENSING PROCEDURES

165:26-1-110. Licensing procedure for AST Licensee

- (a) Any individual who would like to become an AST Licensee must:
- (1) Complete an application form.
 - (2) Provide sufficient proof of two (2) years' related work experience, and of active participation in the completion of three (3) aboveground storage tank handling activities, two (2) of which must be installations.
 - (3) Pass an examination approved by PSTD.
 - (4) Pay fees for applications, examinations, and licensing prior to examination and license issuance as set forth in OAC 165:5.
 - (5) Certify that they will comply with all PSTD rules and requirements for aboveground storage tanks, and applicable Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response (HAZWOPER) standards.
- (b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.
- (c) Continuing education is required to maintain an AST license; this consists of four (4) hours of continuing education through a Commission approved program every year. Licensees may request to rollover a maximum of four (4) credit hours from the current year to satisfy the following year's continuing education requirements. Approval of any rollover hours will be at the discretion of PSTD after evaluating the class, course, or seminar.
- (d) Any person who holds an AST license may install or remove AST systems.

[Source: Renumbered from 165:26-1-30.3 at 25 Ok Reg 2187, eff 7-11-08; Amended at 30 Ok Reg 586, eff 7-1-13; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-1-111. Licensee disciplinary action procedure

A license issued by PSTD is a designation of competence to the public in the area of licensee expertise. PSTD is not limited to, but may use the following disciplinary action for PSTD licensees:

- (1) **Informal reprimand.** The Manager of the appropriate PSTD department will call offending licensee for an informal discussion addressing the recent infraction and place a memo in the licensee's file documenting the discussion and nature of the violation.
- (2) **Formal reprimand.** The Manager of the appropriate PSTD department will prepare a letter of reprimand to the licensee addressing the offense. The letter of reprimand will provide the licensee an opportunity to formally dispute alleged violation(s). The reprimand letter, licensee's response, all recourse actions following licensee rebuttal, if any, and the Manager's final decision(s) will be placed in the licensee's file and maintained by PSTD.

(3) **License suspension, revocation and/or refusal to renew a license.** If the Director elects to pursue suspension, revocation, or refusal to renew, a notice of such action will be sent to the licensee by certified mail/return receipt requested. The notice will state the date and time of the hearing scheduled before an Administrative Law Judge.

[Source: Added at 36 Ok Reg 576, eff 8-1-19]

165:26-1-113. License penalties

(a) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any licensee who is found in violation of:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
- (2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.
- (3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients.
- (4) Aiding or assisting another person in violating any provision of this Chapter.
- (5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.
- (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
- (7) Failure to comply with this Chapter, OAC 165:25, 165:26, 165:27, 165:29, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.) may result in PSTD seeking a suspension and/or revocation of the license.
- (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.

(b) Failure to submit Commission required paperwork, test results, and reports in the online format established by PSTD within the required timeframe may result in enforcement action.

(c) Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.

(d) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.

[Source: Added at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

PART 17. OPERATOR TRAINING [REVOKED]

165:26-1-130. Training requirements [REVOKED]

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Revoked at 34 Ok Reg 958, eff 9-11-17]

165:26-1-132. Operator Class designations [REVOKED]

[Source: Added at 25 Ok Reg 2187, eff 7-11-08; Revoked at 34 Ok Reg 958, eff 9-11-17]

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-1. Approved tanks, tank design [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-2-1.3 at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-1.1. Aboveground storage tank installation

All tanks, piping, and associated equipment used in conjunction with an AST installation shall be installed by personnel possessing appropriate skills, experience, applicable certification, and required PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. An AST Licensee must be present at all times during the installation. The PSTD Fuel Specialist monitoring the installation must be contacted before underground piping is backfilled so piping and sump tests may be observed and/or inspected. Photos of the installation of tank(s) and line(s) must accompany a completed registration form within thirty (30) days of installation and tank fees must be paid before a permit is issued.

[Source: Added at 23 Ok Reg 144, eff 10-6-05 (emergency); Added at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-2-1.2. Compatibility [REVOKED]

[Source: Renumbered from 165:26-2-172 at 23 Ok Reg 2297, eff 7-1-06; Revoked at 25 Ok Reg 2187, eff 7-11-08]

165:26-2-1.3. Approved tanks, tank design

- (a) The material and construction of the tank must be compatible with the material stored and the conditions of storage such as pressure and temperature.
- (b) Underground tanks installed for aboveground use prior to July 1, 2007 may be used if installed inside secondary containment.
- (c) Only tanks designed for aboveground use may be installed aboveground after July 1, 2007.
- (d) Product lines must be installed above the maximum liquid level except for vertical tanks may have bottom openings if installed inside concrete secondary containment and meet all other general provisions in accordance with this Chapter.

[Source: Renumbered from 165:26-2-1 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-2-2. Emergency pressure release [REVOKED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Revoked at 25 Ok Reg 2187, eff 7-11-08]

165:26-2-3. Aboveground storage tank spacing

Spacing (shell to shell) between any two adjacent aboveground tanks for tanks storing Class I, II, or IIIA stable liquids must be according to the standards in NFPA 30. The minimum distance between tanks shall be no less than 3 feet. Variances can be made by PSTD for pre-existing facilities where deviation from these rules does not pose a serious hazard to people or property.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-2-4. Distance to be kept around tanks

(a) The following distances, at a minimum, must be kept around aboveground storage tanks.

- (1) 50 ft (15 meters) from the nearest important building as defined by this Chapter;
- (2) 50 ft (15 meters) from any fuel dispenser;
- (3) 50 ft (15 meters) from the nearest side of a public way; and
- (4) 100 ft (30 meters) from any property line that is or might be built upon, including the opposite side of a public way.

(b) The distances as set forth in (a) of this may be reduced by 50 percent if the tanks are fire-resistant. The distances as set forth in (a) may be further reduced if the tanks are a fire-protected tank or tanks in vaults as per NFPA 30A-4.3.2.4.

(c) A variance may be granted for pre-existing facilities where compliance would be difficult and expensive and the current distances between tanks, property lines or dispensers pose no serious threat to people or property.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-2-5. Requirements on fill pipes

(a) Each fill pipe must be identified by a tag or other marking to identify the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank. Color-coding may also be used in addition to marking.

(b) If the fill pipe is located within the containment dike a spill bucket is not required.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-2-5.1. General spill and overflow prevention requirements

(a) Owners and operators of aboveground storage tank systems, their employees or agents, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a five (5) gallon spill container. A spill bucket is not required if the fill pipe is located within an impervious containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage. Tampering with equipment is prohibited. Any violation of this section may result in fines, enforcement action and/or shutdown of operations.

(c) For existing aboveground storage tank systems installed before October 13, 2018, any one of the following methods must be used to prevent overfilling.

- (1) High liquid level alarms with an audible or visual signal that alerts personnel when the tank reaches ninety percent (90%) capacity at a constantly attended operation or surveillance station.

- (2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.
 - (3) Direct audible or code signal communication between the tank gauger and the pumping station.
 - (4) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a second person must be present to monitor gauges and the overall filling of the tank.
- (d) For installations after October 13, 2018, a fill valve which automatically stops delivery of liquid when the tank reaches ninety-five percent (95%) capacity in addition to one of the following methods must be used to prevent overfilling.
- (1) High liquid level alarms with an audible or visual signal that alerts personnel when tank reaches ninety percent (90%) capacity at a constantly attended operation or surveillance station.
 - (2) Direct audible or code signal communication between the tank gauger and the pumping station.
 - (3) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used, a second person must be present to monitor gauges and the overall filling of the tank.
- (e) Liquid level sensing devices must be tested at least annually to ensure proper operation.
- (f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

[Source: Amended and renumbered from 165:26-3-21 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-2-6. Vent piping requirements

- (a) For installations after October 13, 2018, each tank and each compartment of a compartment tank shall have both normal and emergency venting. The vent opening shall be in addition to the fill, withdrawal, and liquid level gauge opening.
- (b) Normal vents must be sized in accordance with either:
- (1) UL new tank manufacturing standards
 - (2) API new tank manufacturing standards
 - (3) API 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or
 - (4) Other accepted standards; or
 - (5) Must be at least as large as the filling or withdrawal connection, whichever is larger, but in no case less than 1 1/4 in. (7 centimeters) nominal inside diameter.
- (c) Emergency vents must be sized in accordance with either:
- (1) UL new manufacturing standards
 - (2) API new tank manufacturing standards
 - (3) API 2000, Venting Atmospheric and Low-Pressure Storage Tanks, or
 - (4) Appendix I, or
 - (5) Other accepted standards.
- (d) Where vent pipe outlets for tanks storing Class I liquids are adjacent to buildings or public ways, they must be located so that the vapors are released at a safe point outside of buildings and not less than 12 ft. (3.6 meters) above the

adjacent ground level.

(e) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not be trapped by eaves or other obstructions and be at least 5 ft. (1.5 meters) from building openings.

(f) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 meters) above ground level or 5 ft. above the roof line at the highest point of attachment.

(g) Total venting capacity must be sized in accordance with:

- (1) UL new manufacturing standards
- (2) API new manufacturing standards
- (3) Wetted area calculations per tank design, and
- (4) Appendix I, or
- (5) Other approved method.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-2-7. Collision barriers

(a) Aboveground storage tanks exposed to traffic must be resistant to damage from the impact of a motor vehicle by suitable collision barriers. The secondary containment dike may serve as a collision barrier provided that it cannot be penetrated by a motor vehicle.

(b) When guard posts or collision barriers are installed, the following design shall be acceptable:

- (1) They shall be constructed of steel not less than 4 in. (100 millimeters) in diameter and shall be filled with concrete.
- (2) They shall be spaced not more than 4 ft. (1.2 meters) on center.
- (3) They shall be set not less than 3 ft (0.9 meters) deep in a concrete footing of not less than 15-in. (380 millimeters) diameter.
- (4) They shall not be less than three feet (3') above grade and concrete barriers not less than thirty-two inches (32") above grade.
- (5) They shall not be less than five feet (5') from the tank shell.

(c) Dispensing devices, except those attached to containers, must either be mounted on a concrete island or otherwise protected against collision damage by suitable means and must be securely bolted in place. If located indoors, the dispensing device will be located in a position where it cannot be struck by a vehicle that is out of control descending a ramp or other slope. The installation must be in accordance with the manufacturer's instructions.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-2-8. Installation testing

(a) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.

- (1) All aboveground storage tanks must be tested to manufacturers instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation.
- (2) Aboveground product piping shall be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.

- (3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions
- (4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.
- (5) All piping should be air tested and monitored continuously during the installation.
- (6) All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1½ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.
- (7) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's instructions.
- (8) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).
- (9) Containment sumps must be tested after all piping and conduit has been installed by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:
 - (A) Requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);
 - (B) Code of practice developed by a nationally recognized association or independent testing laboratory, e.g., PEI RP 1200.

[Source: Amended and renumbered from 165:26-2-171 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 34 Ok Reg 958, eff 9-11-17]

PART 3. SECONDARY CONTAINMENT

165:26-2-31. Double-walled tanks

Double-walled tanks do not require additional containment if all the following conditions are met:

- (1) The capacity of the tank does not exceed 50,000 gallons (189,000 liters).
- (2) All piping connections to the tanks are made above the normal maximum liquid level.

- (3) A mechanism is provided to prevent the release of liquid from the tank by siphon flow.
- (4) A mechanism is provided for determining the level of liquid in the tank, which is accessible to the delivery operator.
- (5) A mechanism is provided to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity. In no case will these provisions restrict or interfere with the proper functioning of the normal vent or the emergency vent.
- (6) Spacing between adjacent tanks is not less than 3 ft (0.9 meters).
- (7) The tank is capable of resisting damage from the impact of a motor vehicle or suitable collision barriers are provided in locations where the tank is exposed to traffic.
- (8) Where the interstitial space is enclosed, it is provided with emergency venting.
- (9) A means is provided to establish the integrity of the interstitial space of the double wall tank.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 33 Ok Reg 615, eff 8-25-16]

165:26-2-32. Secondary containment

- (a) Aboveground storage tanks, other than those with double walls as set out in 165:26-2-31, must have secondary containment for the fuels stored in them.
- (b) Multiple products stored within the same containment area must be compatible with each other.
- (c) If the secondary containment area is open to precipitation, it must be able to contain 110 percent of the capacity of the largest tank plus the volume displaced by other tanks within the containment area.
- (d) The secondary containment area must be constructed with materials that are compatible with the product being stored.
- (e) The secondary containment area cannot have any uncapped drain that extends outside of the containment.
- (f) The secondary containment must be kept intact and free of vegetation, trash, water, and all other items not necessary for fuel storage.
- (g) Secondary containment can be made from native soil if the soil meets or exceeds the permeability rates listed in Appendix J, or it can be made of concrete or steel. Generally, soil containment may be preferred in open rural areas and concrete in more congested urban areas. In either case the secondary containment must be impermeable for the products stored in the tanks:
 - (1) When concrete is used for secondary containment the concrete must be suitable to contain the released product for as long as it would take to recover the release.
 - (2) Soil containment not meeting the permeability rates listed in Appendix J must be made impermeable by use of a synthetic membrane liner made of rubber, plastic, or a geosynthetic clay liner.
 - (3) A double-walled tank would meet the criteria of secondary containment.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-32.1. Spill Prevention, Control and Countermeasure Plan

- (a) Owners of aboveground storage tanks must comply with the Spill Prevention Control and Countermeasure (SPCC) rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112 (Oil Pollution Prevention). If a Spill Prevention Control and Countermeasure (SPCC) plan is required, it must be kept on site.
- (b) The registered Professional Engineer or person responsible for preparation of plan must certify that plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards and the requirements of 40 CFR 112; procedures for required inspections and testing must be established; and the plan must be adequate for the facility.

[Source: Renumbered from 165:26-3-22 at 23 Ok Reg 2297, eff 7-1-06; Amended at 26 Ok Reg 1831, eff 7-1-09]

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:

- (1) American Petroleum Institute Publication 1632-2002, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;
- (2) National Association of Corrosion Engineers Standard RP0193-2001, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;
- (3) National Association of Corrosion Engineers Standard SP0169-2013, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;
- (4) National Association of Corrosion Engineers Standard SP0285-2011, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

- (b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.
- (c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

[Source: Renumbered from 165:26-3-80 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-2-41. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems must be operated and maintained in accordance with the manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground. If any portion of an AST or metallic piping comes in contact with an electrolyte (dirt, sand, gravel, etc.), cathodic protection should be applied to assist in the control of corrosion. The amount of metal in contact with the electrolyte will determine the appropriate selection of cathodic protection; either galvanic anodes or an impressed current system. The selected cathodic protection system will be designed by a corrosion expert or a qualified engineer trained in the field of cathodic protection.

[Source: Renumbered from 165:26-3-81 at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-42. Frequency and criteria of inspections and tests

Cathodic protection systems must be inspected for proper operation by a qualified corrosion technician in accordance with the following requirements:

- (1) Cathodic protection systems must be tested within six(6) months of installation and/or repair, and at least once every three(3) years thereafter by a qualified cathodic protection tester, who can demonstrate education and experience in the measurement of cathodic protection of buried or submerged metal piping systems and metal tanks.
- (2) Every sixty(60) days impressed current cathodic protection systems must be inspected by the owner or operator (or owner's designated representative) to ensure that the equipment is working properly.
- (3) The criteria used to determine that cathodic protection is adequate must be consistent with a code of practice developed by a nationally recognized organization, such as the National Association of Corrosion Engineers (NACE).
- (4) All personnel performing cathodic protection system testing must have the required education, current corrosion certification experience, knowledge and competence to correctly perform testing services in accordance with a certified course and applicable industry standards or codes.

[Source: Renumbered from 165:26-3-82 at 23 Ok Reg 2297, eff 7-1-06; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 36 Ok Reg 576, eff 8-1-19]

PART 5. PIPING

165:26-2-51. Piping protection

Piping must be located for maximum practical protection from physical damage.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04]

165:26-2-52. Piping and gravity flow

Where tanks are at an elevation that produces a gravity head on the dispensing device, the tank outlet must be equipped with an anti-siphon device such as a solenoid valve, positioned adjacent to and downstream from the emergency valve, installed and adjusted so that liquid cannot flow by gravity from the tank in case of piping or hose failure when the dispenser is not in use.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-2-53. Valves on piping

- (a) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.
- (b) If a suction pump-type dispensing device with an air eliminator is used, and where the height of liquid in the tank may exceed the height of the suction pump, a UL listed, vacuum-actuated shutoff/shear valve or equivalent-type valve must be installed directly under each dispensing device. Both the shut off/shear valve and dispensing device shall be rigidly anchored in place. Tanks installed in below-grade vaults are not required to comply with this requirement.

- (c) Manual shutoff and check valves must be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank. Manual shutoff valves that are normally open and only closed for maintenance do not require a pressure relieving device.
- (d) Each connection to an aboveground tank through which liquid normally flows must be provided with an internal or an external emergency fire valve located as close as practical to the shell of the tank or submerged pump. The fill line may be equipped with a check valve made of steel or nodular iron rather than a fire valve. The steel check valve must be installed downstream of the block valve on fill lines if a fire valve is not installed.
- (e) An anti-siphon or solenoid valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.
- (f) A manual shut off or ball valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.
- (g) All valves must meet the construction criteria of 165:26-2-54.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-54. Aboveground storage tank piping materials

- (a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with the piping manufacturers installation recommendations and instructions.
- (b) Pipes, valves, couplings, flexible connectors, fittings and other pressure containing parts must be installed in accordance with Petroleum Equipment Institute RP200, *Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling*.
- (c) Refer to Subchapter 8 for guidelines regarding over-water piping used at marinas.
- (d) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.
- (e) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-2-55. Underground piping materials

- (a) All new underground product piping and ancillary equipment installed at a new facility or existing facility must have the following characteristics:
 - (1) Non-metallic;
 - (2) Double-walled;
 - (3) A tracer locator wire must be installed in all piping trenches; and
 - (4) Dispenser sumps must be installed and monitored with sensors as per 165:26-3-20.2.
 - (5) Piping transition sumps must be installed and monitored with sensors if the interstice area of connecting piping cannot be connected in an approved manner.

- (b) Existing facilities that are replacing the lesser of twenty feet (20') or fifty percent (50%) of underground piping must upgrade pursuant to (a) of this Section. If a metallic line fails due to structural failure or corrosion, all metallic product lines at the facility must be removed, and cannot be repaired.
- (c) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant to 165:25-3-6.29.
- (d) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.
- (e) Tracer locator wire is not required to be installed in existing piping trenches containing piping which otherwise meets the requirements in subsection (a) unless the trench is opened to repair, move, or replace the piping.
- (f) Existing facilities that are replacing aboveground storage tanks must replace all single walled piping per (a) of this section.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-56. Installation and monitoring requirements for piping [AMMENDED AND RENUMBERED TO 165:26-3-20.2]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended and renumbered to 165:26-3-20.2 at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-57. Commission-approved alternative methods [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-3-20.3 at 23 Ok Reg 2297, eff 7-1-06]

PART 7. VAULT REQUIREMENTS

165:26-2-71. Vaults

A vault is allowed above or below grade and must meet NFPA 30 and NFPA 30A requirements.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 34 Ok Reg 958, eff 9-11-17]

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. Dispensers

- (a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (b) Dispensing devices for Class I and Class II liquids must be listed.
 - (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD.
 - (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD for approval prior to installation.
- (c) A control must be provided that will permit the dispenser to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to

the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the dispenser when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A UL listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

(e) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 Fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a ten (10) micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a thirty (30) micron or smaller nominal pore-sized filter.

(f) Dispensers installed after August 27, 2015, that are connected to aboveground piping must have sumps underneath the dispensers and be monitored. Dispensers that cannot meet these requirements must be in a contained area such as a dike.

(g) New dispensers installed at motor fuel facilities must be located ten feet (10') or more from any building.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 30 Ok Reg 586, eff 7-1-13; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-91.1. Display on dispenser

(a) Every dispenser or delivery device regulated by the Commission used for sale of motor fuel to the public must legibly display the type of motor fuel offered for sale.

(b) Any motor fuel must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

[Source: Added at 37 Ok Reg 1143, eff 10-1-20]

165:26-2-92. Dispenser hose

(a) Listed hose assemblies must be used to dispense fuel.

(1) Hose length at facilities will not exceed eighteen feet (18') (5.5 m).

(2) Hose at retail and marina facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings.

(3) Hoses on dispensers that are connected to aboveground tanks within a fenced area may not exceed fifty feet (50') in length and must be secured, such as with a hose reel, to protect it from damage.

(b) If any defects are present, the defective hose must be immediately removed from service.

(c) At least once every thirty (30) days the hose must be completely extended and inspected.

(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined.

- (2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.
- (3) Hoses that show evidence of soft spots must be immediately removed.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-2-93. Nozzles

At any installation where the normal flow of product may be stopped other than by the hose nozzle valve such as at pre-pay stations, the system must include listed equipment with a feature that causes or requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser; or the hose nozzle valve must not be equipped with a latch-open device.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04]

PART 11. TANK FILLING PROCEDURES

165:26-2-111. Tank filling operation

A delivery vehicle must be separated from any aboveground tank by at least 25 ft. (7.6 m) if possible.

- (1) No minimum separation distance is required for tanks that are filled by gravity.
- (2) The required minimum separation distance will be reduced to 15 ft. (4.6 m) where the fuel being delivered is not a Class I liquid.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04]

PART 13. MISCELLANEOUS SAFETY PROVISIONS

165:26-2-131. Fencing

- (a) Tanks not enclosed in vaults must be enclosed with a chain link fence at least 6 ft. (2m) high. The fence must be separated from the tanks by at least 10 ft (3 m) and must have a gate that is secured against unauthorized entry.
- (b) The area within the fence must be kept free of vegetation, debris and any other material that is not necessary to the proper operation of the tank and piping system.
- (c) Tanks are not required to be enclosed within a fence if the property on which the tanks are located already has a perimeter security fence.
- (d) A fence may not be required if another method effectively restricts access to the tanks.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-132. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

- (1) WARNING.
- (2) It is unlawful and dangerous to dispense gasoline into unapproved containers.
- (3) No smoking.
- (4) Stop motor.
- (5) No filling of portable containers in or on a motor vehicle.

- (6) Place container on ground before filling.
- (b) If blended ethanol or biodiesel product is dispensed, an OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the dispenser from which a blended ethanol or biodiesel product is dispensed.
- (c) A sign or label must be displayed in a clear, conspicuous and prominent manner when two (2) different types of gasoline are being dispensed from a single hose, e.g., one hundred percent (100%) gasoline and ten percent (10%) ethanol blend gasoline. The sign must be displayed in close proximity to the one hundred percent (100%) gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of one hundred percent (100%) gasoline.
- (d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-2-133. Sources of ignition

- (a) Smoking materials, including but not limited to matches and lighters, must not be used within 20 ft. (6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.
- (b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.
- (c) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04]

165:26-2-134. Monitoring requirements [AMMENDED AND RENUMBERED TO 165:26-3-20.1]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended and renumbered to 165:26-3-20.1 at 23 Ok Reg 2297, eff 7-1-06]

PART 15. ELECTRICAL

165:26-2-151. Electrical requirements

- (a) All electrical work must be performed by a licensed electrician.
- (b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 30A and NFPA 70, National Electrical Code.
- (c) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency. The switch or circuit breaker must be a minimum of twenty feet (20') and not more than one hundred feet (100') away from dispensing devices.
- (d) Electrical equipment that was installed in compliance with an earlier state or national code will not require modification unless the equipment is hazardous to people or property.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 35 Ok Reg 1010, eff 10-1-18]

PART 17. INSTALLATION OF ABOVEGROUND STORAGE TANK SYSTEMS [REVOKED]

165:26-2-171. Aboveground storage tank system installation [AMMENDED AND RENUMBERED TO 165:26-2-8]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended and renumbered to 165:26-2-8 at 23 Ok Reg 2297, eff 7-1-06]

165:26-2-172. Compatibility [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-2-1.2 at 23 Ok Reg 2297, eff 7-1-06]

PART 19. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-191. Repairs to aboveground tank systems

Repairs to an aboveground storage tank system, excluding electrical work, must be performed by an AST Licensee. Routine maintenance such as painting and repairs to a product dispensing unit will not be considered repairs to the storage tank system.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15]

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

- (a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least fourteen(14) days prior to the removal or permanent closure of aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. If events require a change in the date of removal, the Division shall be given forty-eight (48) hours notice prior to the new date.
- (b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.
- (c) Tanks, lines and ancillary equipment must be removed upon closure unless a Commission order grants a variance.
- (d) An AST Licensee must remove aboveground storage tank systems.
- (e) Photos must be taken of tank(s), line(s), and soil at removal. In the event there is a hole in a tank or line, further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

[Source: Added at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-211. Compliance with removal and closure requirements

Owners and/or operators of aboveground storage tank systems that are temporarily taken out of service or permanently removed, must comply with all the requirements of this Part.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04]

165:26-2-212. Temporary removal from service

When an aboveground storage tank system is taken temporarily out of service, the owner or operator must:

- (1) Drain all fluid to less than one inch (1") of residue remaining in the tank.
- (2) Leave all vent lines open and functioning.
- (3) Cap and secure all other lines, pumps, manways and ancillary equipment.
- (4) Lock all fill caps.
- (5) Notify PSTD of a change in service on the prescribed form within thirty (30) days.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-212.1. Requirements for returning to service

- (a) All tanks out of service for more than twelve (12) months are required to be pressure and soap tested and test results submitted to PSTD before returning to service.
- (b) A tightness test must be performed by a certified tester and must be completed on the underground portion of out of service systems if more than twelve (12) months have elapsed since the last tightness test. Any system failure will require either closure or upgrade of the failed portion.
- (c) All systems out of service for more than twelve (12) months are required to meet all the requirements of this Chapter.
- (d) All underground storage tanks being used as aboveground storage tanks that have been out of service for more than twelve (12) months may not be returned to service.

[Source: Renumbered from 165:26-2-215 at 23 Ok Reg 2297, eff 7-1-06; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-213. Permanent closure

Owners and/or operators of aboveground storage tank systems who do not intend to use the tanks for fuel storage in the future must close the tank systems after they have been out of service for more than twelve (12) months by performing the following:

- (1) Empty, clean, purge and devaporize the tank of all flammable products.
- (2) Separate the piping from the tank. All underground piping and ancillary equipment must be removed unless a Commission order grants a variance.
- (3) Perform a site assessment pursuant to 165:26-2-214, "Assessing the site at tank closure or change in service".
- (4) An AST Licensee must be on site at all times during the removal of an aboveground storage tank and/or lines.
- (5) All UST's currently being used as AST's must be destroyed upon closure. A certificate of destruction must be included with the AST Closure Report and submitted to PSTD within forty-five (45) days of closure.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-2-214. Assessing the site at tank closure or change in service

- (a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. Please refer to the PSTD sampling document when choosing sample locations.
- (b) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.
- (c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with Chapter 29 of Commission rules.
- (d) Any sampling at closures must be conducted under the supervision of a Licensed Environmental Consultant.
- (e) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-2-215. Requirements for returning to service [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-2-212.1 at 23 Ok Reg 2297, eff 7-1-06]

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION [REVOKED]

165:26-3-1. Release prohibition [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-2. Release reporting [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-3. Release, investigation, and confirmation [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 3. RECORDKEEPING [REVOKED]

165:26-3-11. Availability of records [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-55 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-12. Repair records [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-56 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-13. Tank installation, closure and removal records [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-

57 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-14. Release detection and corrosion protection records [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-58 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-15. Spill and overflow records [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Renumbered to 165:26-1-59 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-16. Piping records [RENUMBERED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Renumbered to 165:26-1-60 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-17. Underground line tightness testing [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-1-48 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-18. Inventory records [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-1-61 at 23 Ok Reg 2297, eff 7-1-06]

PART 4. RELEASE DETECTION

165:26-3-19. General monitoring requirements

Tanks must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter.

[Source: Added at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-20. General release detection methods and devices

(a) Owners and operators of new and existing aboveground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

- (1) Capable of detecting a release of regulated substances from any portion of the aboveground storage tank system that routinely contains product.
- (2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.
- (3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.
- (4) Sampled, tested, or checked for a release at least once every 30 days.

(b) Owners and/or operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

(c) All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or per the manufacturer's recommendation, whichever is more frequent.

[Source: Added at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping

One of the following methods must be used:

(1) Visual Monitoring.

(A) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment area and product transfer area.

(B) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and identify poor maintenance, operating practices or malfunctioning equipment.

(C) Visual inspection of elevated tanks or tanks on concrete slabs.

(D) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank containment has a sound concrete floor.

(E) Visual inspections are not adequate where due to the nature of the aboveground storage tank and/or its secondary containment it cannot be determined whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment.

(F) An annual line tightness test performed by a certified tester may be used in lieu of thirty (30) day visual monitoring for aboveground product piping.

(2) Inventory Reconciliation. Product inventory control (or another test of equivalent performance) must be conducted at least every thirty (30) days to detect a release of at least one percent (1.0%) of flow-through plus 130 gallons on a thirty (30) day basis in the following manner:

(A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(D) Product dispensing is metered and recorded within an accuracy of six (6) cubic inches for every five (5) gallons of product withdrawn.

(E) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once every thirty (30) days.

(F) Use of the PSTD Inventory Reconciliation Form or an electronic equivalent is required.

(3) Interstitial Monitoring. Interstitial monitoring must be used for double walled aboveground storage tank systems. The sampling or testing method must detect a release at least every thirty (30) days in accordance with the manufacturer instructions through the inner wall in any portion of the tank

that routinely contains product

(4) Automatic tank gauging systems.

(A) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every thirty (30) days and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(B) Automatic tank gauging systems (ATG's) must be third party certified for the size and quantity of the tank. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

[Source: Amended and renumbered from 165:26-2-134 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-3-20.2. Installation and monitoring requirements for underground piping

Underground piping that routinely contains regulated substances must be installed and monitored for releases in a manner that meets the following requirements:

(1) Pressurized piping.

(A) Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have at least one (1) sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(C) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) Suction piping. New installations and facilities replacing a piping system must have at least one (1) sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(3) Methods of release detection for pressurized piping. Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

(A) Automatic mechanical line leak detectors and annual line tightness testing:

- (i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) psi line pressure within one (1) hour.
- (ii) An annual test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.
- (iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (iv) A hydrostatic line tightness test must be performed annually by a certified tester.

(B) Sump sensors with automatic line leak detectors

- (i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.
- (ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed/manually recorded and retained for each thirty (30) day period.
- (iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of a mechanical line leak detector and annual tightness test only if:

- (i) The system is capable of detecting and tests for a leak of three (3) gallons per hour before or after each operation of the submersible turbine pump; and
- (ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every thirty (30) days; and
- (iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and
- (iv) The system must be function tested annually by simulating a leak in accordance with manufacturer's specifications. If the system has printer capabilities, attach the electronic line leak detector printout documenting the system shutdown or alarm when tested.

(4) Methods of release detection for suction piping. Each method of release detection for underground suction piping must be performed in accordance with the following requirements.

(A) Sump Sensors

- (i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness

testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed/manually recorded and retained for each thirty (30) day period.

(B) Annual Line Tightness Testing. A hydrostatic line tightness test must be performed annually by a certified tester.

[Source: Amended and renumbered from 165:26-2-56 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18]

165:26-3-20.3. Commission-approved alternative methods [REVOKED]

[Source: Renumbered from 165:26-2-57 at 23 Ok Reg 2297, eff 7-1-06; Revoked at 25 Ok Reg 2187, eff 7-11-08]

PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS [REVOKED]

165:26-3-21. General spill and overfill prevention requirements [AMMENDED AND RENUMBERED TO 165:26-2-5.1]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended and renumbered to 165:26-2-5.1 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-22. Spill Prevention, Control and Countermeasure Plan [RENUMBERED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-2-32.1 at 23 Ok Reg 2297, eff 7-1-06]

PART 7. COMPATIBILITY [REVOKED]

165:26-3-31. Compatibility [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 8. INSTALLATION OF ABOVEGROUND STORAGE TANK SYSTEMS [REVOKED]

165:26-3-53. Aboveground storage tank installation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-3-54. Licensing procedure for aboveground storage tank installers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS [REVOKED]

165:26-3-55. Repairs to aboveground tank systems [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 11. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS [REVOKED]

165:26-3-61. Compliance with removal and closure requirements [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-3-62. Temporary removal from service [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-3-63. Permanent closure [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-3-63.1. Assessing the site at tank closure or change in service [REVOKED]

[Source: Added at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-3-63.2. Tank removal and closure records [REVOKED]

[Source: Added at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-64. Requirements for returning to service [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. CORRECTIVE ACTION REQUIREMENTS [REVOKED]

165:26-3-71. General applicability [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-71.1. Prescribed forms [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Amended at 15 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-72. Initial response [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-73. Initial abatement measures and site check [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-73.1. Initial site characterization and corrective action plan [REVOKED]

[Source: Added at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74. Tier 1 and Tier 1A ORBCA [REVOKED]

[Source: Added at 9 Ok Reg 3739, eff 8-27-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74.1. Free product removal [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 1-7-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74.2. Tier 2 and Tier 3 ORBCA [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74.3. Remedial action plan [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74.4. Closure of a case [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-74.5. Public participation [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Amended at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-75. Laboratory analysis [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-76. Use of Certified UST Consultants [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29 to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter. No person shall allow a confirmed or suspected release of regulated substances from an aboveground storage tank system to continue without reporting to PSTD or initiating an investigation within twenty-four (24) hours of discovery as required by this Chapter. Owners and operators of aboveground storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release reporting tab on PSTD's

webpage on the Commission website; by email at PSTReleaseReporting@occ.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must provide written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter. Events indicating a release include, but are not limited to, the following:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water) whether on-site or off-site.

(2) Any unusual operating conditions observed by owners, operators, their employees, or agents such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) In the case of inventory control, two (2) consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the inventory control results.

(4) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than twenty-five (25) gallons need not be reported to PSTD, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD electronically or by telephone within twenty-four (24) hours of discovery, by the owner, operator, employee, or agent, with a written confirmation to follow within twenty (20) days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than twenty-five (25) gallons.

(3) Any aboveground release of petroleum that is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for three (3) years following the date of the event.

(e) If any of the possible, probable or definite release conditions set forth in subsections (a) through (c) above are not reported within twenty-four (24) hours, the owner, operator, their employees, or agents may be subject to fines, Formal Enforcement Action and/or shutdown of operations.

(f) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405)

823-0994.

[Source: Renumbered from 165:26-3-191 at 23 Ok Reg 2297, eff 7-1-06; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 34 Ok Reg 958, eff 9-11-17; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

PART 15. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS [REVOKED]

165:26-3-80. Corrosion protection [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-2-40 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-81. Compliance with corrosion protection requirements and manufacturer's specifications [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-2-41 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-82. Frequency and criteria of inspections and tests [RENUMBERED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Renumbered to 165:26-2-42 at 23 Ok Reg 2297, eff 7-1-06]

165:26-3-83. Impressed current systems [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-3-84. Recordkeeping [REVOKED]

[Source: Added at 9 Ok Reg 3739, eff 8-27-92¹; Revoked at 17 Ok Reg 2875, eff 7-15-00]

*EDITOR'S NOTE:*¹ The text of this Section was originally published incorrectly at 9 Ok Reg 2719. The text originally published was different from the text approved by the Governor and the Legislature. The correct text was subsequently published at 9 Ok Reg 3739, effective 8-27-92.

165:26-3-85. Qualifications for conducting inspections and tests [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 17. RELEASE INVESTIGATION

165:26-3-171. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless PSTD staff specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD, using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners and/or operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners and/or operators must repair, remove or replace the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water

are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the AST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD Licensed Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg

(B) Groundwater - 10.0 mg/l

(5) TPH

(A) Native Soils - 50.0 mg/kg

(B) Groundwater - 2.0 mg/l

(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the discretion of PSTD.

(d) Within twenty (20) days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) through (c) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by PSTD, after

which corrective action may be required under the provisions of Chapter 29 of Commission rules.

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 31 Ok Reg 1010, eff 9-12-14; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18]

PART 19. RELEASE REPORTING REQUIREMENTS [REVOKED]

165:26-3-191. Release reporting [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-3-77 at 23 Ok Reg 2297, eff 7-1-06]

SUBCHAPTER 4. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS AND FORMAL ENFORCEMENT ACTIONS

PART 1. INSPECTIONS

165:26-4-1. Owner/operator cooperation

- (a) Owners and operators of regulated aboveground storage tank systems must cooperate with inspections, monitoring, sampling and testing requested by or conducted by PSTD.
- (b) Upon request of PSTD, owners and operators must, at all reasonable times:
- (1) Furnish information relating to the owners' or operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.
 - (2) Conduct monitoring or testing of storage tank facilities.
 - (3) Permit PSTD to have access to, and to review, inspect, and copy records relating to storage tank facilities.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-4-2. Authority of the Commission

The Commission has the responsibility and authority at any reasonable time to:

- (1) Enter any storage tank facility or other place where a storage tank system is located within the State.
- (2) Inspect and obtain samples from any facility of any regulated substances stored in the storage tank system.
- (3) Conduct monitoring or testing of the tanks, piping, associated equipment, contents, or the environment at regulated facilities and any location impacted or potentially impacted by a release at a regulated facility.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05]

165:26-4-3. Completion of inspections

All inspections, whether done by PSTD or ordered by the PSTD to be conducted by the owner or operator, must be started and completed with reasonable promptness, and the results submitted to PSTD consistent with the provisions of this Chapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-4-4. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-4-5. Inspection for compliance

(a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.

(b) These inspections may include, but not necessarily be limited to:

- (1) Records of installation.
- (2) Records of repair and retrofit operations.
- (3) Review of release containment practices.
- (4) Review of release detection practices.
- (5) Compliance with prior Commission orders to perform corrective action.
- (6) Records of removal and closure.

(c) In addition, PSTD may perform any other inspection, testing, sampling or monitoring which is necessary to ensure compliance with this Chapter and to protect property, human health and safety and the environment.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-4-6. Exception and Variances [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Revoked at 25 Ok Reg 2187, eff 7-11-08]

PART 3. PENALTIES [REVOKED]

165:26-4-10. Penalties [RENUMBERED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-4-21 at 23 Ok Reg 2297, eff 7-1-06]

PART 5. NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:26-4-15. Notices of Violation, Field Citations, and Formal Enforcement Actions

The purpose of this Section is to create a procedure that allows PSTD Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of Compliance and Inspection to issue Field Citation(s) or refer to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action for any violation(s) found during Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of an NOV or Field Citation will allow petroleum storage tank owners and operators to promptly address and correct the storage tank violation(s) before a Formal Enforcement Action is initiated.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-4-16. Notices of Violation

(a) When a PSTD Fuel Specialist finds a violation of any statute, rule, requirement, or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation ("NOV").

- (1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation, and advise that further PSTD enforcement action may occur if the violation is not corrected.
 - (2) At PSTD's discretion, serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.
 - (3) The NOV must explain what the offense is and how it can be corrected.
- (b) Notices of Violation will state the following information:
- (1) A clear description of the violation(s).
 - (2) A date by which the violation(s) must be corrected.
 - (3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.
- (c) NOV(s) are issued to the owner or operator of the storage tank facility. If the owner/operator is not present, NOV(s) can be given to store personnel.
- (d) All notifications and/or correspondence will be mailed or electronically submitted to the owner and/or operator.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-4-17. Re-inspection, Field Citation and Formal Enforcement Actions

- (a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.
- (b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:
 - (1) Refer the violation to the PSTD Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or
 - (2) Shut down the storage tank system pending correction of the problem or a hearing on the issue.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 33 Ok Reg 615, eff 8-25-16; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-4-18. Issuance of a Field Citation and payment of fine or hearing

- (a) The storage tank owner or operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.
- (b) The tank owner or operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.
 - (1) A fine may be paid with cash, a money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.
 - (2) Payment of the citation within the thirty (30) day time frame will not be considered an agreement or disagreement with the Field Citation.
- (c) If the storage tank owner or operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided on the Field Citation. If found in violation of PSTD rules at the time the Commission order is issued, the tank

owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.

(d) Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the storage tank system for failure to pay fines.

(e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement action.

(f) Any exceptions to the hearing may be made in accordance with OAC 165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 32 Ok Reg 794, eff 8-27-15; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

PART 7. PENALTIES

165:26-4-21. Penalties

(a) Pursuant to 17 O.S. § 311(A), any person who violates any of the provisions of this Chapter shall be liable for an administrative penalty or fine not to exceed \$10,000.00 for each day that the violation continues.

(b) If the person disagrees with the violation(s) listed in the Formal Enforcement Action, they may appear at the hearing at the Commission. If found in violation of PSTD rules at the time the Commission order is issued, the person must pay the amount of the fine, as well as an administrative cost of \$250.00.

[Source: Renumbered from 165:26-4-10 at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 35 Ok Reg 1010, eff 10-1-18; Amended at 36 Ok Reg 576, eff 8-1-19; Amended at 37 Ok Reg 1143, eff 10-1-20]

SUBCHAPTER 5. REQUIREMENTS FOR EXISTING ABOVEGROUND STORAGE TANKS SYSTEMS [REVOKED]

PART 1. PURPOSE AND DEFINITION [REVOKED]

165:26-5-1. Applicability [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-5-2. Tank upgrading requirements [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 13 Ok Reg 2413, eff 7-1-96]

165:26-5-3. Spill and overfill prevention requirements [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-5-4. Release detection methods and devices [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

SUBCHAPTER 6. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-6-1. Application

- (a) This Subchapter applies to aboveground storage tank systems for aircraft fuel at airports. A storage tank system consists of a stationary tank and the pipes, pumps and dispensers attached to it. This Chapter does not extend to aircraft fuel servicing vehicles.
- (b) Private airstrips are excluded from this Subchapter.
- (c) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-6-2. Timeframes for registration and compliance with rules

- (a) Stationary tanks greater than 110 gallons must be registered with PSTD.
- (b) Airport tank systems must come into full compliance with the rules of this Chapter and subchapters before July 1, 2009.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-6-3. Codes and standards

PSTD adopts NFPA 407, which serves as a basis for the standards in this Subchapter. A copy of NFPA 407 is available for inspection at PSTD during regular business hours.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-6-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-6-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-10. Maximum capacity for tanks

There is no maximum capacity for storage tanks at airports. Local jurisdictions may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-11. Emergency pressure release venting [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-13. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-14. Tank distance requirements

- (a) Existing aboveground storage tanks must be at least 100 feet from the edge of the runway;
- (b) Relocated or new tanks must be at least 200 feet from the edge of the runway.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-16. Collision barriers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-17. Spill and overflow prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-6-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-6-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. PIPING REQUIREMENTS

165:26-6-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-40. Aboveground piping at airports

- (a) Aboveground product piping must be metal and rated for the system working pressure or at least 125 psi (860 kPa), whichever is greater.
- (b) Flanged connections or approved couplings must be provided to avoid the need for cutting and welding where components are serviced or replaced. Gaskets in flanged connections must be of a material and design that resist fire exposure for a time comparable to the flange and bolts.
- (c) Piping must be adequately supported.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

PART 11. VAULT REQUIREMENTS [REVOKED]

165:26-6-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-6-50. Specific requirements for airport aboveground storage tank vent pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. DISPENSER REQUIREMENTS

165:26-6-60. Dispensers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-61. Dispenser hose

- (a) Aircraft fueling hose that is frequently used must be inspected before use each day.

- (1) The hose must be checked for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material, and for slippage, misalignment or leaks at couplings.

- (2) If coupling slippage or leaks are found, the cause of the problem must be determined.
- (b) Defective hoses must be immediately removed from service.
- (c) At least once each month the hose must be thoroughly inspected including:
 - (1) The hose couplings and the hose must be examined for a length approximately 12 in. (305 mm) adjacent to the couplings.
 - (2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.
 - (3) Hoses that show evidence of soft spots must be immediately removed from service.
 - (4) The nozzle screens must be examined for rubber particles. The presence of rubber particles indicates possible deterioration of the interior, and the hose must be immediately removed from service.
 - (5) A hose assembly that has been subjected to abuse, such as severe end-pull, flattening or crushing by a vehicle, or sharp bending or kinking, must be immediately removed from service.
 - (6) If inspection shows that a portion of a hose has been damaged, the hose must be immediately replaced. Two lengths of hose must not be coupled together.
 - (7) Before any hose assembly is placed in service, it must be visually inspected for evidence of damage or deterioration.
 - (8) Kinks or short loops in fueling hose must be avoided.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05]

165:26-6-62. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-63. Dispenser location at airports

- (a) Fueling hydrants, cabinets and pits must be located at least 50 ft (15.2 m) from any terminal building, hangar, service building, or enclosed passenger concourse (other than loading bridges).
- (b) Pumps must be located at or below ground level.
- (c) Relay pumping is not allowed.
- (d) Pumps installed outside of buildings must be located at least 5 ft. (1.5 m) from any building opening. They must be substantially anchored and protected against physical damage from collision.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-64. Specific requirements for airport dispensers

- (a) The valve that controls the flow of fuel to an aircraft must have a deadman control. The deadman control device must be arranged to accommodate the operational requirements. The fuel flow control valve must be one of the following:
 - (1) The hydrant pit valve.
 - (2) On the hose nozzle for overwing servicing.
- (b) Deadman controls must be designed to preclude defeating their intended purpose.
- (c) The deadman flow control in the nozzle may be used for overwing fueling.
 - (1) Notches or latches in the nozzle handle that could allow the valve to be locked open are prohibited.

- (2) Each overwing servicing nozzle must have a cable with a plug or clip for bonding to the aircraft.
- (3) Nozzles for underwing fueling must be designed to be attached securely to the aircraft adapter before the nozzle can be opened. It must not be possible to disengage the nozzle from the aircraft adapter until the nozzle is fully closed.
- (d) Fuel servicing pump mechanisms must be designed and arranged so that failure or seizure does not cause rupture of the pump housing, a tank, or of any component containing fuel. Fuel pressure must be controlled within the stress limits of the hose and plumbing by means of either an in-line pressure controller, a system pressure relief valve, or other suitable means. The working pressure of any system component must equal or exceed any pressure to which it could be subjected.
- (e) Listed or approved dispensing devices must be used.
- (f) Access to dispensing equipment must be controlled by means of mechanical or electronic devices designed to resist tampering and to prevent access or use by unauthorized persons.
- (g) Dispensing devices must have a listed or approved emergency shutoff valve, incorporating a fusible link or other thermally actuated device designed to close automatically in case of fire.
 - (1) This valve must also incorporate a shear section that automatically shuts off the flow of fuel due to severe impact.
 - (2) This valve must be rigidly mounted at the base of the dispenser in accordance with the manufacturer's instructions.
 - (3) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 17. TANK FILLING PROCEDURES

165:26-6-70. Tank filling operation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-71. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-72. Tightfill connection requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-73. Emergency controls

- (a) Each fuel system must have means for quickly and completely shutting off the flow of fuel in an emergency. This requirement is in addition to the requirement for a deadman control of fuel flow.
- (b) The emergency fuel shutoff system must include shutoff stations located outside of probable spill areas and near the route that normally is used to leave the spill area or to reach the fire extinguishers provided for the protection of the area.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 19. DISPENSING PROCEDURES

165:26-6-80. Dispensing fuel into aircraft

Aircraft being fueled from a stationary dispenser must be positioned so that aircraft fuel system vents or fuel tank openings are not closer than 25 ft. (8 m) from any terminal building, hangar, service building or enclosed passenger concourse other than a loading walkway. Aircraft being fueled must not be positioned so that the vent or tank openings are within 50 ft. (15 m) of any combustion and ventilation air-intake to any boiler, heater or incinerator room.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-81. Static protection and bonding

- (a) Dispensing devices or cabinets must be designed so that a proper bond between the aircraft and the fueling equipment can be established.
- (b) Conductive hose must be used to prevent electrostatic discharge but not to accomplish required bonding.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-6-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-86. Required signs

Entrances to fueling areas must be posted with signs that state:

- (1) No Smoking.
- (2) Shut engines off.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-88. Fire extinguishers

- (a) Extinguishers specified for protection of fuel servicing operations should be located along the fence, near dispensers or at emergency remote control stations of airport fixed-fuel systems.
- (b) Extinguishers should be located near but not in probable spill areas.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-6-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-6-95. Inventory records [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-6-96. Spill prevention control and countermeasure plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

**SUBCHAPTER 7. REQUIREMENTS FOR NEW ABOVEGROUND
STORAGE TANKS SYSTEMS [REVOKED]**

PART 1. DESIGN, CONSTRUCTION, AND INSTALLATION [REVOKED]

165:26-7-1. General standards [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-7-2. Construction and design standards for tank systems [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

**165:26-7-3. Construction and design standards for piping and ancillary
equipment [REVOKED]**

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

**165:26-7-4. Construction and design standards for the control of spillages and
releases [REVOKED]**

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

**165:26-7-5. Construction and design standards for physical and safety
protection [REVOKED]**

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 3. RELEASE DETECTION [REVOKED]

165:26-7-11. Tanks [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-7-12. Piping [REVOKED]

[Source: Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-7-13. Methods of release detection for piping [REVOKED]

[Source: Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-7-14. Testing or monitoring for vapors [REVOKED]

[Source: Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 21 Ok Reg 2079, eff 7-1-04]

**165:26-7-15. Testing and monitoring for liquids on the groundwater
[REVOKED]**

[Source: Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 21 Ok Reg 2079, eff 7-1-04]

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-8-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances kept in aboveground storage tanks at marinas.

(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-8-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons must be registered with PSTD. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 1, 2009. Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.

(b) All new underground piping at existing facilities must be installed in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-3-20.2, "Installation and monitoring requirements for underground piping."

(c) All dock or pier product piping from the shoreline to the dispensers at new facilities must be installed according to 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(d) All dock or pier product piping from the shoreline to the dispensers at existing facilities must be upgraded before the deadline date of July 1, 2009 according to 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(e) Temporary tanks may not be used at marinas.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-8-2.1. Release detection requirements for marinas

Monitoring requirements, at a minimum, must consist of an annual line tightness test conducted no later than April 1st of each year.

[Source: Added at 23 Ok Reg 144, eff 10-6-05 (emergency); Added at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-3. Codes and standards [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-8-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-10. Maximum capacity for tanks

Aboveground storage tanks storing gasoline and diesel fuel at an individual site must be limited to a maximum capacity of 12,000 gal. (45,600 L) and an aggregate capacity of 40,000 gal. (152,000 L). Local jurisdictions may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-11. Emergency pressure release [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-13. Location of aboveground storage tanks at marinas

(a) Tanks supplying marinas and pumps not integral with the dispensing device must be onshore.

(b) All new aboveground storage tanks located at marinas must be located above the flood stage level.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05]

165:26-8-14. Distance to be kept around tanks [REVOKED}

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-16. Collision barriers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-17. Spill and overflow prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-8-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-8-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. OVER-WATER PIPING REQUIREMENTS

165:26-8-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-40. Aboveground piping at marinas [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Revoked at 23 Ok Reg 144, eff 10-6-05 (emergency); Revoked at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-40.1. Over-water piping at marinas

(a) The design, fabrication, assembly, test, and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30 and NFPA 30A.

(b) The piping must be installed according to the manufacturers installation recommendations and instructions.

(c) Piping must be listed and approved by the manufacturer for aboveground installations.

[Source: Added at 23 Ok Reg 144, eff 10-6-05 (emergency); Added at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-40.2. Installation requirements for over-water piping

(a) Steel piping.

(1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping

enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.

(3) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.

(4) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(5) There must be a normally closed explosion proof solenoid valve with built-in pressure relief or a normally closed explosion proof solenoid valve and a pressure relief valve installed in each product line at the shoreline.

(6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.

(7) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

(b) Double walled piping.

(1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.

(2) All double walled piping installed above the water shall be enclosed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

(3) Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(4) Onshore piping must be rigidly anchored in place to prevent movement when water levels are elevated.

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured

at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(6) There must be a normally closed explosion proof solenoid valve with built-in pressure relief or a normally closed explosion proof solenoid valve and a pressure relief valve installed in each product line at the shoreline.

(7) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel. It must be installed so that it is accessible to the operator at all water levels.

(8) Containment sumps must be installed under all dispensers and monitored with sensors. If a pressure system is used all sump sensors must automatically control the electricity to both the solenoid valves and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.

(9) A transition sump must be rigidly anchored in place either on the dock or at the shoreline. The transition sump must contain the ball valve, solenoid valve, and emergency breakaway device. The transition sump must be either monitored with a sensor or a bypass tube must be used in order to divert a leak from the transition sump to the dispenser sump where it would be detected by a sensor.

[Source: Added at 23 Ok Reg 144, eff 10-6-05 (emergency); Added at 23 Ok Reg 2297, eff 7-1-06; Amended at 34 Ok Reg 958, eff 9-11-17]

165:26-8-41. Installation and monitoring requirements for piping [REVOKED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Revoked at 23 Ok Reg 144, eff 10-6-05 (emergency); Revoked at 23 Ok Reg 2297, eff 7-1-06]

PART 11. VAULT REQUIREMENTS [REVOKED]

165:26-8-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-50. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-8-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. DISPENSER REQUIREMENTS

165:26-8-60. Dispensers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-61. Dispenser hose

Listed hose assemblies must be used to dispense fuel. Where hose length exceeds 18 ft (5.5m), the hose shall be secured so as to protect it from damage, such as a hose reel, and in no case shall the hose exceed 50 ft (15m) in length.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-62. Nozzles

Dispensing nozzles used at marinas must be the automatic closing type. Hold-open latch devices from nozzles for marina service are not allowed.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 37 Ok Reg 1143, eff 10-1-20]

165:26-8-63. Dispenser location at marinas

Dispensing devices at marinas may be located on open piers, wharves, floating docks, shores or on piers of the solid-fill type, but must be located apart from other structures to provide room for safe ingress and egress of watercraft for fueling. Dispensing devices must be in all cases at least 20 ft. (6 m) from any activity involving fixed sources of ignition.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05]

165:26-8-64. Specific requirements for dispensers at marinas; maintenance

When maintenance of a Class I dispenser is necessary the following precautions must be taken before maintenance begins:

- (1) Only persons knowledgeable in performing the required maintenance can perform the work.
- (2) All electrical power to the dispenser, the dispensing pump, and all associated circuits must be shut off at the main electrical panel.
- (3) The emergency shutoff valve at the dispenser, if installed, must be closed.
- (4) All unauthorized persons are prohibited from coming within 20 ft (6 m) of the dispenser while the maintenance work is being done.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 17. TANK FILLING PROCEDURES [REVOKED]

165:26-8-70. Tank filling operation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-71. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-8-72. Tightfill connection requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-73. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 19. DISPENSING PROCEDURES

165:26-8-80. Attendants at marinas

(a) Marinas may have an attendant or supervisor on duty when the marina is open for business. The attendant's primary function will be to supervise, observe, and control the dispensing of fuels to insure that all safety requirements are met, and to insure that the waters of the state are not contaminated by fuel.

(b) At unattended marine facilities an emergency shut off device must be installed to meet the following requirements:

- (1) Installed between 20 to 100 feet from the fuel dispensing devices that they serve.
- (2) Device must shut down the fuel dispensing system in the event of an emergency.
- (3) Must be readily accessible to patrons.
- (4) Emergency instructions must be conspicuously posted.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-81. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-8-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-86. Required signs

All marinas must have a sign printed in ¼ to ½ inch text in black or red block capital letters on a white background conspicuously posted and easily readable from the dispensing area which says:

- (1) BEFORE FUELING:
 - (A) Stop all engines and auxiliaries.
 - (B) Shut off all electricity, open flames and heat sources.
 - (C) Check all bilges for fuel vapors.
 - (D) Extinguish all smoking materials.
 - (E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.
- (2) DURING FUELING:
 - (A) Maintain nozzle contact with the fill pipe.
 - (B) Wipe up spills immediately.
 - (C) Avoid overfilling.
 - (D) Fuel filling nozzle must be attended at all times.
- (3) AFTER FUELING:
 - (A) Inspect bilges for leakage and fuel odors.
 - (B) Ventilate until odors are gone.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06]

165:26-8-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-8-88. Fire extinguishers

- (a) Each marina must have a 40B:C fire extinguisher.
- (b) A minimum of three (3) extinguishers must be located at the fuel dock and one or more located so they will be within fifty feet (50') or fifteen meters (15 m) of each pump, dispenser, and underground fill pipe opening.
- (c) Piers which extend more than five hundred feet (500') or one hundred fifty-two meters (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.
- (d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 144, eff 10-6-05 (emergency); Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 36 Ok Reg 576, eff 8-1-19]

165:26-8-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-8-95. Inventory records [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-8-96. Spill Prevention Control and Countermeasure Plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

SUBCHAPTER 9. INSPECTIONS, FEES, AND PENALTIES [REVOKED]

PART 1. INSPECTIONS [REVOKED]

165:26-9-1. Owner/operator cooperation [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-9-2. Authority of the Commission [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-9-3. Completion of inspections [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-9-4. Recordkeeping [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-9-5. Inspection for compliance [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 3. FEES [REVOKED]

165:26-9-11. Fees [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 5. PENALTIES [REVOKED]

165:26-9-21. Penalties [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

PART 7. FIELD CITATION [REVOKED]

165:26-9-25. Field citations [REVOKED]

[Source: Added at 14 Ok Reg 2515, eff 7-1-97; Amended at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-1. Application

(a) This Subchapter applies to the storage, handling and use of all regulated substances which are kept in aboveground storage tanks, at facilities which engage in the retail sale of a Regulated Substance.

(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 26 Ok Reg 1831, eff 7-1-09]

165:26-10-2. Timeframes for registration and compliance with rules

(a) Tanks at retail facilities that are greater than 110 gallons must be registered with PSTD.

(b) Temporary tanks may not be used at retail facilities.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 24 Ok Reg 1479, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-10-3. Codes and standards [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-10-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-10. Maximum capacity for tanks

Aboveground storage tanks storing Class I and Class II liquids at an individual site must be limited to a maximum capacity of 12,000 gal. (45,600 L) and an aggregate capacity of 40,000 gal. (152,000 L). Other authorities having jurisdiction may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-11. Emergency pressure release [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-13. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-14. Distance to be kept around tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-16. Collision barriers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-17. Spill and overfill prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-10-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-10-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. PIPING REQUIREMENTS [REVOKED]

165:26-10-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-40. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 11. VAULT REQUIREMENTS [REVOKED]

165:26-10-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-10-50. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. DISPENSER REQUIREMENTS [REVOKED]

165:26-10-60. Dispensers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-61. Dispenser hose [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-62. Nozzles [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-63. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-64. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 17. TANK FILLING PROCEDURES [REVOKED]

165:26-10-70. Tank filling operation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-71. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-72. Tightfill connection requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-73. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 19. [RESERVED]

PART 21. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:26-10-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-86. Required signs [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-88. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-10-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-10-95. Inventory records [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-10-96. Spill Prevention Control and Countermeasure Plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

SUBCHAPTER 11. ADMINISTRATIVE PROVISIONS [REVOKED]

165:26-11-1. Hearings, orders and appeals [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-11-2. Changes to rules [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-11-3. Notices [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Amended at 12 Ok Reg 2057, eff 7-1-95; Revoked at 17 Ok Reg 2875, eff 7-15-00]

165:26-11-4. Severability [REVOKED]

[Source: Added at 9 Ok Reg 2719, eff 7-13-92; Revoked at 17 Ok Reg 2875, eff 7-15-00]

SUBCHAPTER 12. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel at fleet and commercial facilities which are kept in aboveground storage tanks, with an individual capacity of 2,100 gallons or more. Aboveground storage tanks with an individual capacity of less than 2,100 gallons are not subject to PSTD regulation, and may not access the Indemnity Fund in the event of a release from such aboveground storage tanks. Although PSTD does not regulate aboveground storage tanks with an individual capacity of less than 2,100 gallons, owners of such tanks should be aware they may be subject to regulation by other jurisdictions.

(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 24 Ok Reg 1479, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-12-2. Timeframes for registration and compliance with rules

(a) Tanks at fleet or commercial facilities with a capacity of 2,100 gallons or greater must be registered with PSTD.

(b) Temporary tanks may not be used at fleet and commercial facilities.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 24 Ok Reg 1479, eff 7-1-07; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-12-3. Codes and standards [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-12-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-10. Maximum capacity for tanks

Aboveground storage tanks storing Class I and Class II liquids at a fleet or commercial facility must be limited to a maximum capacity of 20,000 gal. (76,000 L) and an aggregate capacity of 80,000 gal. (304,000 L). Local jurisdictions may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-11. Emergency pressure release [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-13. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-14. Tank distance requirements

No minimum distance is required between the tanks and the dispenser. Local jurisdictions may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-16. Collision barriers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-17. Spill and overflow prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-12-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-12-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. PIPING REQUIREMENTS [REVOKED]

165:26-12-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-40. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 11. VAULT REQUIREMENTS [REVOKED]

165:26-12-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-12-50. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. DISPENSER REQUIREMENTS [REVOKED]

165:26-12-60. Dispensers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-61. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-62. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-63. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-64. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 17. TANK FILLING PROCEDURES [REVOKED]

165:26-12-70. Tank filling operation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-71. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-72. Tightfill connection requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-73. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 19. [RESERVED]
PART 21. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:26-12-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-86. Required signs [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-88. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-12-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-12-95. Inventory records [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-12-96. Spill Prevention Control and Countermeasure Plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

**SUBCHAPTER 14. REQUIREMENTS FOR ABOVEGROUND STORAGE
TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES**

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-14-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances at bulk plant facilities which are kept in aboveground storage tanks. Bulk plants built after July 15, 2000 must comply with this Chapter and Subchapter.

(b) Bulk plants, already in existence on July 15, 2000 will not be required to comply with these rules unless they pose a threat to property, people or the environment. If a safety or environmental threat does exist at a bulk plant, the owner will be required to correct the specific problem.

(c) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-14-2. Timeframes for registration and compliance with rules

(a) Tanks at bulk plants must be registered with PSTD. The tanks must come in compliance with the rules of this Subchapter before July 15, 2010. Compliance may be required sooner for any part of an existing bulk plant that poses a threat to property, people or the environment.

(b) Temporary tanks will not be allowed at bulk plant facilities.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08]

165:26-14-3. Codes and standards [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

165:26-14-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-10. Maximum capacity for tanks

There is no maximum capacity restriction on bulk plants. Local jurisdictions may have more stringent regulations.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-11. Emergency pressure release [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-13. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-14. Distance to be kept around tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-16. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-17. Spill and overflow prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-14-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-14-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. PIPING REQUIREMENTS [REVOKED]

165:26-14-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-40. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 11. VAULT REQUIREMENTS

165:26-14-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-14-50. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. DISPENSER REQUIREMENTS

165:26-14-60. Dispensers

Bulk plants which have, in addition to their distribution business, a facility for dispensing fuel directly into the fuel tanks of automobiles and trucks must comply with the dispenser requirements of retail facilities.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-61. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-62. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-63. Location of loading facilities

Tank vehicle and tank car loading and unloading facilities must be separated from aboveground tanks, warehouses, other plant buildings or the nearest line of adjoining property that can be built upon by a distance of at least 25 ft (7.6 m) for Class I liquids and at least 15 ft (4.6 m) for Class II and Class III liquids, measured from the nearest fill spout or transfer connection.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-64. Specific requirements for loading facilities

- (a) Loading and unloading facilities must be provided with drainage systems or other means to contain spills.
- (b) A loading or unloading facility that has a canopy or roof that does not limit the dissipation of heat or dispersion of flammable vapors and does not restrict fire-fighting access and control will be treated as an outdoor facility.
- (c) Loading and unloading facilities at bulk plants that are used to load motor fuel into tank vehicles through open domes must be provided with a means for electrically bonding to protect against static electricity hazards.
 - (1) It must consist of a metal wire that is permanently and electrically connected to the bulk plants fill pipe assembly or to some part of the bulk plants rack structure that is in electrical contact with the fill pipe assembly.

- (2) The free end of this wire must have a clamp for convenient attachment to some metallic part of the vehicle that is in electrical contact with the cargo tank of the tank vehicle.
- (3) All parts of the fill pipe assembly, including the drop tube, must form a continuous electrically conductive path.
- (d) Bulk plants where motor fuel or blending materials are loaded or unloaded through open domes of railroad tank cars must be protected against stray electrical current by permanently bonding the bulk plant's fill pipe and the individual storage tanks to at least one rail of the railroad.
- (e) Equipment such as piping, pumps, and meters used for the transfer of Class I liquids between storage tanks and the fill stem of the loading facility cannot be used for the transfer of Class II or Class III liquids.
 - (1) This provision does not apply to water-miscible liquid mixtures where the class of the mixture is determined by the concentration of liquid in water.
 - (2) This provision does not apply where the equipment is cleaned between transfers.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 17. TANK FILLING PROCEDURES

165:26-14-70. Tank filling operation

A delivery vehicle must be separated from any aboveground tank to which it is delivering fuel by at least 25 ft. (7.6 m) if possible.

- (1) No minimum separation distance is required for storage tanks that are filled by gravity.
- (2) The required minimum separation distance will be reduced to 15 ft. (4.6 m) where the fuel being delivered is not a Class I liquid.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-71. Switch loading

To prevent hazards due to a change in flash point of liquids, no tank or tank vehicle that has previously contained a Class I liquid may be loaded with a Class II or Class III liquid unless proper precautions are taken.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-72. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-73. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 19. DISPENSING PROCEDURES

165:26-14-80. Dispensing fuel into tank vehicles

Tank vehicles must be loaded and unloaded as follows:

- (1) Liquids can only be loaded into cargo tanks whose material of construction is compatible with the chemical characteristics of the liquid.

- (2) The liquid being loaded must also be chemically compatible with the liquid hauled on the previous load unless the cargo tank has been cleaned.
- (3) When transferring Class I liquids, engines of tank vehicles or motors of auxiliary or portable pumps must be shut down while making and breaking hose connections.
- (4) If loading or unloading is done without requiring the use of the motor of the tank vehicle, the vehicle's motor must be shut down throughout any transfer operations involving Class I liquids.
- (5) Filling through open domes into the tanks of tank vehicles must be by means of a downspout that extends to within 6 in. of the bottom of the tank.
- (6) When top loading a tank vehicle with Class I or Class II liquids without a vapor control system, valves used for the final control of flow must be of the self-closing type and must be manually held open except where automatic means are provided for shutting off the flow when the vehicle is full.
 - (A) Automatic shutoff systems must be provided with a manual shutoff valve located at a safe distance from the loading nozzle to stop the flow if the automatic system fails.
 - (B) When bottom loading a tank vehicle, a positive means must be provided for loading a predetermined quantity of liquid, together with a secondary automatic shutoff control to prevent overflow.
 - (C) The connecting components between the loading rack and the tank vehicle that are required to operate the secondary control must be functionally compatible.
 - (D) The connection between the liquid loading hose or pipe and the truck piping must be by a dry disconnect coupling.
- (7) When bottom loading a tank vehicle that is equipped for vapor control, but when vapor control is not used, the tank must be vented to the atmosphere, at a height not lower than the top of the cargo tank of the vehicle, to prevent pressurization of the tank. Connections to the facility's vapor control system must be designed to prevent the escape of vapor into the atmosphere when not connected to a tank vehicle.
- (8) When bottom loading is used, reduced flow rates (until the fill opening is submerged), splash deflectors or other devices must be used to prevent splashing and to minimize turbulence.
- (9) To allow for the relaxation of charge, metal or conductive objects, such as gauge tapes, sample containers and thermometers must not be lowered into a compartment while the compartment is being filled or immediately after pumping stops.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-81. Static protection and bonding

Before loading tank vehicles through open domes, a bonding connection must be made to the vehicle or tank before dome covers are raised and must remain in place until filling is completed and all dome covers have been closed and secured.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-14-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-86. Required signs

(a) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.

(b) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

(1) WARNING: It is unlawful and dangerous to dispense gasoline into unapproved containers.

(2) NO SMOKING.

(3) STOP MOTOR.

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-88. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-14-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-14-95. Inventory records [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-14-96. Spill Prevention Control and Countermeasure Plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS [REVOKED]

165:26-16-1. Application [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 31 Ok Reg 1010, eff 9-12-14; Revoked at 33 Ok Reg 615, eff 8-25-16]

165:26-16-2. Timeframes for registration and compliance with rules [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Amended at 23 Ok Reg 2297, eff 7-1-06; Amended at 25 Ok Reg 2187, eff 7-11-08; Amended at 31 Ok Reg 1010, eff 9-12-14; Revoked at 33 Ok Reg 615, eff 8-25-16]

165:26-16-3. Codes and standards [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-4. Local jurisdiction [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-5. Consultation of Petroleum Storage Tank Division [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS [REVOKED]

165:26-16-9. Approved tanks, tank design [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-10. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-11. Emergency pressure release [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-12. Aboveground storage tank spacing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-13. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-14. Distance to be kept around tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-15. Requirements on fill pipes [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-16. Collision barriers [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-17. Spill and overflow prevention [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-18. Corrosion protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 5. SECONDARY CONTAINMENT REQUIREMENTS [REVOKED]

165:26-16-25. Double-walled tanks [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-26. Secondary containment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 7. EQUIPMENT AND MATERIALS [REVOKED]

165:26-16-30. Aboveground storage tank piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-31. Electrical equipment [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 9. PIPING REQUIREMENTS [REVOKED]

165:26-16-35. Piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-36. Piping and gravity flow [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-37. Valves on piping [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-38. External piping protection [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-39. Underground piping materials [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Amended at 19 Ok Reg 1616, eff 6-13-02; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-40. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 11. VAULT REQUIREMENTS [REVOKED]

165:26-16-45. Vaults [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 13. VENTING AND VENTING SPECIFICATIONS [REVOKED]

165:26-16-50. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-51. Vent piping size [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-52. Vent piping height [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 15. [RESERVED]
PART 17. TANK FILLING PROCEDURES [REVOKED]

165:26-16-70. Tank filling operation [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-71. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-72. Tightfill connection requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-73. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

PART 19. [RESERVED]
PART 21. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:26-16-85. Fencing [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-86. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-87. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-88. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-89. Sources of ignition [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

165:26-16-90. Monitoring requirements [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

PART 23. RECORDKEEPING [REVOKED]

165:26-16-95. [RESERVED]

[Source: Reserved at 17 Ok Reg 2875, eff 7-15-00]

165:26-16-96. Spill Prevention Control and Countermeasure Plan [REVOKED]

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked at 21 Ok Reg 2079, eff 7-1-04]

SUBCHAPTER 18. FINANCIAL RESPONSIBILITY [REVOKED]

165:26-18-1. Applicability [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-36 at 23 Ok Reg 2297, eff 7-1-06]

165:26-18-3. Evidence of financial responsibility [RENUMBERED]

[Source: Added at 21 Ok Reg 2079, eff 7-1-04; Amended at 22 Ok Reg 1752, eff 7-1-05; Renumbered to 165:26-1-37 at 23 Ok Reg 2297, eff 7-1-06]

APPENDIX A. SOIL AND GROUNDWATER REMEDIATION INDEX [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 14 Ok Reg 2515, eff 7-1-97]

APPENDIX B. SOIL CLEANUP LEVELS [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 14 Ok Reg 2515, eff 7-1-97]

APPENDIX C. MEAN ANNUAL PRECIPITATION [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 14 Ok Reg 2515, eff 7-1-97]

APPENDIX D. HYDROLOGICALLY SENSITIVE AREAS [REVOKED]

[Source: Added at 12 Ok Reg 2057, eff 7-1-95; Revoked at 14 Ok Reg 2515, eff 7-1-97]

APPENDIX E. PRIORITIZATION INDEX [REVOKED]

[Source: Added at 14 Ok Reg 2515, eff 7-1-97; Revoked at 17 Ok Reg 2875, eff 7-15-00]

APPENDIX F. FIELD CITATION FINES [REVOKED]

[Source: Added at 14 Ok Reg 2515, eff 7-1-97; Revoked and reenacted at 15 Ok Reg 3020, eff 7-15-98; Revoked at 17 Ok Reg 2875, eff 7-15-00]

APPENDIX G. FIELD CITATIONS TABLE

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Source: Revoked and reenacted at 21 Ok Reg 2079, eff 7-1-04; Revoked and reenacted at 23 Ok Reg 2297, eff 7-1-06; Revoked and reenacted at 25 Ok Reg 2187, eff 7-11-08; Revoked and reenacted at 35 Ok Reg 1010, eff 10-1-18; Revoked and reenacted at 36 Ok Reg 576, eff 8-1-19; Revoked and reenacted at 37 Ok Reg 1143, eff 10-1-20]

APPENDIX H. SPACING (SHELL TO SHELL) BETWEEN ADJACENT TANKS

[Figure 1](#)

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

APPENDIX I. TOTAL CAPACITY OF VENTING DEVICES

[Figure 1](#)

[Source: Added at 17 Ok Reg 2875, eff 7-15-00]

APPENDIX J. TABLE ESTABLISHING PERMEABILITY RATES FOR SECONDARY CONTAINMENT

[Figure 1](#)

[Source: Added at 17 Ok Reg 2875, eff 7-15-00; Revoked and reenacted at 21 Ok Reg 2079, eff 7-1-04; Revoked and reenacted at 33 Ok Reg 615, eff 8-25-16]

CHAPTER 27. INDEMNITY FUND

[Authority: 17 O.S., §§ 52, 301, 306(12), 307, 322, and 342; 27A O.S., § 1-3-101]

[Source: Codified 6-25-92]

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-1. Purpose

The Indemnity Fund Program will provide reimbursement for corrective action performed of PSTD regulated pollution sites that have resulted from releases of petroleum from storage tank systems. The Indemnity Fund Program as a good steward of monies entrusted to it, will also prioritize cases to most effectively protect the public health, safety and welfare and minimize damage to the environment. In order to accomplish these purposes, the Indemnity Fund Program will reimburse allowable costs incurred for corrective action to eligible parties for eligible releases from eligible tank systems and advise, consult, cooperate with and assist other agencies of this state.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, and in Oklahoma Administrative Code (OAC) 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damage" means those damages to real and personal property directly related to corrective action performed on a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern" or **"COC"** means chemicals that may pose a threat to human health and the environment.

"Claim" or **"Claims"** means a properly submitted request for reimbursement from the Fund for an eligible suspicion of release ("SOR") or confirmed release case when the co-pay is paid.

"Closed case" means a petroleum release case for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund and the PSTD Technical Department deems no further corrective action is necessary.

"Commission" or **"OCC"** means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective action is required.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system.

"Electronic signature" means an electronic signature as defined in OAC 165:5-1-3.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Licensed Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by corrective action performed on a release of petroleum from a Commission regulated storage tank system.

"Modified eligibility" means the eligibility process for a suspicion of release ("SOR") case in which substantial compliance review is not required and the Indemnity Fund co-payment is paid upon closure of the SOR case. In the event the SOR case becomes a confirmed release case, a substantial compliance review is required and the statutory co-payment must be remitted within 30 days of the invoice date.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two (2) different tank system locations, are separated by time, or both.

"Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release, tank closure, violation of the Oklahoma Petroleum Storage Tank Consolidation Act, or a rule promulgated thereunder, or a requirement of the Commission. In the case of a storage tank system in service/use before November 8, 1984, but no longer in service/use on that date, the last person to operate the storage tank system immediately before the discontinuation of its service/use.

"Owner" means any person as set forth in 17 O.S. § 303(27), including the real property owner where the storage tank system is still present, the storage tank system presence is a trade fixture or improvement or both. It is not necessary that the real property owner sold, used, or stored regulated substances in, of, or from the storage tank system. However, a real property owner who has a storage tank system

located on their property that was taken out of service/use prior to November 8, 1984, is not considered to be a storage tank owner for any PSTD regulated purpose.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a delivery truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Recalcitrant owner" means an owner/operator who is responsible for a tank system and after notice will not adhere to a PSTD enabling statute, Commission rule, requirement or order.

"Reimbursement" means repayment of an approved claim to a qualified Claimant or Assignee, or for an Administrative Application, or payment of an approved claim submitted on behalf of a qualified Claimant for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"Work Plan" means a proposed scope of work submitted online to implement corrective action.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 34 Ok Reg 967, eff 9-11-17; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19; Amended at 37 Ok Reg 1155, eff 10-1-20]

165:27-1-3. Scope

This Chapter provides a basis that will allow the Indemnity Fund Program to define eligible persons, eligible releases, and eligible tank systems, allowable costs, methods, limitations of reimbursement, corrective action, completed work, and standards that will protect the public health, safety, welfare and the environment, and offers specific procedures for prompt and timely reimbursement of allowable costs to eligible persons.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-4. Authority

17 O.S. 2018, §§301 et seq. establishes the Oklahoma Petroleum Storage Tank Indemnity Fund.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-1-5. Citation of rules

This Chapter shall be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing the Petroleum Storage Tank Indemnity Fund and may be cited as Chapter 27 of Commission rules.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15]

165:27-1-6. Prescribed forms

Use of the online format established by PSTD is required.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 37 Ok Reg 1155, eff 10-1-20]

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

165:27-3-1. General requirements

In order to qualify for reimbursement from the Fund, a person must meet the following requirements:

- (1) The person must be an eligible storage tank owner or operator, property owner, adjacent property owner, or impacted party who has met applicable criteria for Fund reimbursement, to include Fund eligibility for an OCC confirmed release case, or a PSTD authorized Purchase Order for a Suspicion of Release, that does require modified eligibility. The Director of PSTD may make a formal administrative application without meeting eligibility criteria.
- (2) The claimant must have incurred eligible expenses for an eligible release from an eligible tank for which reimbursement is requested.
- (3) The claimant must submit properly completed forms, purchase orders, reports, and claims for reimbursement to the Fund in accordance with governing statutes, the rules of this Chapter, and OAC 165:25, 165:26, and 165:29 in a format established by PSTD. Failure to submit required paperwork within the required timeframe may result in an enforcement action.
- (4) The release of substances must be from an eligible tank system, either present, abandoned, or formerly present at the facility where the release occurred. It is the sole duty and responsibility of the Indemnity Fund applicant to establish to the satisfaction of the PSTD that a tank system is/was formerly present, and that the tank system contains/contained regulated substances.
- (5) If tanks were in service after November 8, 1984, the person who currently owns either the tank system or the property or both, where a tank system is located, is the eligible person regardless of the person never having sold, stored or otherwise owned or operated the storage tank system while the storage tank system contained regulated substances.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-3-2. Eligible person

An eligible person can be any of the following who has costs incurred as the result of a confirmed eligible release from a petroleum storage tank system, who has satisfied requirements for PSTD eligibility, and has been issued an Indemnity Fund Eligibility Letter by the PSTD Director.

- (1) An owner or operator of a storage tank system who fulfills the requirements of 17 O.S. § 327.3 and OAC 165:25 or OAC 165:26.
- (2) An owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or

- operated by the property owner and has no responsibility for the release.
- (3) A town or city which has obtained assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for purposes of investigation and remediation of abandoned tank sites where a release of regulated substances has occurred on the property where the tanks are or were located and/or on nearby property within the limits of a single town or city. In any case where an abandoned petroleum storage tank system has released regulated substances onto the property where tanks are located or onto nearby property, within the limits of a single town or city, the city or town may obtain assignments from the property owners to act in their stead as "eligible party" and/or be deemed an "eligible party" itself for the purpose of investigation and remediation of the site(s).
- (4) Adjacent property owner or impacted party.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-3-3. Eligible release [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Revoked at 22 Ok Reg 1775, eff 7-1-05]

165:27-3-4. Substantial compliance ¹ [TERMINATED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Terminated at 10 Ok Reg 4269, eff 6-9-93 ¹]

EDITOR'S NOTE: ¹Section 165:27-3-4 was disapproved in its entirety by Senate Bill 455 (Section 28), effective 6-9-93. See also related Editor's Notice published at 10 Ok Reg 4255.

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

- (1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed within the required timeframe in accordance with the standards, requirements, rules, and regulations of PSTD in a format established by PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted unless otherwise directed by PSTD.
- (2) The eligible person must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.
- (3) The eligible person must apply for reimbursement in a format established by PSTD, including a certified affidavit by a Licensed Environmental Consultant that the corrective action costs incurred are true and correct and that the Licensed Environmental Consultant supervised the corrective action performed accompanied with supporting documentation as set forth on the Purchase Order.
- (4) Investigation and remediation work must be supervised/performed by a Licensed Environmental Consultant. Reimbursement will be paid to the

eligible person unless the eligible person provides the Fund with a written "Assignment of Benefit" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project upon presentation of a reimbursement request form accompanied by an original invoice.

(5) Investigation and remediation costs expended prior to submission of a release report to the Commission, shall not be eligible for Indemnity Fund reimbursement.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18]

165:27-5-2. Application for reimbursement

An application for PSTD Eligibility on a confirmed release or a suspicion of release shall be made to the Administrator of the Indemnity Fund in a format established by PSTD and at a minimum include:

- (1) A properly completed "Indemnity Fund Application" with all requested information provided.
- (2) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.
- (3) Contract between Indemnity Fund applicant and Licensed Environmental Consultant.
- (4) Damage Statement or court filed petitions alleging damages from a release of regulated substances (if applicable).
- (5) Other Financial Mechanisms allowable besides the Indemnity Fund.
- (6) Information deemed sufficient by PSTD staff to substantiate a claim as an impacted party or adjacent property owner and a sworn statement that no other financial mechanisms were in place at the time of discovery of the release. The eligible person must submit any and all property insurance policies to the Indemnity Fund in place at time of the release.
- (7) Any other information requested by PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-5-3. Application for supplemental reimbursement

In order to be considered complete, a request for supplemental reimbursement shall be made in a format established by PSTD and at a minimum contain:

- (1) Supplemental Indemnity Fund reimbursement request.
- (2) Itemized original invoices, if requested by PSTD.
- (3) Any other information as may be required by the Fund.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 35 Ok Reg 1027, eff 10-1-18]

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

- (1) Reasonable, integral and necessary costs directly related to the corrective action. These costs may include but are not limited to such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, and for use of third party property, on a case by case basis, for corrective actions.
- (2) Backfill on active confirmed cases.
- (3) Suspicion of release, and other costs deemed investigatory in nature.
- (4) Costs that are reasonable, integral and necessary.
- (5) Third Party property damage costs and medical injury costs that have been paid by the eligible person as set forth in 17 O.S. § 327.3(I).
- (6) Reasonable, integral and necessary costs for any county, municipality or state agency imposed permit fees, disposal fees or other such fees that may be needed to further corrective actions.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-7-2. Reimbursement

(a) Among other requirements an eligible person for reimbursement is required to show:

- (1) Allowable costs were incurred on or after December 23, 1988.
- (2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.
- (3) The eligible person has fully cooperated with PSTD in responding to the release.

(b) The Petroleum Storage Tank Division will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system allowable costs in excess of one percent (1%) co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than the statutorily set limitations on reimbursement in 17 O.S. § 327.3.

(c) Indemnity Fund co-payments must be paid by the eligible person within thirty (30) days of invoice date. If the eligible person does not timely pay any Indemnity Fund co-payment within thirty (30) days of invoice date, then corrective actions will continue and the PSTD will seek cost recovery against the eligible person after the petroleum release case closes.

(d) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable, integral and necessary.

(e) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the Five Thousand Dollars (\$5,000.00) co-pay has been prepaid or a payment arrangement concerning the co-pay has been agreed to by PSTD and significant compliance with the payment agreement is achieved.

(f) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with unit cost pricing recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.

(g) All corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.

(h) All purchase orders, reports, and other required paperwork must be submitted within the required timeframe in a format established by PSTD.

(i) When the technology is available, payment of Indemnity Fund claims may be in the form of Electronic Funds Transfer ("EFT").

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 34 Ok Reg 967, eff 9-11-17; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-7-2.1. Limitations on Reimbursement [REVOKED]

[Source: Added at 22 Ok Reg 1775, eff 7-1-05; Revoked at 23 Ok Reg 1661, eff 7-1-06]

165:27-7-3. Limited reimbursement [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Revoked at 10 Ok Reg 2627, eff 6-25-93]

165:27-7-4. Cost recovery

(a) Cost recovery shall be initiated for all corrective action expenditures from either the Indemnity Fund, Oklahoma Leaking Underground Storage Tank Trust Fund ("LUST Trust Fund"), Oklahoma Leaking Underground Storage Tank Revolving Fund ("LUST Trust Revolving Fund"), or any combination thereof, through an administrative application with notice and hearing. The tank owner, operator or otherwise eligible person shall be assessed the total amount of corrective action costs, administrative and legal expenses, including attorney's fees. Upon issuance of a Commission order, the total amount assessed by order shall be due and payable and shall constitute a judgment lien of the Commission as provided by 17 O.S. § 6.

(b) LUST Trust Fund or LUST Trust Revolving Fund cost recoveries regarding an imminent threat to public health, safety, or the environment; or an unknown, unwilling, or unavailable owner, operator or otherwise eligible person, shall be upon issuance of a Commission order immediately reimbursable from the Indemnity Fund to the LUST Trust Revolving Fund. The Commission order shall establish the Indemnity Fund as the lien holder and shall include administrative and legal expenses. The amount reimbursable to the LUST Trust Revolving Fund will be for corrective action costs only.

[Source: Reserved at 9 Ok Reg 2315, eff 6-25-92; Added at 35 Ok Reg 1027, eff 10-1-18]

165:27-7-5. Methods for reimbursement [REVOKED]

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Revoked at 22 Ok Reg 1775, eff 7-1-05]

165:27-7-6. Conditions for reimbursement

(a) Action taken as a result of an eligible release, other than in an emergency, may be made by competitive bid of at least two (2) bidders. When a requirement for bidding is made by PSTD, all bids received shall be forwarded to PSTD and the bid results discussed between the eligible person, PSTD and the PSTD Licensed

Environmental Consultant. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one (1) site shall be awarded to the lowest or best bidder as determined by PSTD. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed Environmental Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.

(b) When current costing systems cannot accommodate specific situations, contracts awarded shall be to the lowest or best bidder. The Indemnity Fund Program requires review and approval of all competitive bid actions.

(c) The owner/eligible and Licensed Environmental Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These records include but are not limited to:

- (1) Corrective action plans.
- (2) Remedial action plans
- (3) Contracts and contract negotiations.
- (4) Accounts
- (5) Invoices
- (6) Sales tickets
- (7) Subcontractor invoices
- (8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.

(d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.

(e) Reimbursement shall be made by the Fund only for costs that PSTD determines were actually incurred, were reasonable, allowable and are integral and necessary towards the corrective action performed.

(f) An eligible person with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a ten percent (10%) interest.

(g) An eligible person shall provide application information that will enable the Fund to determine which reimbursement method to use.

(1) Initial, supplemental and final payments. An eligible person may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:

(A) Make application within two (2) years from the date of a closure letter issued by PSTD.

(B) Been determined to be eligible (eligible person, eligible release, eligible tank system) to access the Fund.

(2) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the case closure letter issued by the PSTD or the date the Final Claim Confirmation form is received by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

165:27-7-7. Exclusions from reimbursement

- (a) Tanks and/or systems owned or operated by the federal government are not eligible for reimbursement from the Fund.
- (b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.
- (c) No reimbursement shall be made by the Indemnity Fund to any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for the corrective action taken or to any person for the same cost.
- (d) No reimbursement shall be made for loss of time.
- (e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.
- (f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.
- (g) No reimbursement shall be made for attorney's or legal fees incurred by or rendered against an eligible person for any reason associated with the release case.
- (h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.
- (i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.
- (j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved in advance by the PSTD.
- (k) No reimbursement shall be made to an otherwise ineligible person, or for a release of regulated substances that cannot be tied back to an existing or former storage tank system, or for non-regulated petroleum storage tank system releases or releases of non-regulated substances.
- (l) No reimbursement for corrective action costs will be made for the portion of PSTD-regulated releases commingled with non-regulated substances.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 30 Ok Reg 589, eff 7-1-13; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-8. Withholding reimbursement

The Fund may withhold reimbursement payments in whole or in part if any of the following apply:

- (1) Offsetting charges.
- (2) Conflicting, duplicate or unclear assignments.
- (3) Subrogation of reimbursements.
- (4) Pending legal action pertaining to reimbursement or claims.
- (5) Clarification of possible third party payors.
- (6) Investigation or pending investigation of suspected illegal or improper activity.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-9. The Pre-Approval Program

- (a) The purpose of the Pre-Approval Program is to reduce, if not eliminate, disallowances of reimbursement for costs incurred and associated with corrective action, as well as to foster a spirit of cooperation between the Licensed

Environmental Consultant, PSTD and the eligible person.

(b) Parties are required to use either or both of the two (2) pre-approval processes developed by PSTD. These two (2) procedures are: Purchase Orders and Pay-For-Performance (PFP). These procedures document the agreement that all parties have reached and must comply with.

(c) An eligible person may opt out of the pre-approval program if they elect, in writing after consultation with the Administrator of the Indemnity Fund, not to participate in the pre-approval program and acknowledges in writing that the eligible person understands that all requests for reimbursement submitted without pre-approval will be subject to non-reimbursement of costs incurred which do not meet the statutory standards for reimbursement set forth in 17 O.S. §327.3 et seq.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions

(a) Emergency abatements must be reported according to PSTD rules and requirements. Reimbursement of costs incurred as a result of an emergency response are subject to Fund review, and a determination by the Indemnity Fund that there is sufficient information such costs are reasonable, integral, and necessary.

(b) If an emergency response has been declared by the PSTD, immediate action is required.

[Source: Added at 22 Ok Reg 1775, eff 7-1-05; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-10. Pay-For-Performance procedures

(a) Pay-For-Performance (PFP) Remediation Proposals are designed for pre-approval of work that is to be performed. Pay-For-Performances shall not be issued on work that has already been completed.

(b) Before a Pay-For-Performance (PFP) Remediation Proposal can be approved, a Remedial Action Plan which satisfies the criteria of OAC 165:29-3-80 must be approved by the PSTD.

(c) A Performance-based Remedial Action Plan must be submitted for review to the PSTD.

(d) The Performance-based Remedial Action Plan Proposal shall include the following information:

- (1) Chronologic summary of site work with type, amount, and location of the release.
- (2) General description of the site geology and hydrology with stratigraphic cross-section.
- (3) Tier I/IA and 2 (if needed) report summary with proposed contaminant clean-up levels
- (4) Description of the proposed remediation technology to be used.
- (5) Schematics showing remediation system layout and remediation equipment.
- (6) Description of performance monitoring methods and list of key monitoring wells.
- (7) Total site remediation cost, contract terms, payment schedule, contract time frame, and warranty period.
- (8) Base map with all well and soil boring locations.
- (9) Detailed facility map with current benzene and TPH groundwater and soil plume maps.

- (10) Detailed facility map with free product thickness, if present.
 - (11) Concentration maps of all other chemicals of concern that exceed Oklahoma Risk Based Corrective Action ("ORBCA") Site Specific Target Levels.
 - (12) The number of months that will be required to complete the remediation.
 - (13) The number of months that remediation will be warranted through continued operation in the event clean up levels have not been reached during the required clean up period.
 - (14) Other relevant information to explain the extent and type of the contamination, how the proposed performance based work plan will accomplish the clean up, types of monitoring to be used, and any risks that may be associated with the clean-up that should be addressed.
- (e) All costs associated with the Performance-based Proposal must be included in the Performance-based Remedial Action Plan submitted to the PSTD.
 - (f) Any change order or re-design costs will be part of the original Performance-based Work Plan unless otherwise stipulated in the PFP contract.
 - (g) Costs associated with the closing of the site may or may not be included in the PFP but will be discussed prior to the execution of the PFP.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 26 Ok Reg 1836, eff 7-1-09; Amended at 31 Ok Reg 1013, eff 9-12-14]

165:27-7-11. Purchase order procedures

- (a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders shall not be issued on work that has been completed without pre-approval.
 - (1) All purchase orders must use the appropriate standardized method for a particular scope of work.
 - (2) All purchase order requests must be submitted online within the required timeframe by the Licensed Environmental Consultant.
 - (3) All purchase order requests submitted will be reviewed and responded to within thirty (30) days.
 - (4) If the purchase order request is approved as submitted, the PSTD staff will notify the Licensed Environmental Consultant and eligible person with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.
 - (5) If the purchase order request is not approved as submitted, the PSTD staff will contact the Licensed Environmental Consultant or eligible person concerning the necessary changes required or will schedule a meeting, if needed.
 - (A) The Licensed Environmental Consultant will then make the agreed revisions and resubmit online the final purchase order to PSTD within the required timeframe.
 - (B) When PSTD staff recommends revisions to the purchase order request, the Licensed Environmental Consultant or eligible person will have thirty (30) days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or eligible person does not respond within thirty (30) days, the purchase proposal as originally submitted is void.

(C) Unless agreed upon by PSTD, the eligible person and the Licensed Environmental Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

(6) In the event the Licensed Environmental Consultant, eligible person, and PSTD cannot agree upon reasonable terms, the purchase order request shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. §327.3(C), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of PSTD.

(b) Change orders must be submitted prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the Technical staff, unless the total additional costs are less than five percent (5%) of the approved purchase order.

Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the Fund.

(c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full, required reports submitted within the required timeframe and approved by PSTD, before reimbursement is requested, unless other payment terms are pre-approved by the PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will contain:

(A) A copy of the approved purchase order (and change order, if applicable).

(B) Required documentation.

(d) Reimbursement claims on purchase orders will be paid within thirty (30) days of receipt.

(e) The Licensed Environmental Consultant, eligible person or both may make application for an Administrative Application for hearing to determine terms and conditions of purchase order approval.

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 31 Ok Reg 1013, eff 9-12-14; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 35 Ok Reg 1027, eff 10-1-18; Amended at 36 Ok Reg 593, eff 8-1-19]

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-1. Hearing, orders, and exceptions

(a) Hearings to enforce or exceptions to the provisions of this Chapter or PSTD enabling statutes shall be conducted in accordance with OAC 165:5.

(b) The Commission shall issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the public health and safety, and the environment.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 37 Ok Reg 1155, eff 10-1-20]

165:27-9-2. Changes to rules

The adoption of this Chapter shall not preclude the PSTD from subsequently altering, amending, or changing the rules in whole or in part in accordance with 75 O.S. § 250 et seq., of the Administrative Procedures Act.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 32 Ok Reg 805, eff 8-27-15; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-9-3. Notices

Any notices and documents required to be submitted to the Fund or PSTD shall be delivered or mailed to:

(1) Indemnity Fund mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(2) PSTD mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.

(3) Delivery address for Indemnity Fund and PSTD: Jim Thorpe Building, 2101 N. Lincoln Blvd., Room 480, Oklahoma City, Oklahoma 73105 (405) 521-4683.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92; Amended at 10 Ok Reg 2627, eff 6-25-93; Amended at 12 Ok Reg 2069, eff 7-1-95; Amended at 22 Ok Reg 1775, eff 7-1-05; Amended at 23 Ok Reg 1661, eff 7-1-06; Amended at 33 Ok Reg 624, eff 8-25-16; Amended at 36 Ok Reg 593, eff 8-1-19]

165:27-9-4. Severability

If any part of this Chapter is adjudged by a court of competent jurisdiction to be invalid for any reason or in any manner, the remainder of this Chapter shall not be affected and shall remain in full force and effect.

[Source: Added at 9 Ok Reg 2315, eff 6-25-92]

APPENDIX A. REQUEST FOR PURCHASE ORDER [REVOKED]

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Revoked at 31 Ok Reg 1013, eff 9-12-14]

APPENDIX B. REQUEST FOR ACCEPTANCE OF CHANGES IN APPROVED PURCHASE ORDERS [REVOKED]

[Source: Added at 15 Ok Reg 3033, eff 7-15-98; Revoked at 31 Ok Reg 1013, eff 9-12-14]

CHAPTER 28. STORAGE TANK ADVISORY COUNCIL [REVOKED]

[Authority: 17 O.S., § 340]

[Source: Codified 7-1-96]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

165:28-1-1. Purpose [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-2. Scope [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-3. Definitions [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-4. Description of Council [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-5. Administration [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-6. Meetings [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

165:28-1-7. Public forum procedures [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

SUBCHAPTER 3. RULEMAKING [REVOKED]

165:28-3-1. Rulemaking procedures [REVOKED]

[Source: Added at 13 Ok Reg 2415, eff 7-1-96; Revoked at 30 Ok Reg 592, eff 7-1-13]

CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

[Authority: 42 U.S.C. §6991 et seq.; 17 O.S., §§ 306(12), 307, 322, and 342]

[Source: Codified 6-26-00]

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND STATUTORY AUTHORITY

165:29-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive program for the regulation of petroleum storage tank systems in Oklahoma to prevent, contain, abate, and remove contamination harmful to the public health, safety, welfare and the environment.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 36 Ok Reg 598, eff 8-1-19]

165:29-1-2. Contents

This Chapter sets forth specific requirements for corrective action of releases including the investigation, site assessment, cleanup, public notice, and monitoring of systems.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 32 Ok Reg 811, eff 8-27-15]

165:29-1-3. Authority

(a) 42 U.S.C.A. § 6991 et seq., allows Oklahoma to apply for state program approval by the United States Environmental Protection Agency ("EPA"). EPA initially approved Oklahoma's petroleum storage tank program on August 12, 1992 and again on March 12, 2018.

(b) 17 O.S. § 305 authorizes the Commission to administer Subtitle I of Title VI of the Solid Waste Disposal Act (42 U.S.C.A. § 6901 et seq.).

(c) 17 O.S. § 306 requires the Commission to promulgate and enforce rules to carry out the provisions of the Oklahoma Petroleum Storage Tank Consolidation Act (17

O.S. § 301 et seq.).

(d) The Commission has jurisdiction over storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 36 Ok Reg 598, eff 8-1-19]

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"**ANSI**" means the American National Standards Institute.

"**API**" means the American Petroleum Institute.

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

"**Aboveground release**" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"**Agent**" means a person authorized by another to act on their behalf, either out of employment or contract.

"**Aquifer**" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"**Ancillary equipment**" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"**Backfill**" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"**Belowground release**" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"**Beneficial uses**" means a classification of the waters of the State, according to their best uses in the interest of the public.

"**Change in service**" means a change in the status of a storage tank (i.e., from currently in use to temporarily out of use); or change of regulated substance that a storage tank contains.

"**Chemicals of Concern**" or "**COC**" means chemicals that may pose a threat to human health and the environment.

"**Commission**" or "**OCC**" means the Oklahoma Corporation Commission.

"**Confirmed Release**" means a release of a regulated substance from a regulated storage tank system resulting in free product, contaminated soils or groundwater that exceed state action levels, organic vapor readings significantly above background levels, petroleum staining or odors or any other indication that a release has occurred that could be harmful to human health, safety or the environment and to which a PSTD case number is assigned and further corrective

action is required.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"EPA" means the United States Environmental Protection Agency.

"Electronic signature" means an electronic signature as defined by OAC 165:5-1-3.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a PSTD regulated substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Groundwater" means that part of water that is below the water table.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed Environmental Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division to perform corrective action.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one (1) occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes that the PSTD regulated substance occurred in two (2) different tank systems locations, are separated by time, or both.

"ORBCA" or **"Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division or Division.

"Permanent out of use" or **"POU"** means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means the substances as set forth in 17 O.S. § 303(31). It does not include 100% biodiesel, compressed natural gas, liquid natural gas, methanol, or propane.

"Pipe" or **"Piping"** means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).

(C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.

(D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or "RME" means the highest rate of exposure that has a small probability five percent (5%) of being exceeded.

"Reference Dose" or "RfD" means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas or propane.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" means a process or technique used to reduce concentration levels of chemicals of concern in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

"Reportable Quantity" or "RQ" means the amount of a PSTD regulated substance release required to be reported to appropriate federal, state, and/or local officials.

"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

"STI" means the Steel Tank Institute.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by regulated substance(s) above OCC action levels.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of PSTD regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Suspicion of Release" or "SOR" means preliminary investigative work to determine if a release of a regulated substance has occurred.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at one in a million (1E-06) and a Hazard Quotient of less than one (1.0).

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"UL" means Underwriter's Laboratory.

"Unsaturated zone" or "vadose zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 33 Ok Reg 626, eff 8-25-16; Amended at 34 Ok Reg 970, eff 9-11-17; Amended at 35 Ok Reg 1033, eff 10-1-18; Amended at 37 Ok Reg 1157, eff 10-1-20]

PART 5. SCOPE OF RULES

165:29-1-21. Overview of applicability and enforcement

This Chapter applies to the containment, control, abatement, and removal of releases of regulated substances from any petroleum storage tank system that causes pollution harmful to the public health, safety, welfare and the environment of the State of Oklahoma, regardless of whether the release occurs within or outside of the State.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 32 Ok Reg 811, eff 8-27-15]

PART 7. NATIONAL INDUSTRY CODES

165:29-1-31. Sources of standards

The standards referenced in this Chapter are available for inspection at the Petroleum Storage Tank Division offices during regular business hours and from the following sources:

- (1) American Petroleum Institute (API), 1220 L. Street, N.W., Washington, D.C. 20005-4070. Telephone (202) 682-8375.
- (2) National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, Texas 77218-8340. Telephone (281) 228-6200.
- (3) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. Telephone (800) 344-3555.
- (4) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585.
- (5) Underwriter's Laboratory (UL), 333 Pfingston Road, Northbrook, Illinois 60062-2096. Telephone (847) 272-8800, ext. 42612.
- (6) Petroleum Equipment Institute (PEI), P.O. Box 2380, Tulsa, Oklahoma 74101-2380. Telephone (918) 494-9696.
- (7) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60047. Telephone (847) 438-8265.
- (8) American Society of Mechanical Engineers (ASME/ANSI), 22 Law Drive, P.O. Box 2300, Fairfield, New Jersey 07007-2300. Telephone (800) 843-2763.
- (9) National Ground Water Association, 601 Dempsey Road, Westerville, Ohio 43081. Telephone (800) 551-7379.
- (10) United States Environmental Protection Agency
 - (A) National Service Center for Environmental Publications (NSCEP), Box 42419, Cincinnati, Ohio 45242. Telephone (800) 490-9198.
 - (B) Office of Underground Storage Tanks (OUST), 1200 Pennsylvania Avenue N.W., Mail Code 5401G, Washington, DC 20460. Telephone (800) 424-9346.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 34 Ok Reg 970, eff 9-11-17]

165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supercede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
 - (A) Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
 - (B) Standard Number 329, 2018, "Handling Releases of Flammable and Combustible Liquids and Gases."
 - (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
 - (D) Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."

- (E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards:
 - (A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems."
 - (B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."
 - (C) Recommended Practice 1604, R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition."
 - (D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks."
 - (E) Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."
 - (F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
 - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
 - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
 - (I) Publication 2200, 2015, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, 4th Edition."
 - (J) Publication 2015, 2018, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
- (3) National Association of Corrosion Engineers:
 - (A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
 - (B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
 - (C) Standard Number SP-0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."
- (4) Underwriter's Laboratory Standards:
 - (A) Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."
 - (B) Standard UL1316, Bulletin-2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures."
 - (C) Standard UL1746, Bulletin-2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."
 - (D) Standard UL567, 2014, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas."
- (5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."
- (6) PEI 1700 (2018 Edition), "Recommended Practices for the Closure of Underground Storage Tank and Shop-Fabricated Aboveground Storage Tank Systems."

(7) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006."

(8) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems."

(9) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."

(10) National Groundwater Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."

(11) American Society for Testing and Materials, ASTM Designation: E 1739-95 2015, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

(12) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 33 Ok Reg 626, eff 8-25-16; Amended at 34 Ok Reg 970, eff 9-11-17; Amended at 36 Ok Reg 598, eff 8-1-19; Amended at 37 Ok Reg 1157, eff 10-1-20]

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS [REVOKED]

165:29-1-41. General reporting requirements [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

165:29-1-42. Releases [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

165:29-1-43. Sampling, testing, and monitoring results [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

165:29-1-44. Corrective action [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-1. Release prohibition

The intentional release of regulated substances from a petroleum storage tank or system is absolutely prohibited. No person shall knowingly allow a confirmed or suspected release of regulated substances from a petroleum storage tank or system to continue without investigation as required by this Chapter. Owners, operators, their employees, or agents of petroleum storage tank systems, as well as persons who transport regulated substances must ensure that spills and overfills do not occur. The requirements of this Chapter apply to all confirmed and suspected releases.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-2. Release reporting

(a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.

(b) All petroleum storage tank system owners, operators, their agents and employees, or transporters must report to PSTD within twenty-four (24) hours of discovering any substances, conditions or monitoring results that indicate a release may have occurred using the link provided on the release reporting tab located on PSTD's webpage on the Commission website; by email at PSTReleaseReporting@occ.ok.gov; or by telephone at (405) 521-4683 or 1-888-621-5878. If after hours, or on weekends or holidays, call the PSTD emergency phone number at (405) 823-0994. Owners or operators must send written confirmation within twenty (20) days in accordance with the release investigation and confirmation requirements of this Subchapter. Events indicating a release include, but are not limited to, the following:

(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including, but not limited to, the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless the system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; for secondarily contained systems, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

(A) In the case of inventory control, two (2) consecutive thirty (30) day periods where the Total Gallons Over/Short is greater than the "Leak Check" (one percent (1%) of product sales plus 130 gallons) must be reported to PSTD within twenty-four (24) hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD by the owner, operator, or SIR provider within twenty-four (24) hours of discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within seven (7) days.

(C) An "Inconclusive" report from an SIR analysis must be reported by the SIR provider, owner or operator within twenty-four (24) hours of report generation. An Inconclusive means that the UST system has failed to meet leak detection requirements for that thirty (30) day period.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for

diesel storage tanks, must be reported to PSTD within twenty-four (24) hours by the owner, operator, their agents, or employees discovering the monitoring results. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within ten (10) days, the owner or operator must submit to PSTD all vapor monitoring well data, including background data, for the last twelve (12) thirty (30) day periods. Upon examination of the submitted data, PSTD will advise the owner or operator what action, if any, he or she needs to take. Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by thirty (30) day monitoring, even though below the twenty-four (24)-hour reporting level, must be reported if the increase does not correct itself in the second thirty (30) day period of monitoring and it must be reported to PSTD within twenty-four (24) hours of the owner, operator, their employees, or agents discovering the monitoring results.

(c) Monitoring results, including investigation of an alarm from a release detection method required by OAC 165:25 that indicate a release may have occurred, must be reported within twenty-four (24) hours of the owner or operator's receipt of them; and PSTD will advise what action should be taken to determine whether or not a release has occurred, unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;

(2) The leak is contained in the secondary containment and;

(A) Any liquid in the interstitial space not used as the interstitial monitoring method is immediately removed.

(B) Any defective system equipment or component is immediately repaired or replaced.

(3) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and nonreportable events listed in 165:29-3-2 of Commission rules sufficient to permit adequate inspection and review by PSTD. These records shall be kept in permanent form for three (3) years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within twenty-four (24) hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by PSTD. These records must be kept for three (3) years following the date of the event.

(f) While aboveground petroleum releases of less than twenty-five (25) gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately. All of the following releases must be reported to PSTD by email or telephone within twenty-four (24) hours of discovery, by the owner, operator, employee or agent, with a written confirmation to PSTD within twenty (20) days in

accordance with the requirements established in this Chapter:

- (1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.
 - (2) Any aboveground release of petroleum greater than twenty-five (25) gallons.
 - (3) Any aboveground release of petroleum which is less than twenty-five (25) gallons, but cannot be contained and cleaned up within twenty-four (24) hours.
- (g) Owners and operators must contain and immediately clean up any spill or overfill of regulated substances less than twenty-five (25) gallons within twenty-four (24) hours of incident occurrence. If the spill or overfill cannot be cleaned up within twenty-four (24) hours, is more than twenty-five (25) gallons, or it causes a sheen on nearby surface water, then owners and operators must report to the PSTD within twenty-four (24) hours and begin corrective action in accordance with Part 5 (Corrective Action Requirements) of this Chapter.
- (h) Any releases requiring emergency corrective action must be reported immediately to PSTD at (405) 521-4683 or 1-888-621-5878. After office hours, weekends or holidays, calls must be reported to PSTD's emergency number at (405) 823-0994.
- (i) If any of the possible, probable or definite release conditions above are not reported within twenty-four (24) hours, the owner/operator may be subject to enforcement action.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 30 Ok Reg 594, eff 7-1-13; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 33 Ok Reg 626, eff 8-25-16; Amended at 35 Ok Reg 1033, eff 10-1-18; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting

(a) **Duty to inspect for release.** Owners and operators of storage tanks must routinely inspect and conduct necessary testing of their storage tanks to prevent spilling, overfilling, or leaking from a storage tank system into the native environment. The owner or operator of a petroleum storage tank system must take the following steps or use other procedures approved by PSTD:

- (1) **System test.** Owners or operators must conduct petroleum storage tank system tightness tests and, if applicable containment testing, that will determine whether a release exists in the portion of the tank that routinely contains regulated substances and the attached delivery piping or a breach of either wall of the secondary containment has occurred. If the test results for the system, tank, delivery piping, or interstice indicate that a leak exists, the owner or operator must repair, remove, replace, or permanently closed as defined in OAC 165:25-2-135 the petroleum storage tank system, delivery piping, or interstice and begin a site check. Further investigation is not required if the test results for the system, tank, delivery piping, and interstice do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release. However, the owner or operator must conduct a site check as described in (B) below if the test results for the system, tank, delivery piping and interstice do not indicate that a release exists, but indicator chemical concentrations detected in soil or water are above action levels cited in (b) of this Section.

(2) **Site check.** The owner or operator must measure for the presence of a release where released regulated substances are most likely to be present at the petroleum storage tank system site. In selecting sample types, locations, depths and measurement methods, owners or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately five feet (5') from the outside of the petroleum storage tank system in native soil or another location approved by the PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles may be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the DEQ for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the petroleum storage tank system site confirm that a release has occurred, the owner or operator must begin the required corrective action in accordance with this Subchapter.

(B) If the test results for the native soil and/or groundwater or the petroleum storage tank system site do not indicate that a release has occurred, further investigation is not required.

(b) Confirmed release.

(1) When one or more of the following is present from a petroleum storage tank system, a release may be considered confirmed and a confirmed release case may be activated by PSTD staff.

(A) Free product.

(B) Contaminated groundwater and/or soil that exceed OCC action levels.

(C) Organic vapor readings above background levels.

(D) Actionable levels of petroleum staining or odors.

(E) Any other indication that a release from a regulated petroleum storage tank system has occurred that is harmful to human health, safety or the environment.

(2) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(A) Benzene

(i) Native Soils - 0.5 mg/kg

(ii) Groundwater - 0.005 mg/l

(B) Toluene

(i) Native Soils - 40.0 mg/kg

(ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene

(i) Native Soils - 15.0 mg/kg

(ii) Groundwater - 0.7 mg/l

(D) Xylene

(i) Native Soils - 200.0 mg/kg

(ii) Groundwater - 10.0 mg/l

(E) TPH

- (i) Native Soils - 50.0 mg/kg
- (ii) Groundwater - 2.0 mg/l
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 mg/kg may be required to confirm a case at the discretion of PSTD.

(c) **Suspected release.** When an owner, operator, or their agent has reason to believe that a release from a storage tank may have occurred, he or she must notify PSTD within twenty-four (24) hours and receive authorization from the Division prior to initiating any investigation for which subsequent payment from the Indemnity Fund may be sought.

(d) **Emergency suspected release.** Owners, operators, or their agent may begin investigation of suspected releases when the suspected release may cause immediate harm to the public health, safety, welfare or the environment. The Petroleum Storage Tank Division will approve and reimburse expenses for an investigation after it has been performed and prior to the issuance of a Suspicion of Release by the Petroleum Storage Tank Division when the owner or operator has reasonably acted upon the belief that the suspected release gave rise to the need for immediate emergency action. The determination of whether or not action was reasonable is within the discretion of PSTD.

(e) **Release reporting.** Within twenty (20) days after the reporting of a release, the owner or operator must submit a report to PSTD summarizing the steps taken under this Section and any resulting information. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in a format established by PSTD within the required timeframe, after which corrective action may be required under the provisions of this Chapter.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 31 Ok Reg 1022, eff 9-12-14; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 34 Ok Reg 970, eff 9-11-17; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-4. Activation of a case [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

PART 3. REMOVAL AND CLOSURE OF PETROLEUM STORAGE TANK SYSTEMS

165:29-3-65. Assessing the site at closure or change in service

(a) As directed by PSTD, backfill material that is removed when an underground storage tank or associated piping is removed from the subsurface may be tested for BTEX, TPH (GRO and/or DRO, whichever is appropriate) and total lead, if appropriate.

(b) As directed by PSTD excavated backfill material may be sampled at a rate of one composite sample (composed of 10 grab samples) per 50 cubic yards of material, which must be analyzed by a laboratory certified by DEQ.

(c) The consultant or tankowner may put excavated backfill back into the tankpit while waiting for sampling results, but if the backfill needs to be re-excavated and replaced with clean backfill, the re-excavation is not a reimbursable expense.

(d) After reviewing analytical results, PSTD will determine if concentrations of Chemicals of Concern are at levels that pose a threat to human health, safety and/or the environment, and should be removed. This decision will be based upon analytical levels and specific site conditions such as, but not limited to, lithology of

the tankpit walls and surrounding native soils, gradient and direction of groundwater flow, and potential receptor exposure to Chemicals of Concern.

(e) Contaminated backfill and tankpit water that poses a threat to human health and/or the environment as determined by PSTD must be removed from the site to a proper disposal site and replaced by clean backfill, or may be remediated above grade to concentrations below action levels or ORBCA-related cleanup levels.

(f) Expenses incurred in the removal and disposal (but not re-excavation, see (c) above) of contaminated backfill and tankpit water may be reimbursable by the Fund only with written or documented verbal pre-approval (i.e., confirmed by fax or email) from PSTD Technical staff. Reimbursement of eligible backfill disposal costs can only be paid when associated with an active, confirmed release case.

(g) Reimbursable backfill expenses identified in Section (f) above do not apply to new tank installations. If existing tanks are removed and replaced with new tanks, in order to ensure the efficacy of the cathodic protection, old backfill must be removed and new backfill must be placed in the tankpit. If the backfill is contaminated to the degree that it must be taken to a landfill, backfill removal and disposal costs are not reimbursable expenses.

(h) No soil, backfill material, or groundwater is to be removed from the site without prior PSTD approval and proper laboratory characterization unless otherwise directed by PSTD.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 32 Ok Reg 811, eff 8-27-15]

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception

- (a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in OAC 165:25 and 165:26.
- (b) All work associated with the assessment, characterization, investigation, remedial action, and closure from a release or suspected release of a regulated substance should be pre-approved by PSTD.
- (c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:
- (1) Report the release to PSTD using the link provided on the release reporting tab located on PSTD's webpage on the Commission website; by email at PSTReleaseReporting@occ.ok.gov; by telephone at 405-521-4683 or 1-888-621-5878; or fax to 405-521-4945. If after hours, or on weekends or holidays call the PSTD emergency number at 405-823-0994.
 - (2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.
 - (3) Identify and mitigate any fire, explosion, and vapor hazards.
 - (4) Remove free product to the extent practicable as determined by PSTD while continuing, as necessary, any actions required by this Subchapter.
- (d) Any corrective action work performed at a release site must have prior documented verbal or written approval by a member of PSTD staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work

associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 33 Ok Reg 626, eff 8-25-16; Amended at 36 Ok Reg 598, eff 8-1-19; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-3-72. Prescribed format

All reporting for investigating and corrective action requirements must be in accordance with a format established by PSTD.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-73. Initial response

Upon confirmation of a release or after a release from a petroleum storage tank system is identified in any other manner, the owner or operator must perform the following initial response actions within 24 hours of a release:

- (1) Report the release to the PSTD either by telephone, electronic mail, or facsimile.
- (2) Take and document immediate action to prevent any further release of the regulated substance into the environment.
- (3) Identify any fire, explosion, and vapor hazards and mitigate them immediately.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05]

165:29-3-74. Initial abatement measures and site check

(a) Unless directed to do otherwise by PSTD, the owner or operator must perform the following abatement measures:

- (1) Remove as much of the regulated substance from the leaking petroleum storage tank system as is necessary to prevent further release to the environment.
- (2) Visually inspect the petroleum storage tank system for any aboveground releases or exposed below-ground releases and prevent further migration of the released substance into surrounding soils and the waters of the state.
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the petroleum storage tank system excavation zone and entered into subsurface structures such as sewers or basements.
- (4) Remedy hazards posed by impacted soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. All remedies, including but not limited to treatment or disposal of soils, must comply with applicable state and local requirements where applicable.
- (5) Measure for the presence of a release where the released regulated substances are most likely to be present at the petroleum storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and/or operator must consider the nature of the stored substance, the type of

backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release. Unless directed to do otherwise by PSTD, the owner or operator must analyze for the Chemicals of Concern (COCs) using approved analytical methods. For sites where used oil is involved, as determined through TPH analysis, TCLP analysis for metals, semi-volatiles and volatiles may be required. The selected analytical method must be able to detect concentrations of Chemicals of Concern below action levels. In addition, if a release occurs from any PSTD regulated petroleum storage tank system that is contaminated or combined with a non-regulated substance, the cleanup requirements for that particular release will be determined by DEQ.

(6) Investigate to determine the presence and amount of free product.

(b) Within twenty (20) days after release confirmation, the owner or operator must submit a report to the PSTD in a format established by PSTD that summarizes the initial abatement steps taken and any resulting information or data, unless this report was required to be submitted under 165:29-3-3.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-75. Initial Site Characterization and Corrective Action Plan

(a) Unless otherwise directed by the PSTD, the owner or operator must assemble information about the site and the nature of the release, including information obtained while confirming the release or completing the abatement measures. The report must include, but is not necessarily limited to, the following:

(1) Data on the nature and estimated quantity of the release.

(2) Data from available sources and/or site investigations concerning the following factors:

(A) Surrounding populations.

(B) Water quality (regional).

(C) Use and approximate locations of water wells, basements, storm cellars, and all subsurface crawl spaces potentially affected by the release within 330 feet from the source, and any wellhead protection delineations.

(D) Subsurface soil conditions.

(E) Locations and depths of subsurface utilities and petroleum storage tank systems.

(F) Climatological conditions.

(G) Land use.

(H) Depth to and quality of groundwater (site-specific).

(I) Latitude and longitude of the center of the tankpit to the nearest second.

(3) Results of the site check and/or the closure site assessment required by 165:29-3-65.

(4) Results of the free product investigations.

(b) Within twenty (20) days of release confirmation or according to a schedule set by the PSTD, the owner or operator must submit the information collected in compliance with this Section to the PSTD, in a manner established by PSTD that demonstrates its applicability and technical adequacy.

(c) The owner or operator must submit a Corrective Action Plan (CAP) to the PSTD as a separate part of the report required in this Section, identifying a plan of action to:

- (1) Perform an ORBCA Tier 1A analysis to determine the need, if any, for remediation and/or additional ORBCA analyses.
 - (2) Monitor air, water, and soil.
 - (3) Remediate the release to such an extent that it no longer poses a threat to human health or safety or the environment.
- (d) On Tier 1A, Tier 2 and Tier 3 ORBCA, case prioritization will be established by the PSTD using the Storage Tank Prioritization Guidance Document.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-76. Tier 1A ORBCA

- (a) Unless otherwise directed by the PSTD, the owner or operator must compile information in order to assess the site using the Risk-Based Corrective Action (RBCA) process described in the ORBCA Guidance Document. (The ORBCA Guidance Document is available on the Commission website and at the offices of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.) The RBCA process must be implemented with a three (3) tiered approach that must involve an increase in the level of data collection and analysis from one tier to the next. Some conservative default parameters under the Initial Site Characterization Tier 1A process must be replaced with more site-specific parameters under the Tier 2 and Tier 3 process. PSTD will review the results and recommendations at the completion of the Tier 1A analysis and decide if a more site-specific tiered analysis is required by initiating a Tier 2 or Tier 3 process, or whether remedial action should be performed as provided for in this Subchapter.
- (b) PSTD will only accept and review reports, worksheets, checklists, closure reports or other relevant documents which incorporate the RBCA process, or any other acceptable risk analysis, from a Commission Licensed Environmental Consultant.
- (c) The RBCA Tier 1A process is as follows:
 - (1) Tier 1A: Non-site-specific risk-based screening method used to determine corrective action goals using limited site-specific data.
 - (A) Tier 1A establishes conservative cleanup goals called modified Risk-Based Screening Levels (RBSLs). Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the default Fate and Transport Parameters are indicated. The default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation. This evaluation must be performed using the models cited in Appendix C of the ORBCA Guidance Document. The modified RBSLs take into consideration regional characteristics, aesthetic criteria, and other appropriate standards such as Maximum Contaminant Levels (MCLs) for water. Tier 1A modified RBSLs are derived from standard exposure scenarios using current Reasonable Maximum Exposure (RME) toxicological parameters and conservative contaminant migration models. RBSL values are determined by the PSTD using one (1) in one million (1,000,000) as a Target Risk Limit for carcinogens and a Hazard Quotient (HQ) not greater than one (1.0) as a Target Risk Limit for non-carcinogens. One (1) in ten thousand (10,000) is the acceptable Target Risk Limit for

carcinogens for future potential receptors.

(B) The most likely Point of Exposure (POE) for current and potential future beneficial use of fresh groundwater should be determined. The concentration at this Point of Exposure for each Chemical of Concern (COC) must not exceed the Target Risk Limits cited in this Section.

(C) Unless otherwise directed by PSTD under Tier 1A the owner or operator must drill and install a minimum of four (4) two-inch (2") diameter monitoring wells outside of the UST pit or AST containment or product piping trench excavation zones. These wells must be located as follows:

(i) One (1) well must be installed in an apparent upgradient location to any known potential source at the site on or as close to the release as possible.

(ii) One (1) well must be installed in a location most likely to be contaminated.

(iii) One (1) well must be installed in a location that will allow the determination of an accurate groundwater gradient.

(iv) One (1) well must be installed in the direction of the nearest probable Point of Exposure either at the nearest property line or fifty feet (50') from the source of contamination, whichever is closer, or at another location as determined by PSTD. This well will be the Point of Compliance (POC) well for the Tier 1A evaluation unless there is a Point of Exposure nearer to the source of contamination, in which case the Point of Exposure will also become the Point of Compliance. The concentration for each Chemical of Concern in the Point of Compliance well should not exceed the Tier 1A standards as calculated using the ORBCA Guidance Document. If a drinking water supply well has been identified within 330 feet of the site, groundwater MtBE must be tested at the Point of Compliance. 0.020 mg/L will be considered the level of concern for MtBE and may require further assessment and corrective action.

(2) Tier 1A: Risk-Based Screening Level corrective action goals developed using limited site-specific data.

(A) This evaluation must be performed using the same models as those which are cited in Appendix C of the Guidance Document.

(B) Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the Tier 1A default Fate and Transport Parameters are indicated. The Tier 1A default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation.

(3) Within forty-five (45) days of release confirmation, or according to a schedule established by PSTD, the owner or operator must submit the information required in the Tier 1A evaluation as a report. This report must be submitted in the online format established by PSTD.

(d) PSTD may re-evaluate a Tier 1A analysis of a site, for the purpose of closure, on a case-by-case basis.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 31 Ok Reg 1022, eff 9-12-14; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 35 Ok Reg 1033, eff 10-1-18; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-3-77. Classification and prioritization [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

165:29-3-78. Free product removal

At sites where an investigation indicates the presence of free product, the owner or operator must notify the PSTD within twenty-four (24) hours that free product is located on site. The owner or operator must, as required by the PSTD as a result of the ORBCA tiered process, remove free product to the extent required by the PSTD while continuing, as necessary, any other actions required by this Subchapter. To meet the requirements of this Section, the owner or operator must, unless otherwise directed by the PSTD:

- (1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable state and federal regulations;
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (4) In the event free product is encountered in a utility trench, the owner or operator must advise the appropriate utility company and the PSTD of the presence of free product within twenty-four (24) hours of discovery.
- (5) Using the format specified by the PSTD, prepare and submit to the PSTD within forty-five (45) days after discovering free product, continuing thereafter at intervals specified by the PSTD, a Free Product Removal Report that provides at least the following information:
 - (A) The name of the person(s) responsible for implementing the free product removal measures.
 - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.
 - (C) The depth to free product and to groundwater in each monitor well.
 - (D) The type of free product recovery system used.
 - (E) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located.
 - (F) The type of treatment applied to and the effluent quality expected from any discharge.
 - (G) The steps that have been or are being taken to obtain necessary permits for any discharge.
 - (H) The disposition of the recovered free product and PSTD Disposal/Recycler Report.
 - (I) Any permits required by federal, state, or local agencies.
 - (J) The screened interval for each monitor well.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-79. Tier 2 and Tier 3 ORBCA

(a) Tier 2: Site-Specific Corrective Action Goals

(1) Under Tier 2, the owner or operator may be required to perform additional site investigation as determined by PSTD. The Tier 2 analysis is conducted in order to determine Site-Specific Target Levels (SSTLs) and appropriate Points of Compliance (POCs). Tier 2 analysis differs from the Tier 1A analysis in that some of the conservative default parameter assumptions of Tier 1A are replaced with site-specific data and the plume is redefined accordingly.

(2) Target Risk Limits remain the same.

(3) A report in compliance with the ORBCA Guidance Document must be submitted to the PSTD in accordance with a schedule and format required by PSTD.

(b) Tier 3: Enhanced Site-Specific Corrective Action Goals

(1) Where, in the determination of, PSTD, site or near-site conditions dictate more detailed site assessment, the owner or operator may be required to perform a risk analysis using probabilistic evaluations and sophisticated chemical fate and transport models. The extent of this additional site assessment and risk analysis model must be acceptable to the PSTD and must follow the ORBCA Guidance Document.

(2) Target Risk Limits remain the same.

(3) A report in compliance with the ORBCA Guidance Document must be submitted to PSTD in accordance with a schedule and format required by PSTD.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 35 Ok Reg 1033, eff 10-1-18]

165:29-3-80. Remedial Action Plan

(a) At any point after reviewing the information submitted, PSTD may require additional information or a Remedial Action Plan for contaminated soils and groundwater. If a plan is required, it must be submitted in the online format specified by PSTD.

(b) PSTD will approve a Remedial Action Plan only after the Licensed Environmental Consultant ensures that implementation of the plan will adequately protect human health, safety, and the environment as determined by using the process outlined in the ORBCA Guidance Document.

(c) As directed by PSTD, the owner or operator must implement the Remedial Action Plan, including any modifications to the plan made by PSTD. Implementation for the purposes of this Chapter means that the Remedial Action Plan approved by PSTD is fully operational and is performing the task for which it was designed.

(d) The owner or operator will be required to perform remediation and compliance monitoring as directed by PSTD.

(e) The owner or operator may, with verbal pre-approval documented by fax or email of PSTD staff, begin cleanup of soil and groundwater before the Remedial Action Plan is approved, provided that the owner or operator:

(1) Notify PSTD of the intention to begin cleanup at least seven days prior to initiating any cleanup action, unless it is an emergency.

- (2) Comply with any conditions imposed by PSTD, including halting cleanup or mitigating adverse consequences from cleanup activities.
- (3) Incorporate these self-initiated cleanup measures in the Remedial Action Plan or closure by risk assessment that is submitted to PSTD for approval.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-3-81. Property owners affected by releases; notice

(a) Upon confirmation that soil and/or groundwater contamination is above action levels, owners or operators must, at a minimum, notify adjacent or abutting property owners that have been, or may be impacted by the release. This notice should be made just after delineation of the release to Tier 2 clean-up levels or prior to a case closure based on Tier 1A modified RBSL's. The notice, unless otherwise directed by the PSTD, must include at a minimum:

- (1) The origin and extent of the release; impacted party, upon written request to owner/operator may receive reports;
- (2) The nature of the substance(s) released;
- (3) The name, address and telephone number of the owner or operator or his or her designee who may be contacted for more information about the release;
- (4) The phone number and name of the Project Environmental Analyst at the PSTD whom the property owner can contact for additional information.
- (5) If an adjacent or abutting property owner that has been or may be impacted by a release requests, in writing, copies of all reports, it is the responsibility of the owner/operator to assure past and future reports are delivered to the requesting property owner.

(b) For each confirmed release that requires remediation or closure by a risk assessment or Risk-Based Corrective Action, the owner or operator must notify property owners that have been or may be impacted by the release and provide:

- (1) The origin and extent of the release;
- (2) The nature of the substance(s) released;
- (3) A description of any planned remedial action or closure based upon a risk assessment of the release;
- (4) The name, address and telephone number of the owner or operator or his or her designee and of the PSTD Project Environmental Analyst working on the case who may be contacted for more information about the release, including any planned response action; and
- (5) A statement that additional information about the release, including any planned response action, is on file with the PSTD and available for public review.

(c) The notices required by this Section must be given by certified mail/return receipt requested. Copies of the return receipts must be included in the Public Participation Report submitted to the PSTD.

(d) The PSTD must ensure that any and all information concerning the release is made available to the public for review upon request.

(e) Before approving a remediation plan or closure based upon risk assessment, the PSTD may hold a public meeting to consider comments on the proposed remediation plan or closure if there is sufficient public interest, or for any other reasons. If no comments have been received within thirty (30) days of the receipt date of the certified mail notice letters required by paragraph (c) of this Section,

then remediation or closure activities may commence. Any public comments related to the proposed remediation or case closure must be submitted in writing to the OCC to the attention of the PSTD Project Environmental Analyst working on this case, whose name and address will be on the notice letter.

- (f) The notice required by this Section must also be given;
- (1) after implementation of an approved Remedial Action Plan that does not achieve the cleanup levels established in the plan, and
 - (2) when termination of the plan is subsequently approved by the PSTD.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 30 Ok Reg 594, eff 7-1-13; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-3-82. Closure of a case

- (a) Closure occurs when PSTD has determined that the appropriate cleanup levels have been achieved for both BTEX and TPH and monitored as remaining below the cleanup level for a period of time as directed by PSTD, or when PSTD has determined the case is eligible for closure under Risk-Based Corrective Action.
- (b) Upon approval of the request for case closure or as directed by PSTD, the owner or operator must submit a final closure report on a form specified by PSTD and certified by the Licensed Environmental Consultant which provides evidence of proper decommissioning of equipment and corrective action materials.
- (c) All residual waste soil and/or fluid drums generated during case closure activities, or that remain on-site from prior case investigation activities, must be disposed of as part of case closure work and evidence of disposal of such drums documented in the final closure report. The final closure report will not be approved until all residual wastes have been disposed of.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 33 Ok Reg 626, eff 8-25-16]

165:29-3-83. Laboratory analysis

- (a) All samples required to be collected and analyzed pursuant to this Chapter must be analyzed by a DEQ certified laboratory.
- (b) The Total Petroleum Hydrocarbon (TPH) Lab Methodology EPA 418.1 will not be accepted for Part 5 of this Subchapter.
- (c) When air sampling is required inside any structure or vapor monitoring well, the sampling and the method(s) used must be pre-approved in writing by PSTD.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05]

PART 7. LICENSING PROCEDURES FOR ENVIRONMENTAL CONSULTANTS

165:29-3-90. Licensing for Environmental Consultants involved with closures and/or corrective action of releases from underground or aboveground storage tanks

- (a) Any individual seeking a license as an Environmental Consultant involved with closures, and/or corrective action of releases from either underground or aboveground storage tank sites must complete an application form prepared by PSTD. The application form requires information regarding education, experience, knowledge of applicable state and federal regulations, industry standards and practices and references.

- (b) All applicants must qualify in the following manner:
- (1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) forty (40) hour course with eight (8) hour annual updates and the eight (8) hour supervisor course; must provide evidence of the successful completion of a PSTD approved Risk-Based Corrective Action course, seminar or school. At a minimum this course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment; eight (8) hours of which must be hands-on computer training with appropriate software; and
 - (2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations; or
 - (3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities, and pass an examination approved by the PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months.
- (c) Licensed Environmental Consultants are required to pay fees for applications, examinations, and certifications prior to examination and license issuance as set forth in OAC 165:5.
- (d) Licensed Environmental Consultants must provide proof of attending (online or in-class) eight (8) hours of PSTD approved continuing professional education courses, classes, seminars or conferences to PSTD every year. Licensees may request to rollover a maximum of eight (8) credit hours from the current year to satisfy the following year's continuing education requirements. Approval of any rollover hours will be at the discretion of PSTD after evaluating the class, conference, course, or seminar. Licensees must also provide proof of attending eight (8) hours of HAZWOPER Refresher class updates every year.
- (e) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by PSTD must be under the supervision of a Licensed Environmental Consultant. All work requiring supervision by Licensed Environmental Consultants must contain a verification statement signed by the consultant in supervisory control.
- (f) Licensed Environmental Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.

[Source: Added at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Amended at 26 Ok Reg 1841, eff 7-1-09; Amended at 30 Ok Reg 594, eff 7-1-13; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 35 Ok Reg 1033, eff 10-1-18; Amended at 36 Ok Reg 598, eff 8-1-19]

165:29-3-91. Licensee disciplinary action procedure

A license issued by PSTD is a designation of competence to the public in the area of licensee expertise. PSTD is not limited to, but may use the following disciplinary action for PSTD licensees:

- (1) **Informal reprimand.** The Manager of the appropriate PSTD department will call offending licensee for an informal discussion addressing the recent infraction and place a memo in the licensee's file documenting the discussion and nature of the violation.
- (2) **Formal reprimand.** The Manager of the appropriate PSTD department will prepare a letter of reprimand to the licensee addressing the offense. The letter of reprimand will provide the licensee an opportunity to formally dispute alleged violation(s). The reprimand letter, licensee's response, all recourse actions following licensee rebuttal, if any, and the Manager's final decision(s) will be placed in the licensee's file and maintained by PSTD.
- (3) **License suspension, revocation and/or refusal to renew a license.** If the Director elects to pursue suspension, revocation, or refusal to renew, a notice of such action will be sent to the licensee by certified mail/return receipt requested. The notice will state the date and time of the hearing scheduled before an Administrative Law Judge.

[Source: Added at 36 Ok Reg 598, eff 8-1-19]

165:29-3-92. License penalties

(a) PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license of, or reprimand, any Licensed Environmental Consultant who is found in violation of:

- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
- (2) Reckless or willful disregard, incompetence or misconduct in work performed pursuant to this Chapter.
- (3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients.
- (4) Aiding or assisting another person in violating any provision of this Chapter.
- (5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.
- (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
- (7) Failure to comply with this Chapter, OAC 165:25, 165:26, 165:27, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.).
- (8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.

(b) Failure to submit required PSTD paperwork, test results, and/or reports in the online format established by PSTD within the required timeframe may result in enforcement action.

(c) Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.

(d) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.

[Source: Added at 36 Ok Reg 598, eff 8-1-19; Amended at 37 Ok Reg 1157, eff 10-1-20]

SUBCHAPTER 5. ADMINISTRATIVE PROVISIONS

165:29-5-1. Hearings, orders and exceptions

(a) Hearings to enforce or exceptions to the provisions of this Chapter will be conducted in accordance with OAC 165:5.

(b) The Commission will issue orders after notice and hearing as necessary to enforce the provisions of this Chapter or PSTD enabling statutes to protect property, the public health, and safety, and the environment.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 32 Ok Reg 811, eff 8-27-15; Amended at 37 Ok Reg 1157, eff 10-1-20]

165:29-5-2. Changes to rules [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Revoked at 18 Ok Reg 1085, eff 5-11-01]

165:29-5-3. Notices [REVOKED]

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01; Amended at 22 Ok Reg 1785, eff 7-1-05; Revoked at 32 Ok Reg 811, eff 8-27-15]

165:29-5-4. Severability

If any part of this Chapter is adjudged by a court of competent jurisdiction to be invalid for any reason or in any manner, the remainder of this Chapter will not be affected and will remain in full force and effect.

[Source: Added at 17 Ok Reg 2317, eff 6-26-00; Amended at 18 Ok Reg 1085, eff 5-11-01]

CHAPTER 30. MOTOR CARRIERS, PRIVATE CARRIERS AND TRANSPORTATION NETWORK COMPANIES

Editor's Note: Effective 4-24-00, the Corporation Commission was given the authority to "promulgate rules to administer a hazardous waste transportation registration and permitting program for motor carriers engaged in transporting hazardous waste . . ." [Laws 2000, c. 130, § 3]. As a result, the Department of Environmental Quality revoked related sections 252:205-7-1, 252:205-7-3, and 252:205-21-3 by emergency action on 1-2-01 and permanent action on 6-1-01, and the Corporation Commission promulgated numerous revisions and additions to this Chapter 30 by emergency action on 10-11-00 and permanent action on 7-1-01. For additional information, see Laws 2000, c. 130.

[Authority: OKLA. CONST. Art IX, §§ 18, 19; 17 O.S., § 40; 47 O.S., §§ 161 through 230.34b, 966, 1013, 1106 and 1166 through 1170]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:30-1-1. Purpose

The public policy of this State, as declared by the Legislature, requires that motor carriers and private carriers, except as provided in this Chapter, should be regulated by the Oklahoma Corporation Commission, hereinafter referred to as the Commission, to protect the public interest, the environment and the highways of the state of Oklahoma and ensure compliance with applicable safety rules and

regulations. The public policy of this State, as further declared by the Legislature, requires that motor carriers of household goods be regulated by the Commission in such manner as to establish standards for public safety, fair competitive practices, adequate and dependable service and protection of shippers from deceptive or unfair practices. The public policy of this State, as further declared by the Legislature, requires that transportation network companies be regulated by the Commission in such a manner as to implement and enforce public safety standards and insurance requirements as required by statute. The rules in this Chapter are intended to implement that public policy and to carry out the Commission's statutory duty of regulation in the public interest. In case of doubt as to the meaning of any language of the rules in this Chapter, that construction should be adopted which is consistent with the Constitution and Statutes of Oklahoma.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Added at 26 Ok Reg 2947, eff 6-22-09 (emergency); Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq., the Oklahoma Transportation Network Company Services Act and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"110% rule" means the household goods carrier must deliver the shipper's goods once the shipper pays 110% of the estimated or agreed upon charges.

"Alliance" means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state, local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

"Accessorial services" means services provided by an intrastate motor carrier of household goods at the request of a shipper that may be in addition to the actual transportation of the household goods. Examples of accessorial services are packing, unpacking, appliance servicing, loading/unloading of large items (such as a piano), climbing/descending stairs, demurrage, etc.

"Audit" means an examination of records, source documents and any other information supporting a regulated entity's application or return; or a review performed by staff as a result of a complaint or prior enforcement actions taken.

"Authority" means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations, fuel licenses or permits, or TNC permits.

"Base state" means the state selected by a motor carrier according to the procedures established by a uniform program

"Binding estimate" means a written agreement made in advance between the intrastate household goods carrier and the shipper which guarantees the total cost of the transportation of the household goods based upon the quantities and services shown on the estimate.

"CFR" means the Code of Federal Regulations.

"Consignee" means the person or place shown on the shipping documentation as the location to which a carrier is directed to deliver a shipment.

"Consignor" means the person who offers goods for shipment.

"Commission" means the Oklahoma Corporation Commission.

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or

indirectly one hundred percent (100%) interest.

"Deleterious substance" means any chemical, salt water, oilfield brine, waste oil, waste emulsified oil, basic sediment, mud or injurious substances produced or used in the drilling, development, production, transportation, refining and processing of oil, gas and/or brine mining.

"Environmental restoration" means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

"Exceeding authority" means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"For-hire motor carrier" means a person operating upon any public highway engaged in the transportation of property or passengers for compensation or consideration or for commercial purposes.

"Gross Combination Weight Rating" (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross Vehicle Weight" (GVW) means the registered weight of the vehicle or any lawful registered combination weight (Gross Combination Weight or GCW).

"Gross Vehicle Weight Rating" (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

"Harvest permit" means a document issued by the Commission to a motor carrier engaging in the commercial transportation of farm products in a raw state. A harvest permit encompasses vehicle registration, fuel permit and intrastate operating authority requirements of the State of Oklahoma.

"Hazardous waste" means any material that is subject to the "Hazardous Waste Manifest Requirements" of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

"Hazardous waste permit" means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

"HMTUSA" means the Hazardous Materials Transportation Uniform Safety Act of 1990.

"Household goods" means the used personal effects and property of a dwelling.

"Hunter's permit or Unladen permit" means a permit that provides temporary registration to an apportionable vehicle at the unladen (empty) weight of the vehicle. It is commonly used by a vehicle lessor to move a vehicle, without any load, to another jurisdiction so the lessor can establish a new contractual relationship with a different motor carrier.

"Identification device" means an annual, fee-paid, nontransferable device issued by the Commission to be carried in each and every vehicle.

"IFTA" means the International Fuel Tax Agreement. The IFTA is a motor fuel use tax reciprocity agreement between the United States contiguous states and certain Canadian provinces which allows a licensee to report and pay motor fuel use taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability.

"Intercorporate hauling" means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

"Interstate" means a shipment having an origin or destination into, out of or through two or more states.

"Intrastate" means a shipment having an origin and destination wholly within one state.

"IRP" means the International Registration Plan. The IRP is a commercial vehicle registration reciprocity agreement between the United States contiguous states and certain Canadian providences which allows a registrant to pay and report commercial vehicle registration fees to a base jurisdiction for distribution to other member jurisdictions in which the registrant travels.

"IVDR" means an Individual Vehicle Distance Record which is a document where the required operational information, as set forth by IRP and IFTA, can be recorded.

"Letter of filing" means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

"Motor carrier" means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

"Motor License Agent (MLA)" means any person meeting the requirements for appointment as a motor license agent pursuant to 47 O.S. § 1140 and authorized by the Oklahoma Corporation Commission to process vehicle registrations, collect associated fees and issue credentials pursuant to the IRP and the Oklahoma Vehicle License and Registration Act (47 O.S. Chapter 74).

"NAIC" means the National Association of Insurance Commissions.

"Non-binding estimate" means the estimated total cost to transport household goods intrastate based upon the weight of the shipment, volume of the shipment, amount of time to perform the movement and/or any accessorial services requested.

"OTNCS Act" means the Oklahoma Transportation Network Company Services Act, 47 O.S. § 1010 et seq.

"Participating state" means a state electing to participate in a uniform program by entering into a base state agreement.

"PIN" means personal identification number.

"Principal place of business" means a single location that serves as the motor carrier's headquarters and where it maintains or can make available its operational records.

"Private motor carrier" means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

"Process agent" means a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker, or freight forwarder.

"Registration" means the identification of hazardous waste transporters through a national base state system.

"Reciprocal state" means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

"Shipper" means a person authorized to tender a shipment to a carrier and may include, but is not limited to, a consignor, consignee or beneficial owner of the shipment.

"TNC" means a Transportation Network Company.

"Trip permit" means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

"Truck yard pit" means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

"UCR" means Unified Carrier Registration.

"Uniform application" means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

"Uniform program" means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal with one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

"Unprocessed agricultural commodities" means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling, spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

"USDOT" means the United States Department of Transportation.

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17]

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 1. APPLYING FOR A LICENSE

165:30-3-1. Obtaining a license

(a) No intrastate motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers or

property for hire without first obtaining from the Commission a license as provided in this Section. A license issued under this Subchapter shall not include transportation as a motor carrier of household goods. Motor carriers of household goods must comply with Subchapter 13 of this Chapter.

(1) An applicant for a license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Chapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Chapter shall be met within thirty (30) days from date of receipt of a motor carrier license application by the Commission. Failure to comply will result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for intrastate operations shall be issued until after the applicant has provided a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Chapter and all applicable state statutes; and has purchased an appropriate number of identification devices.

(6) The application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, email address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the mailing, physical and email addresses of each.

(C) The type of operations for which the applicant is applying.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business or a terminal in Oklahoma).

(E) Declaration of its USDOT number. Motor carriers without a USDOT number must obtain a USDOT number from FMCSA or the Commission prior to a license being issued.

(F) Declaration of its USDOT safety rating and safety compliance.

(G) Declaration of size and weight compliance.

(H) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(I) A description of all terminal and dock facilities.

(J) Declaration the applicant is in full compliance with all other state laws, rules and regulations.

(K) Any other information the Commission deems pertinent.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers.

(8) A motor carrier desiring to modify its license operations shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (5) and (6) (D) -(I) of this subsection.

(9) A copy of the current license under which a motor carrier operates shall be carried at all times in each power unit by the motor carrier.

(b) A motor carrier engaged in intercorporate hauling shall be subject to this Subchapter.

(c) Motor carrier operations, other than motor carriers of passengers, are exempt from this Subchapter when:

(1) Conducted strictly within a municipality, or

(2) Conducted by a federal, state or local government.

(d) Motor carriers of passengers shall be exempt from this Subchapter when:

(1) Operating a taxicab, as defined by 47 O.S. § 1-174, wholly within a municipality, provided the operator of the taxicab is licensed by the municipality in which business is conducted;

(2) Operating a bus, as defined by 47 O.S. § 1-105, not between two or more cities or towns, provided the operator of the bus is licensed by a municipality in which business is conducted.

(e) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all other requirements for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license to the Director of the Transportation Division. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(f) The Commission may grant or deny the motor carrier license application or may impose conditions, stipulations and limitations on the license. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within thirty(30) days of receipt of a complete application.

(g) No intrastate motor carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) All proceedings subsequent to the application, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-3-1.1. Cancellation of intrastate certificates and permits [EXPIRED]

[Source: Added at 12 Ok Reg 1005, eff 1-1-95 through 7-14-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-95 (after the 7-14-95 expiration of the emergency action), Section 165:30-3-1.1 was no longer effective. For the official text of the emergency rule that was in effect from 1-1-95 through 7-14-95, see 12 Ok Reg 1005.

165:30-3-2. Temporary authority [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-3. License and certificate renewals

(a) Any motor carrier desiring to continue intrastate motor carrier operations as granted in its license or certificate, shall, prior to the date of license or certificate expiration; apply for renewal by submitting the appropriate application form (TDF2 or MCF2) and all supporting documentation. Each renewal application shall be properly signed, attested to as follows:

- (1) Application of sole proprietorship must be signed by owner.
- (2) Application of partnership must be signed by one of the partners.
- (3) Application of corporation must be signed by an officer.

(b) All intrastate motor carrier licenses and certificates issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one (1) year.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) A renewal application may be set for hearing at the discretion of the Commission for good cause.

(e) An intrastate motor carrier desiring to renew its license or certificate should apply for renewal of its license or certificate a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license or certificate has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate motor carrier license or certificate shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate motor carrier operations shall be performed under an expired motor carrier license or certificate.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 32 Ok Reg 823, eff 8-27-15; Amended at 36 Ok Reg 602, eff 8-1-19]

PART 3. LICENSE REQUIREMENTS

165:30-3-11. Insurance

(a) No motor carrier whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an insurer authorized or approved by

the Oklahoma Insurance Department. No motor carrier whose principal place of business is not in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by an insurer licensed or approved by the insurance regulatory authority of the state of their principal place of business or the Oklahoma Insurance Department. No holder of an authority shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) Every motor carrier shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury, property damage, and including environmental restoration in minimum amounts, of combined single limits, for bodily injuries to, or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or others (excluding cargo). Minimum liability insurance limits as set forth in 49 CFR Part 387 shall also be applicable to intrastate operations unless otherwise specified in subsections (b)(1)-(4).

(1) Motor carriers of property using vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more:

(A) Transporting property, non-hazardous commodities or transporting hazardous waste, materials or substances not listed in 49 CFR Part 387.9 - \$750,000.

(B) Transporting deleterious substances - \$750,000.

(C) Transporting hazardous waste, materials, or substances- as required by 49 CFR, Part 387.9.

(2) Motor carriers of property using only vehicles with a GVWR under 10,000 pounds:

(A) Transporting commodities not listed in (B) of this paragraph- \$300,000.

(B) Transporting hazardous waste, materials or substances - as required by 49 CFR Part 387.9.

(3) Motor carriers of the following types of property, materials, and products (also known or identified as restricted property) - \$350,000:

(A) Sand, rock, gravel, rip-rap, aggregate or dirt.

(B) Asphaltic mixtures and similar mixtures and compositions (excluding concrete and concrete mixtures) used in road, highway and other ground surface paving.

(C) Unprocessed forestry products and by products thereof not in a finished state.

(D) Unprocessed agricultural commodities.

(E) Ordinary livestock.

(4) Motor carriers of passengers (manufacturer's designed seating capacity includes the driver):

(A) Utilizing vehicles having a seating capacity of six (6) or less passengers - \$100,000.

(B) Utilizing vehicles having a seating capacity of seven (7) - nine (9) passengers - \$750,000.

(C) Utilizing vehicles having a seating capacity of ten (10) to fifteen (15) passengers - \$1,000,000.

(D) Utilizing vehicles having a seating capacity of sixteen (16) or more passengers \$5,000,000.

(5) Motor carriers of household goods - \$750,000.

(c) Every motor carrier of freight, except a motor carrier of household goods, shall be exempted from filing proof of cargo liability insurance. Every motor carrier of household goods shall file with, and be approved by, the Commission an additional certificate on Form H or J that there is in effect a valid bond or insurance policy issued by a State Insurance Department authorized provider as security required to compensate shippers or consignees for loss of or damage to property coming into the motor carrier's possession. Security in the amount of at least Five Thousand Dollars (\$5,000) is required to cover loss of or damage to property carried on any one motor vehicle in connection with its transportation service and in the amount of Ten Thousand Dollars (\$10,000) for the loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

(d) Motor carriers of hazardous materials or hazardous waste shall maintain a properly executed Form MCS-82 or MCS-90 in effect as required by 49 CFR 387.

(e) The Commission may by order grant authority to operate or to continue operating as a motor carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section

(f) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(g) Insurance certificates or surety bonds may be canceled without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or canceled, the motor carrier provides an affidavit stating no operations have been conducted and the effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(h) Insurance certificates or surety bonds not properly canceled or expired shall be considered expired one (1) year after the motor carrier's authorization to operate has been canceled or expired.

(i) Insurance certificates or surety bonds approved by this Commission shall be replaced by more recent insurance certificates or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(j) No certificate of insurance shall be filed with the Commission, which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(k) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the motor carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the certificate or permit or license.

(l) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(m) When insurance is provided by more than one insurer in order to aggregate security limits for motor carriers, a separate insurance certificate and endorsement

- is required of each insurer. For each motor carrier, no more than one primary insurance filing and no more than two excess insurance filings shall be approved.
- (n) Every motor carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the license or authority of a motor carrier until proper insurance is filed.
- (o) Whenever the license or authority of a motor carrier is suspended for failure to maintain in force insurance required by this Section, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).
- (p) Whenever a motor carrier fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the motor carrier's certificate or permit, license, or other authority shall be canceled by operation of law, and without notice. A certificate or permit, license, or other authority so canceled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the motor carrier was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the motor carrier's own negligence.
- (q) Any motor carrier conducting operations under a suspended or canceled authority shall not be eligible to apply for a new authority for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.
- (r) A person may not require indemnification from a motor carrier as a condition to the following:
- (1) The transportation of property by the motor carrier.
 - (2) Entrance onto property by the motor carrier for the purpose of loading, unloading or transporting property.
 - (3) Subsection (r)(2) of this Section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.
- (s) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.
- (t) Insurance companies or their underwriters desiring a hard copy of an approved or disapproved insurance filing or insurance cancellation must submit the insurance filing or insurance cancellation in duplicate and additionally provide a self-addressed stamped envelope.

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 30 Ok Reg 1042, eff 7-1-13; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-3-12. Identification device

- (a) Every motor carrier operating upon the public highways of the State of Oklahoma shall purchase and place within each power unit operated by said motor carrier an identification device issued by this Commission, and make available for

inspection upon request.

- (1) Only one (1) identification device is required for each power unit.
- (2) The annual fee for each identification device will be as prescribed by law or Commission rule.
- (3) Identification devices shall expire simultaneously with the expiration date of the annual license issued to the motor carrier.

(b) No identification device may be sold or otherwise transferred; except if such motor carrier provides a newly acquired vehicle in substitution therefor, each identification device on the discontinued vehicle, if such device is still in the possession of the motor carrier, may be transferred to the substitute vehicle or any subsequently substituted vehicle.

(c) Identification devices found to be in the possession of a carrier not authorized will be confiscated and returned to the Commission by a motor carrier enforcement officer.

(d) No identification devices will be issued to any motor carrier who does not meet all statutory, regulatory and Commission requirements.

(e) Identification device(s) must be purchased prior to the expiration of each annual expiration of a multiple year renewal license to extend the motor carrier license. Failure to timely purchase the identification device(s) will cause the motor carrier license to expire. Failure to purchase the identification device(s) within 30 days of the expiration of the license will cause the motor carrier license to automatically expire and subject to reinstatement rules as prescribed in OAC 165:30-3-103.

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 24 Ok Reg 1814, eff 7-1-07]

165:30-3-13. Deleterious Substance Transport Permit

(a) No person, motor carrier or private carrier shall transport any deleterious substance(s) in any quantity over twenty (20) gallons, without a Deleterious Substance Transport Permit (DSTP), to be issued by the Commission. A DSTP is required for soils contaminated by deleterious substances unless exempted under subsection (b) of this Section. The DSTP shall be required in addition to a motor carrier license as prescribed by this Chapter, when required.

(b) A DSTP is not required when:

- (1) Transporting deleterious substances to be applied to land pursuant to a soil farming permit. A valid copy of the soil farming permit must be carried in the vehicle at the time of transportation; or,
- (2) Transporting contaminated soil which surrounded a leaking underground storage tank or a leaking pipeline when such soil is being transported to and can be legally disposed of in a landfill permitted by the Oklahoma Department of Environmental Quality.

(c) No person, motor carrier or private carrier shall dump, disperse or otherwise release deleterious liquids or substances described herein upon a public highway, on private property, or at any place except as authorized by law.

(d) No motor vehicle used to transport salt water or other deleterious substances shall be equipped with a release device which can be operated in any manner from within the cab of any motor vehicle.

(e) The Commission may issue the permit upon applicant fulfilling all requirements. If issued, a copy of the permit must be carried in each motor vehicle transporting a deleterious substance. Motor carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11.

Failure to do so shall subject the permit to revocation.

(f) Notice of the application and hearing thereon shall not be required, unless the Commission shall so direct.

(g) Every person, motor carrier or private carrier holding a DSTP or transporting deleterious substances not requiring a DSTP pursuant to subsection (b) of this Section, shall maintain an accurate register in numerical order at the principal place of business and retain for inspection by Commission personnel at all times. The register shall consist of the shipping document or criteria as provided in (g) of this Section.

(h) Every vehicle transporting deleterious substances, whether under a DSTP or pursuant to subsection (b) of this Section, shall carry an individual shipping document for each load containing the information as follows:

- (1) Vehicle identification
- (2) Driver name
- (3) Shipper name
- (4) Legal description of the origin of the load
- (5) Volume and description of substance
- (6) Legal description of the destination of the load

(i) The shipping documentation may be transferred to the register. The register shall be maintained in numerical order by the permit holder and retained for inspection by Commission personnel at all times.

(j) Failure to maintain and preserve the records provided herein shall be grounds for revocation of the permit.

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-3-14. Passenger schedules [REVOKED]

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 13 Ok Reg 2419, eff 7-1-96]

165:30-3-15. Annual report [REVOKED]

[Source: Amended at 11 Ok Reg 3727, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3727, eff 7-11-94; Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-16. Current address requirement

(a) Any notice required by law, the Commission's Rules of Practice, OAC 165:5, or this Chapter to be served upon or mailed to any holder of a certificate, permit or license shall be delivered or mailed to the last known mailing or email address as reflected by the records of the Commission. It is the duty of every holder of a certificate, permit or license to notify the Transportation Division by specific written request (TDF 17) of any change in the mailing, physical or email address of the principal place of business and mailing address thereof.

(b) Any non-resident motor carrier who has not filed a written designation of service agent with the Commission shall be deemed to have designated the Secretary of State of Oklahoma for the purpose of service of process by the Commission.

(c) Where such notice is required by law, Commission's Rules of Practice, OAC 165:5, or this Chapter is returned undeliverable, it will be grounds for revocation of the certificate, permit or license.

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-3-17. Markings

- (a) Every intrastate motor carrier shall obtain and display a USDOT number.
- (b) Each motor vehicle operated by a motor carrier shall be properly marked. The markings shall be in compliance with the Federal Motor Carrier Safety Regulations, 49 CFR Part 390.21 (b)-(d). A motor carrier vehicle operating under a DBA or trade name must first list the DBA or trade name on the carrier's operating authority.
- (c) If the motor carrier's USDOT number is designated as intrastate only, the letters OK must follow the carrier identification number.
- (d) A carrier shall immediately notify the Commission when filing changes on a USDOT identification report (MCS-150). This notification shall occur when a carrier updates its USDOT identification report (MCS-150) resulting in a change in name, dba, mailing, physical or email address, interstate to intrastate classification, intrastate to interstate classification, or any other modification that may affect the carrier's intrastate authority or permits issued by the Commission.
- (e) In the event a power unit is transferred or sold by a motor carrier, the carrier is responsible for removing the markings from the unit.

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency); Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-3-18. C.O.D. shipments [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

PART 5. CONDUCTING OPERATIONS

165:30-3-31. Compliance with laws and regulations

- (a) All intrastate motor carriers and private carriers, where applicable, shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of this Chapter. All licenses heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Chapter as fully as if those laws and rules were set forth verbatim therein.
- (b) No intrastate motor carrier or private carrier shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, the rules of this Commission; or, the statutes of the State of Oklahoma. No motor carrier or private carrier shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.
- (c) The Commission adopts the oversize and overweight provisions of the rules as adopted by the Oklahoma Department of Public Safety in OAC 595:30.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 24 Ok Reg 1814, eff 7-1-07]

165:30-3-32. Shipping documentation

- (a) Every shipment shall be accompanied at all times by some form of written document of identification, which may be a bill of lading, freight bill, way bill, receipt, load ticket or other written instrument which sets out the date of shipment, commodity, weight, point of origin, point of destination, consignor and consignee.
- (b) Each shipping document shall represent a single shipment and shall not represent multiple shipments.
- (c) This Section 1 does not prohibit any motor carrier from utilizing an electronic system of documentation provided the information required in subsection (a) is evident.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-3-33. Records

- (a) All records required by this Subchapter shall be maintained at the location last designated by the motor carrier as its principal office. If no location in Oklahoma is so designated, upon demand, the records shall be made available at a location designated by the Commission, at the expense of the motor carrier.
- (b) All books, records and other documents required by this Subchapter must be retained for a period not less than three (3) years.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-34. Minimum standards

- (a) Every vehicle used for transportation of passengers or property shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma and the regulations of the USDOT.
- (b) Every motor vehicle operating upon the highways of the State of Oklahoma shall be properly registered. Commercial motor vehicles with a GVWR/GCWR of 15,000 pounds or more must be registered by weight prior to transporting property.
- (c) A commercial motor vehicle may not be registered for a capacity less than its GVWR/GCWR.
- (d) Every motor vehicle used for transportation of passengers or property shall be adequate in size, design, and equipment to perform the transportation and other services required of it. Every vehicle used for transportation requiring specialized equipment shall be equipped with all features and equipment necessary to afford adequate protection to cargo and to the public. No vehicle shall be loaded in excess of applicable weight limits; nor in any event in excess of the reasonable capacity of the vehicle, or in such fashion as to endanger any portion of the cargo.
- (e) Every motor vehicle used for the transportation of explosives or any other dangerous substance shall comply with all applicable laws and rules as to safety, placarding and other transportation requirements.
- (f) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.
- (g) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-3-35. Credit [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-36. Loss, damage and concealed claims [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-37. Leasing of equipment

(a) An authorized carrier may perform authorized intrastate transportation in equipment it does not own only under the following conditions:

- (1) There shall be a written lease granting the use of the equipment and meeting the requirements as set forth in (b) of this Section.
- (2) The authorized carrier acquiring the use of equipment under this Section shall identify the equipment in accordance with the Commission's requirements.
- (3) Upon termination of the lease, the authorized carrier shall remove all identification showing it as the operating carrier before giving up possession of the equipment.

(b) The written lease required pursuant to (a) of this Section shall contain the following provisions which shall be adhered to and performed by the authorized carrier as follows:

- (1) The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.
- (2) The lease shall specify the time and date or the circumstances on which the lease begins and ends.
- (3) The period for which the lease applies shall be for thirty (30) days or more when the equipment is to be operated for the authorized carrier by the owner or an employee of the owner.
- (4) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.
- (5) The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.
- (6) The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes empty mileage, permits of all types, tolls, detention and accessorial services, base plates and licenses, and any unused portions of such items. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume

the risks and costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed, the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor, the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received.

(7) The lease shall specify that payment to the lessor shall be made by the authorized carrier within fifteen (15) days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to those documents necessary for the authorized carrier to secure payment from the shipper. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment.

(8) The lease shall clearly specify the right of the lessor whose revenue is based on a percentage of the gross revenue for a shipment to examine copies of the authorized carrier's freight bill before or at the time of settlement. The lease shall clearly specify the right of the lessor, regardless of method of compensation, to examine copies of the carrier's documentation upon which charges are assessed.

(9) The lease shall clearly specify all items that may be initially paid by the authorized carrier but ultimately deducted from the lessor's compensation at the time of payment or settlement together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

(10) The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement.

(11) As it relates to insurance, the lease shall clearly specify:

(A) The legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public.

(B) The conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(12) An original and two (2) copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease in the equipment during the period of the lease. The owner of the equipment shall keep the other copy of the lease. Leases shall not be filed with the Transportation Division.

(c) All charges for transportation performed by equipment covered by this Section shall be made and billed by the lessee and all records shall be maintained as required by 165:30-3-33.

(d) A contract for lease of equipment with provision or option to purchase the equipment as part thereof shall be valid if otherwise in compliance with this Section.

(e) This Section shall not apply to a regular route carrier of passengers.

(f) No person shall rent equipment with driver to a private intrastate carrier or to a shipper, without appropriate certificate or permit or license from the Commission.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95]

PART 7. CHANGE OF NAME OF LICENSE HOLDER

165:30-3-51. Name changes

(a) An application to change the name or business name of the holder of an intrastate motor carrier license, without any change in the legal identity of the holder or any change in the ownership of the license, except as provided in subsections (c), (d) or (e) below, shall be filed on the appropriate form prescribed (TDF3) under the permanent PIN of the holder with appropriate sub-number designation and with such filing fee as prescribed by law or by Commission rule. No notice or hearing shall be necessary unless the Commission so requires. Notice, if required, shall be as the Commission shall direct.

(b) Any change in legal identity of the holder of an intrastate motor carrier license, except as provided in subsections (c), (d) or (e) below, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust shall require an original application for a license.

(c) Incorporation by a sole proprietor in which the sole proprietor is the majority shareholder of the corporation, limited liability corporation or limited liability partnership shall be deemed a name change. Incorporation by a partnership in which the partners are the majority shareholders of the corporation shall be deemed a name change.

(d) A change in legal entity from a corporation, limited liability corporation or a limited liability partnership to a sole proprietorship, a partnership, a limited liability corporation or a limited liability partnership in which the sole proprietor, partners or shareholders hold the majority of all issued and outstanding shares of the corporation shall be deemed a name change.

(e) The merger of two or more corporations in which the survivor is the holder of a current license shall be deemed a name change.

(f) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation shall not be deemed a name change.

(g) The employment of incorporation, change of name or similar action directly or indirectly as a device to circumvent the rules of this Chapter is prohibited.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96]

165:30-3-52. Transfer of certificate or permit [REVOKED]

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-53. Transfer upon death of holder of certificate or permit [REVOKED]

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

PART 9. VIOLATIONS

165:30-3-71. Loading capacity - Safety compliance

- (a) No intrastate motor carrier or private carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the size and weight limits established by the State Statutes. Factors to be considered when an application for suspension or revocation is made are set forth in subsection (d)(1) through (5).
- (b) No person, firm or corporation shall assist in the commission of such overweight violation or cause a motor vehicle to be overloaded.
- (c) No intrastate motor carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the safety standards established by the state statutes.
- (d) A compliance audit may be conducted by the Commission and will be based upon, but not limited to the following:
- (1) Frequency of violations.
 - (2) Pattern of violations.
 - (3) Fleet size.
 - (4) Type of operation.
 - (5) Overweight excess.
- (e) Motor carriers obtaining a permit authorizing the operation of an oversize or overweight vehicle shall maintain a copy of the permit in accordance with 165:30-3-33.
- (f) When performing an overweight audit, a certified load ticket or scale ticket shall be considered the actual weight of the vehicle or vehicle combination unless other reliable evidence is presented.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-3-72. Pooling agreements [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-73. Leasing of license

No intrastate motor carrier license, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner permit the use thereof, or the exercise of any rights or privileges thereunder by another, except as provided in this Section. Violation of this Section shall be grounds for revocation of the license, and shall be grounds for denial of an application for a new or renewed license.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96]

165:30-3-74. Violations [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-75. Advertising

(a) Any person who advertises to perform intrastate transportation services for which he does not hold a proper certificate or permit or license shall be in violation of this Section and subject to the penalties prescribed for contempt of the Commission.

(b) A motor carrier authorized to transport passengers must ensure all advertisements contain the motor carrier's USDOT number that is linked to the motor carrier's passenger authority license.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-3-76. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission's Rules of Practice, OAC 165:5 regarding the procedure in proceedings as for contempt, the following procedures may be followed for violations of this Chapter, and applicable statutes of Title 47 and Title 68:

(1) An enforcement officer/compliance inspector/ rate field agent (hereinafter referred to as "officer") of the Transportation Division may issue in the field a contempt citation for any violation of this Chapter or any applicable state statute. The officer shall furnish a copy of the citation to the person.

(2) The citation shall be in the form prescribed by the Commission's Transportation Division.

(3) A person served with a contempt citation may post bond or be released by the complaining officer upon personal recognizance as provided herein. The person shall indicate a plea on the citation, and sign the citation in the presence of the complaining officer. A person served with a citation may elect to change this plea to the citation at any time prior to and including the hearing date before the Administrative Law Judge. Any person electing to plead not guilty shall appear at the time and date set forth on the citation for a hearing on the matter before the Administrative Law Judge and, if not appearing, forfeit the bond posted. All Rules of Practice, OAC 165:5, of the Oklahoma Corporation Commission regarding procedures for hearing shall apply to the hearings provided for herein, except that the Administrative Law Judge may issue either an oral or written recommendation to the Commission en banc on the matter.

(A) The Commission shall accept bond payment of a fine in the form of cash, certified check, cashier's check, certified or guaranteed bank check, postal or commercial money order, guaranteed arrest bond certificate or any other form of payment accepted by the Commission. Such payment shall be in full satisfaction of the violation asserted in the complaint and the allegations and charges therein will be taken as confessed. The guaranteed arrest bond certificate must have been issued by either a trucking services club or surety company, officially authorized to issue such bonds for trucking violations in Oklahoma by the State Insurance Commission, or a trucking association authorized to transact business in Oklahoma by the State Insurance Commission. The guaranteed arrest bond certificate shall be signed by the person to whom it is issued and shall contain a printed statement that such surety company, trucking association or trucking services club guarantees to pay the fine imposed on such person.

(B) Any person may be released by the complaining officer on personal recognizance if the person is unable to post a bond and the person has been issued a valid license to operate the motor vehicle they are operating, by Oklahoma, or by another state jurisdiction within the United States, or by any party jurisdiction of the Nonresident Violator Compact; and the complaining officer is satisfied as to the identity of the person receiving the citation. A person released on personal recognizance shall post a bond with the Commission within ten (10) days of the writing of the citation. Failure to do so may result in detention of equipment or revocation of authority.

(C) The failure to timely appear at the hearing at the time and date set forth on the citation may result in a request for suspension of the person's driver's license in Oklahoma, or in the nonresident's home state pursuant to the Nonresident Violator Compact. The Commission's Transportation Division shall report all such requests for suspension to the Department of Public Safety which shall proceed as provided for by the provisions of Section 1115.5 of Title 22 of the Oklahoma Statutes.

(D) The violations for which fines shall be accepted and amounts thereof shall be as follows:

(i) Operating as a motor carrier without proper authority:

(I) First violation within a 12-month period -

\$300.00

(II) Second violation within a 12-month period -

\$400.00

(ii) Operating without carrying /producing a valid copy of the authority, permit, vehicle registration, fuel license, oversize or overweight permit, or display of fuel decal or identification device:

(I) First violation within a 12-month period -

\$125.00

(II) Second violation within a 12-month period -

\$200.00

(iii) Operating as a motor carrier carrying or producing an altered or fraudulent authority, oversize or overweight permit, vehicle registration, fuel license or license plate:

(I) First violation within a 12-month period -

\$1,000.00

(II) Second violation within a 12-month period -

\$1,500.00

(III) Third violation within a 12-month period -

\$2,000.00

(iv) Operating a commercial vehicle in excess of its registered weight by two thousand one (2,001) pounds or more:

(I) First violation within a 12-month period -

\$175.00

(II) Second violation within a 12-month period -

\$250.00

- (v) Transportation of a deleterious substance(s) without a current deleterious substance transport permit:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (vi) Operating a vehicle without proper registration:
 - (I) First violation within a 12-month period - \$175.00
 - (II) Second or third violation within a 12-month period - the amount as shown in (vi) above plus an amount as reflected in 47 O.S. §1133
- (vii) Operating motor vehicle without proper markings on vehicle:
 - (I) First violation within a 12-month period - \$175.00
 - (II) Second violation within a 12-month period - \$250.00
- (viii) Operating a commercial motor vehicle without a valid fuel permit:
 - (I) First violation within a 12-month period - \$175.00
 - (II) Second violation within a 12-month period - \$250.00
- (ix) Operating motor vehicle without valid lease agreement in vehicle:
 - (I) First violation within a 12-month period - \$125.00
 - (II) Second violation within a 12-month period - \$200.00
- (x) Operating motor vehicle without proper shipping or cargo ownership documentation in vehicle:
 - (I) First violation within a 12-month period - \$125.00
 - (II) Second violation within a 12-month period - \$200.00
- (xi) Failure to yield for inspection:
 - (I) First violation within a 12-month period - \$150.00
 - (II) Second violation within a 12-month period - \$200.00
- (xii) Operating as an interstate motor carrier while placed out of service by a federal agency:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (xiii) Operating as a transporter of hazardous waste without proper registration/permit:
 - (I) First violation within a 12-month period - \$350.00

- (II) Second violation within a 12-month period - \$500.00
- (xiv) Operating as an interstate motor carrier, freight forwarder, broker or leasing company without paying the appropriate UCR fee:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (xv) Operating as an interstate motor carrier, freight forwarder, leasing company or broker without an active USDOT number:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (xvi) Operating as an interstate motor carrier, freight forwarder, leasing company or broker without proper federal authority:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (xvii) Operating as motor carrier, carrier, freight forwarder, leasing company or broker without proper insurance on file:
 - (I) First violation within a 12-month period - \$300.00
 - (II) Second violation within a 12-month period - \$400.00
- (xviii) Operating oversize without a proper oversize permit; operating as an escort service without proper certification or violating its certification; failure to secure load; or failure to carry or produce a valid insurance security verification form, if required:
 - (I) First violation within a 12-month period - \$175.00
 - (II) Second violation within a 12-month period - \$250.00
- (xix) Refusal to weigh vehicle - \$500.00
- (xx) Operating a commercial vehicle in excess of its legal weight- amount as specified by state statute, or:
 - (I) From 700 to 2,000 pounds - \$200.00
 - (II) From 2,001 to 3,000 pounds - \$250.00
 - (III) From 3,001 to 4,000 pounds - \$300.00
 - (IV) From 4,001 to 5,000 pounds - \$350.00
 - (V) From 5,001 to 6,000 pounds - \$400.00
 - (VI) From 6,001 to 7,000 pounds - \$450.00
 - (VII) From 7,001 pounds and above - \$500.00
- (xxi) Violating a special permit or a variance permit - \$100.00

(xxii) Other violations, unless otherwise specified by the Oklahoma Statutes or by the Oklahoma Bond Schedule:

(I) First violation within a 12-month period - \$175.00

(II) Second violation within a 12-month period - \$250.00

(xxiii) The third violation within a twelve-month period of units (i) through (xviii) of the subparagraph, unless otherwise specified by the Oklahoma Statutes or the rules of this Subchapter, shall result in a contempt fine of \$500.00.

In addition, the Commission may suspend or revoke a motor carrier's authority, registration or permit.

(E) Every officer is authorized to serve process in motor carrier, private carrier and other Commission related matters.

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency); Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 26 Ok Reg 1398, eff 7-1-09]

PART 11. MISCELLANEOUS

165:30-3-91. Restricted parcel carriers [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-3-92. Pollution abatement

(a) All transportation by motor vehicle of deleterious substances including salt water, brines, liquid mud, acids, or any other fluids used in the drilling, completion, operation or reworking of an oil or gas well and/or any fluids generated as a by-product or resulting from the production of an oil or gas well or the operation of a disposal facility or facility where equipment is cleaned shall be conducted in such a manner that prevents any pollution to the surface of the earth or any fresh water bearing formation. Pollution of surface water or subsurface water is hereby prohibited.

(1) This Section shall not be construed as modifying the rights, obligation or duties of any person under the law of this State, or any order, rule or regulation of the Oklahoma Water Resources Board, State Department of Health, Department of Environmental Quality, Oklahoma Wildlife Conservation Commission, State Board of Agriculture, Department of Pollution Control, Department of Public Safety or any other agency of this State with respect to the pollution of fresh water.

(2) When a complaint is received against any person or company alleging pollution as prohibited in this Section, or field investigations by Commission staff or other regulatory agencies indicates prohibited pollution occurring, the Transportation Division shall immediately initiate such action as is necessary or appropriate to abate the pollution.

(b) No transporters of fluids mentioned in this Section shall use an earthen pit for any storage of said fluids or the washing or otherwise cleaning of the inside of the trailer or container used to transport or store such fluids.

(c) Any truck yard pit used for the temporary storage of fluids from washing or cleaning activities of equipment used in the transportation of fluids mentioned in this Section shall not be utilized until the 1014T permit is issued by the Commission's Oil and Gas Division as set forth in OAC 165:10.

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 32 Ok Reg 823, eff 8-27-15]

PART 13. SUSPENSION OR CANCELLATION OF LICENSE

165:30-3-101. Voluntary suspension or discontinuance of license

(a) An intrastate motor carrier may request cancellation of its license without notice or hearing.

(b) Any intrastate motor carrier requesting cancellation of its license while in good standing may reapply for a new license at any time.

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97]

165:30-3-102. Involuntary suspension or revocation of license

(a) Any intrastate motor carrier license may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter.

(b) An application to revoke or suspend an intrastate motor carrier license may be filed by a member of the staff of the Commission or by a person adversely affected by the acts alleged. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(c) After hearing, the Commission may grant or deny the application, and may suspend or revoke the license, or any part thereof or rights thereunder, or the Commission may assess a fine or impose limitations or conditions upon the continuation of operations under the license as stated in the order.

(d) Any motor carrier conducting operations under a suspended or cancelled license, shall not be eligible to apply for a new license for a period of not less than one hundred eighty (180) days. Except for insurance violations as noted in 165:30-3-11, the one hundred eighty (180) day period shall begin the date a Commission order is signed suspending or cancelling a motor carrier license.

(e) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to evade subsection (d) of this Section is prohibited.

(f) Any violation of other state statutes or regulations shall be cause to initiate an application for suspension or revocation by staff or other adversely affected persons.

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97]

165:30-3-103. Reinstatement of certificate or permit or license

(a) A motor carrier whose certificate, permit, license, or a portion thereof, has been cancelled by law or by order of the Commission, may file with the Commission a written application for reinstatement on the appropriate form prescribed by the Commission (TDF 8), and shall tender with the application a filing fee as

prescribed by law or by Commission rule.

(b) The application for reinstatement must be filed within three (3) months from the date the certificate, permit or license was cancelled by law or by Commission order and may be approved by the Director for Administrative reinstatement.

Applications not approved for administrative reinstatement may be set for hearing.

(c) The application shall be filed under the PIN as assigned to the certificate, permit, or license, with appropriate sub-number designation.

(d) If the authority was revoked due to lack of insurance on file and the carrier cannot furnish proper proof of continuous insurance, the Commission may reinstate the certificate, permit or license only after a hearing has been held and notice thereof has been given as prescribed by the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(e) No reinstatement shall be issued until all requirements of the certificate, permit or license have been fulfilled and a reinstatement fee as prescribed by law or Commission rule has been tendered.

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency); Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-3-104. Violations

(a) Every for-hire motor carrier, shipper, private motor carrier, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirements of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred (\$500.00) Dollars per violation per day or as otherwise provided for by law.

(b) All motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted road signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or rules of the Commission.

(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, public safety or welfare, upon direction of the Transportation Division Director or his designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.

(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the motor carrier.

[Source: Added at 12 Ok Reg 1005, eff 1-1-95 (emergency); Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 25 Ok Reg 1546, eff 7-1-08]

SUBCHAPTER 5. TARIFF CIRCULAR 4 [REVOKED]

PART 1. TARIFF REQUIREMENTS [REVOKED]

165:30-5-1. Compliance [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-2. Issuance of certificates or permits [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-3. Reasonable rates and practices [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-4. Contract carrier of household goods [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-5. Publication and filing of household goods tariffs containing all rates and rules [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-6. Initial household goods rates and tariffs [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-7. Publishing and filing tariffs of household goods [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-8. Posting of household goods tariffs [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-9. Distance and mileage tariffs [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-10. New or changed provisions of tariffs [REVOKED]

[Source: Amended at 11 Ok Reg 3727, eff 7-11-94; Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-11. Special permission to depart from regulations [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

PART 3. TARIFF VIOLATIONS [REVOKED]

165:30-5-21. Rejection of tariffs not conforming with regulations [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-22. Suspension and investigation of provisions of tariff [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

PART 5. STRUCTURING OF TARIFFS [REVOKED]

165:30-5-31. Form and construction of tariffs and supplements [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-5-32. Changes, amendments and supplements to tariffs [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

SUBCHAPTER 6. TRANSPORTATION NETWORK COMPANIES

PART 1. APPLYING FOR A PERMIT

165:30-6-1. Obtaining a permit

(a) No Transportation Network Company ("TNC") shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers for hire without the TNC first obtaining from the Commission a permit as provided in this Subchapter. A permit issued under this Subchapter shall not constitute authorization to conduct operations as a for-hire motor carrier or as a private carrier.

(1) An applicant for a permit shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 29), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) A permit shall be issued only to an individual, a corporation, a limited liability company, a partnership or other legally recognized entity and shall be personal to the holder thereof.

(3) The filing of an application for a permit does not authorize any TNC operations by the applicant. Such operations are prohibited until after all requirements have been met, and a permit has been issued. All requirements for compliance with this Chapter must be met within thirty (30) days from date of receipt of a TNC permit application by the Commission. The Transportation Division Director may extend the thirty (30) day period upon request by a TNC for good cause shown. Failure to comply will result in dismissal of the application for a permit. Permits issued shall be valid for a maximum of one (1) year and may be renewed after application has been filed and all requirements met as provided by this Chapter.

(4) The application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, email address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the mailing, physical and email addresses of each.

(C) The name and address of the TNC's process agent in Oklahoma.

(D) Name of the TNC's Digital Network and sources from which it can be accessed.

(E) Screenshots of items, or other information deemed acceptable by the Commission, that are required by the Oklahoma Transportation Network Company Services Act to be on the Digital Network.

(F) Copies of policies required by the Oklahoma Transportation Network Company Services Act.

(G) Declaration that the applicant is in full compliance with all other state laws, federal laws, rules and regulations.

(H) Any other information the Commission deems pertinent.

(5) Every TNC operating under the rules of this Commission shall possess a copy of this Chapter.

(b) The Commission may grant or deny the TNC permit application or may impose conditions, stipulations and limitations on the permit consistent with the requirements of the Oklahoma Transportation Network Company Services Act. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within thirty (30) days of receipt of a complete application.

(c) No TNC permit shall be issued to an applicant until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.

(d) All proceedings subsequent to the application, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-6-3. TNC Permit renewals

(a) Any TNC desiring to continue operations as granted in its permit shall apply for renewal by submitting the appropriate application form (TDF 29) a minimum of thirty (30) days prior to the date of the permit's expiration. Each renewal application shall be properly signed.

(b) The applicant must supply updated documentation demonstrating eligibility for a TNC permit upon request.

(c) All TNC Permits renewed by the Commission shall become effective the same date as the prior permit's expiration.

(d) Renewal applications shall be accompanied by a filing fee as prescribed by law or by Commission rule.

(e) A renewal application may be set for hearing at the discretion of the Commission.

(f) All requirements for compliance with this Chapter must be met within thirty (30) days from date of receipt of a TNC permit renewal application by the Commission. Failure to comply will result in dismissal of the renewal application for a permit.

(g) A renewal application will not be accepted if the permit has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(h) No TNC permit shall be renewed until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.

(i) No TNC operations shall be performed under an expired permit.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-6-5. Insurance

(a) No TNC shall conduct any operations in this State unless such operations are covered by a valid insurance policy issued by an insurer authorized or approved by the Oklahoma Insurance Department. No holder of a TNC permit shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved, by the Commission.

(b) Every TNC shall file with the Commission a certificate on form TDF 30 certifying that there is in effect insurance coverage as set forth in the Oklahoma Transportation Network Company Services Act.

(c) No certificate of insurance filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on form TDF 31, which notice shall be effective only upon actual receipt thereof by the Commission.

(d) Insurance certificates may be canceled without the thirty (30) days written notice on form TDF 31 only when the authorization to operate has previously expired or canceled.

(e) Insurance certificates not properly cancelled or expired shall be considered expired one (1) year after the TNC's authorization to operate has been cancelled or expired.

(f) Insurance certificates approved by this Commission shall be replaced by more recent insurance certificates. The liability of the retiring insurer shall be terminated as of the effective date of the replacement insurance certificate provided the replacement is approved by this Commission.

(g) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the TNC insured, subject to the terms and conditions provided for by the Oklahoma Transportation Network Company Services Act.

(h) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(i) When insurance is provided by more than one insurer in order to aggregate security limits for TNCs, a separate insurance certificate is required of each insurer. For each motor carrier, no more than one (1) primary insurance filing and no more than two (2) excess insurance filings shall be approved.

(j) Every TNC shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the permit of a TNC until proper insurance is filed. No TNC operations shall be conducted unless proper insurance is on file with the Commission.

(k) Whenever the permit of a TNC is suspended for failure to maintain in force insurance required by this Section, the TNC must file proper certificate(s) of insurance, as provided in this Section, within sixty (60) days after commencement of the suspension.

(l) Whenever a TNC fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the TNC's permit shall be cancelled. A permit so cancelled shall not be reinstated or otherwise made operative except upon proper showing that the TNC was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with

the Commission was not due to the TNC's own negligence.

(m) Any TNC conducting operations under a suspended or cancelled permit shall not be eligible to apply for a new permit for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

(n) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-6-7. Name changes

(a) An application to change the name or business name of the holder of a TNC permit, without any change in the legal identity of the holder or any change in the ownership of the permit, except as provided in subsections (c), (d) or (e) below, shall be filed on the prescribed form (TDF 3) with such filing fee as prescribed by law or by Commission rule. No hearing shall be necessary unless the Commission so requires.

(b) Any change in legal identity of the holder of a TNC permit, except as provided in subsections (c), (d) or (e) below, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust shall require an original application for a permit.

(c) The following shall be considered a name change:

(1) Incorporation by a sole proprietor in which the sole proprietor is the majority shareholder of the corporation, limited liability company or limited liability partnership.

(2) Incorporation by a partnership in which the partners are the majority shareholders of the corporation.

(3) A change in legal entity from a corporation, limited liability company or a limited liability partnership to a sole proprietorship, a partnership, a limited liability corporation or a limited liability partnership in which the sole proprietor, partners or shareholders hold the majority of all issued and outstanding shares of the corporation.

(4) The merger of two or more corporations in which the survivor is the holder of a current permit.

(d) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation shall not be deemed a name change.

(e) The employment of incorporation, change of name or similar action directly or indirectly as a device to circumvent the rules of this Chapter is prohibited.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

PART 3. CONDUCTING OPERATIONS

165:30-6-17. Current address requirement

(a) Any notice required by law, the Commission's Rules of Practice, OAC 165:5, or this Chapter to be served upon or mailed to any holder of a permit shall be delivered or mailed to the last known email or mailing address as reflected by the records of the Commission. It is the duty of every holder of a permit to notify the

Transportation Division by specific written request (TDF 17) of any change in the email address, address of the principal place of business or mailing address thereof.

(b) Any TNC that has not filed a written designation of service agent with the Commission shall be deemed to have designated the Secretary of State of Oklahoma for the purpose of service of process by the Commission.

(c) Where such notice is required by law, Commission's Rules of Practice, OAC 165:5, or this Chapter is returned undeliverable, it will be grounds for revocation of the permit.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-6-19. Compliance with laws and regulations

(a) All TNCs shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of this Chapter. All permits heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Chapter as fully as if those laws and rules were set forth verbatim therein.

(b) No TNC shall operate or allow to be operated any equipment that does not comply with safety criteria established by the rules of this Commission, the Oklahoma Transportation Network Company Services Act or the statutes of the State of Oklahoma on the public highways of the State of Oklahoma. No TNC shall permit any TNC driver to operate a motor vehicle in violation of any size limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. The TNC shall suspend access to its digital network to a TNC driver, pending an investigation by the TNC, if it receives notice of or has reason to believe the driver has failed to meet the safety criteria or size standards of the Commission, the Oklahoma Transportation Network Company Services Act, or the statutes of the State of Oklahoma.

(c) TNCs shall provide notice to their TNC drivers that arranging for-hire passenger transportation services in any way other than through the TNC's digital network will subject the driver to the same regulation, authority requirements, and penalties as a motor carrier under the Motor Carrier Act of 1995.

(d) TNCs shall provide, via the TNC's Digital Network, a method whereby each TNC driver can present to a requesting law enforcement officer proof that the driver is operating as a TNC driver. TNC drivers unable to present such information may be considered to be engaged in motor carrier operations.

(e) No provisions may be included in the TNC's Terms of Service or Driver Contracts that are contrary to the OTNCS Act.

(f) No provisions in this Subchapter prohibit a TNC from contracting with a licensed intrastate for-hire motor carrier.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-6-21. Records

All records required by the Transportation Network Company Services Act, or this Subchapter, shall be made available upon a request by the Commission within a reasonable time, as required by the Oklahoma Transportation Network Company Services Act. Records may be produced to the Commission in electronic form unless physical copies of specific records are requested by the Commission.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

PART 5. VIOLATIONS

165:30-6-33. Leasing of TNC Permit

No TNC permit, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner allow the use thereof, or exercise any of the rights or privileges thereunder by another, except as provided in this Section. Violation of this Section shall be grounds for revocation of the permit, and shall be grounds for denial of an application for a new or renewed permit.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-6-35. Operating or Advertising to Operate without a Permit

Any person or entity performing or advertising to perform TNC services without holding a proper permit granted by the Commission shall be in violation of this Section and be subject to the penalties prescribed for contempt of the Commission.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-6-37. Violations

- (a) Every TNC, their employees or independent contractors, or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirement of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part of provision thereof, of the Commission, or who procures, aids or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rules, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred Dollars (\$500.00) per violation per day or as otherwise provided for by law.
- (b) Only the Commission staff or other state or federal governmental agency may file an application for a contempt proceeding.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

PART 7. SUSPENSION OR CANCELLATION OF PERMIT

165:30-6-47. Voluntary cancellation of permit

- (a) A TNC may request cancellation of its permit without notice or hearing.
- (b) Any TNC requesting cancellation of its permit while in good standing may reapply for a new permit at any time.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-6-49. Involuntary suspension or revocation of permit

- (a) Any TNC permit may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter.
- (b) An application to revoke or suspend a TNC permit may be filed by a member of the staff of the Commission. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.
- (c) After hearing, the Commission may grant or deny the application, and may suspend or revoke the permit, or the Commission may assess a fine or impose limitations or conditions upon the continuation of operations under the permit as

stated in the order.

(d) Any TNC conducting operations under a suspended or cancelled permit shall not be eligible to apply for a new permit for a period of not less than one hundred eighty (180) days. Except for insurance violations as noted in 165:30-6-5, the one hundred eighty (180) day period shall begin the date a Commission order is signed suspending or canceling a TNC permit.

(e) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to evade subsection (d) of this Section is prohibited.

(f) Any violation of state statutes or regulations shall be cause to initiate an application for suspension or revocation by Commission staff or other state or federal governmental agency.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-6-51. Reinstatement of TNC Permit

(a) A TNC whose permit has been cancelled for lack of insurance, may file with the Commission a written application for reinstatement on the appropriate form prescribed by the Commission (TDF 8), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(b) The application for reinstatement must be filed within three (3) months from the date the permit was cancelled and may be approved by the Director of Transportation for administrative reinstatement. Applications not approved for administrative reinstatement may be set for hearing.

(c) If the authority was revoked due to lack of insurance on file and the TNC cannot furnish proper proof of continuous insurance, the Commission may reinstate the permit only after a hearing has been held and notice thereof has been given as prescribed by the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(d) No reinstatement shall be issued until all requirements of the permit have been fulfilled.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-1. Contents of application [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-7-2. Notice [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-7-3. Hearing [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

165:30-7-4. Collective ratemaking [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 18 Ok Reg 2384, eff 7-1-01]

165:30-7-5. Forms

The following forms of the Commission relate to this Chapter:

- (1) Intrastate license forms.
 - (A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License
 - (B) TDF 2 - Application for renewal of Intrastate Motor Carrier License
- (2) Intrastate certificate forms.
 - (A) MCF 1 - Application for Household Goods Certificate
 - (B) MCF 2 - Application for Renewal of Household Goods Certificate
 - (C) MCF 8 - Application for Reinstatement of Household Goods Certificate
 - (D) Form H - Uniform Motor Carrier Cargo Certificate of Insurance
 - (E) Form J - Uniform Motor Carrier Cargo Surety Bond
- (3) Interstate Form - Unified Carrier Registration
- (4) Harvest Permit forms
 - (A) TOSS 1 - Application for Harvest Permit
 - (B) TOSS 2 - Application for Fifteen (15)-Day Harvest Permit Extension
- (5) Hazardous Waste forms.
 - (A) UPW - Part I - Registration
 - (B) UPW - Part II - Permit
 - (C) UPW - Part III - Other Information
 - (D) UPW - Part IV - Certification
 - (E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)
- (6) IFTA/IRP forms.
 - (A) IRP Schedule A - International Registration Plan Original Application-Schedule A
 - (B) IRP Schedule B - International Registration Plan- Schedule B
 - (C) IRP Schedule C - International Registration Plan Supplemental Application-Schedule
 - (D) IRP Schedule G - International Registration Plan Declaration of Estimated Miles- Schedule G
 - (E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards
 - (F) IFTA Application - International Fuel Tax Agreement Registration Application
 - (G) IFTA QTR - International Fuel Tax Agreement Quarterly Report
- (7) Miscellaneous forms.
 - (A) TDF 3 - Application for Change of Name
 - (B) TDF 8 - Application for Reinstatement
 - (C) TDF 14 - Application for a Deleterious Substance Transport Permit
 - (D) TDF 16 - Application for Identification Devices
 - (E) TDF 17 - Application for Address Change
 - (F) TDF 18 - Affidavit of No Operations
 - (G) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance

- (H) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies
- (I) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond
- (J) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds
- (K) TDF 25 - Application for Motor Carrier Rules and Regulations
- (L) TDF 26 - Motor Carrier Rules and Regulations Update Notification
- (M) TDF 28 - Vehicle Information Request Form
- (8) Transportation Network Company forms
 - (A) TDF 29 - Application for Oklahoma Transportation Network Company Permit
 - (B) TDF 30 - Oklahoma Transportation Network Company Certificate of Insurance
 - (C) TDF 31 - Oklahoma Transportation Network Company Notice of Insurance Cancellation

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3727, eff 7-11-94; Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 32 Ok Reg 823, eff 8-27-15; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-7-6. Applications and requests

- (a) All intrastate motor carrier, private carrier, transportation network company, deleterious, hazardous waste, registration and fuel permit applications must bear an original acceptable signature of the applicant. The applicant must be a legal entity with an optional single trade name listed that is not a legal entity. If signed by an attorney or agent in lieu of the applicant, a copy of the power of attorney must be attached to the application.
- (b) Acceptable signatures on applications for authority are as follows:
 - (1) Sole proprietorship - sole proprietor.
 - (2) Partnership - one of the partners.
 - (3) Corporation - one of the officers or directors.
 - (4) Limited liability company - the manager.
- (c) A name change relating to a partnership or a request to cancel a partnership must be signed by all partners.
- (d) All motor carrier and commercial motor vehicle applications filed by an applicant which does not maintain a terminal in Oklahoma must file and maintain a current listing of a valid Oklahoma process agent on behalf of the applicant.
- (e) All applications for authority shall contain the USDOT number of the operating motor carrier. Applications for registration shall additionally contain the USDOT number of the owner of each vehicle, and the registrant.
- (f) Motor carriers obtaining a name change with FMCSA in association with the motor carrier's DOT number must immediately update the name and/or trade name on the Commission issued authority, registrations, fuel licenses or permits. The Commission may require a name change or an application for new authority. Motor carriers obtaining a name change on Commission issued authority, registration, fuel licenses or permits must immediately obtain a name change with FMCSA in association with the motor carrier's DOT number. Failure to have the motor carrier

name and trade name, if any, identically shown on all authority, registrations, fuel licenses or permits may subject the motor carrier to penalties, suspension, revocation, roadside enforcement delays or delays in processing subsequent applications.

(g) Motor carriers changing their email, mailing or physical address with FMCSA in association with the motor carrier's DOT number must immediately update address(es) on the Commission issued authority, registrations, fuel licenses or permits. In the event the Commission determines a motor carrier has changed its address(es) with FMCSA prior to notifying the Commission, may cause the Commission to update its records to reflect the updated address(es) on file with FMCSA. The motor carrier may notify the Commission in writing if it chooses to maintain separate address(es) on file with the Commission from the address(es) on file with FMCSA. Failure to have current address(es) on file for authority, registrations, fuel licenses or permits may subject the motor carrier to penalties, suspension, revocation, roadside enforcement delays or delays in processing subsequent applications.

(h) An application for authority, commercial vehicle registration or fuel permit may not be processed when the motor carrier or the motor carrier responsible for safety has not updated its USDOT number within the prior twenty-four (24) months. Failure to update the USDOT number may subject the authority to revocation.

(i) Failure to properly complete any application may result in delay or denial of the relief sought.

(j) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.

(k) Interstate authority, fuel permits and registration cannot be issued to a motor carrier whose ability to operate in interstate commerce has been denied or revoked.

(l) If a fee is required for an application, and the funds are returned unpaid, any document or privilege granted as a result of that application shall be immediately revoked without notice. The document or privilege shall be reinstated provided valid payment is received in a timely manner.

[Source: Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-7-7. Records and inspections

(a) All persons engaged in an activity, which an authorized agent of the Commission has reasonable cause to believe appears to be within the purview of this Chapter, shall make its transportation related records available for inspection to an authorized agent of the Commission.

(b) Persons engaged in an activity within the purview of this Chapter, shall stop when ordered to do so by a motor carrier enforcement officer and yield the vehicle, its contents and its shipping documentation to the officer for inspection.

(c) All transportation related records shall be made available at the carrier's principal place of business upon request of the Commission. If no location in Oklahoma is so designated, the records shall be made available at a location designated by the Commission, at the expense of the person engaged in transportation matters.

(d) Every person who fails to provide the transportation related records, upon demand, is guilty of contempt of the Commission and is subject to a fine not exceed Five Hundred (\$500) Dollars or as otherwise provided for by law.

[Source: Added at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01]

165:30-7-8. Review of Applicants for safety fitness [REVOKED]

[Source: Added at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 27 Ok Reg 1773, eff 7-1-10; Revoked at 35 Ok Reg 1044, eff 10-1-18]

165:30-7-9. Compliance reviews [REVOKED]

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01; Revoked at 35 Ok Reg 1044, eff 10-1-18]

165:30-7-10. Civil assessments [REVOKED]

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01; Revoked at 35 Ok Reg 1044, eff 10-1-18]

165:30-7-11. USDOT number

- (a) Every person operating or intending to operate as a motor carrier in intrastate or interstate commerce shall obtain a USDOT number.
- (b) Every person registering a commercial motor vehicle for apportionment shall obtain a USDOT number.
- (c) Every person applying for an IFTA license shall obtain a USDOT number.
- (d) USDOT numbers for interstate operations can be obtained utilizing a MCS-150 form available from FMCSA or online at www.fmcsa.dot.gov.
- (e) USDOT numbers for intrastate only operations can be obtained online at www.fmcsa.dot.gov.
- (f) Motor carriers, registrants and licensees obtaining a USDOT number for interstate operations shall comply with all provisions of 49 C.F.R. 390.19, with the exception that applicants for apportioned registration must update their MCS-150 a minimum of once every twelve (12) months.
- (g) Motor carriers operating intrastate only shall update their MCS-150 or TDF-19 a minimum of once every two (2) years.
- (h) All holders of a USDOT number shall notify the Commission, utilizing a TDF 19 if intrastate only, or file a new MCS-150 form with USDOT or this Commission when they cease operations in order to inactivate their USDOT number.
- (i) A USDOT number issued to an intrastate carrier will be inactivated when the intrastate carrier does not hold an active authority and two (2) or more Commission letters or notifications mailed to the last known email or mailing address on file are returned undeliverable.

[Source: Added at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-7-12. Revocation, suspension or denial of issuance of license, permit, certificate or registration

(a) The Commission may revoke, suspend or deny the issuance of any Commission issued motor carrier or commercial motor vehicle license, permit, TNC permit, certificate or registration issued pursuant to the Commission's jurisdiction for any of the following reasons:

- (1) Violation of applicable state law.
- (2) Violation of Commission rules.

- (3) Failure to observe or fulfill the conditions upon which the license, permit, certificate or registration was issued.
 - (4) Nonpayment of any delinquent tax, fee or penalty to the Commission or to the State of Oklahoma.
 - (5) Nonpayment of a uniform base state program delinquent tax, fee or penalty to a state or province participating with the Commission in that program.
 - (6) Placed out of service by a federal or state agency.
- (b) A motor carrier, private carrier, TNC or registrant who wishes to contest a revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 26 Ok Reg 1398, eff 7-1-09; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-7-13. Disqualification procedure

- (a) **General provisions.** Any person may, after notice and an opportunity for hearing, be disqualified from conducting business before the Transportation Division of the Commission if such person:
- (1) Is shown to be incompetent or disreputable;
 - (2) Refuses to comply with rules and regulations;
 - (3) With intent to defraud, in any manner willfully and knowingly deceives, misleads, or threatens any person;
 - (4) Advises a person to file a fraudulent or false report or return;
 - (5) Knowingly prepares or files a false or fraudulent report or return;
 - (6) Assists, aids or abets any person in or by concealing any information pertaining to said person's books, records, reports or returns;
 - (7) Delays proceedings of the Commission by disposing of or concealing information required in the filing of reports or returns under any Commission law or rule, or assisting another in such acts; or
 - (8) Commits any other misconduct determined by the Commission.
- (b) **Complaint and initial investigation.** The Commission may, upon its own initiative, or upon receiving a written complaint filed with the Director of the Transportation Division, cause the complaint to be investigated and a determination made as to whether good cause exists for initiating a disqualification proceeding. If it is determined that none of the conditions in subsection (a) above have been met, or if there is insufficient evidence to support the allegation, the investigation will be terminated. If a determination is made that good cause exists for initiating a disqualification proceeding, such proceeding will be promptly commenced.
- (c) **Commencement, notice, and conduct of hearing.** The commencement of the proceeding, notice to the respondent, and conduct of the hearing shall be held in compliance with the Commission's Rules of Practice, OAC 165:5.
- (d) **Burden of proof.** The Office of the General Counsel shall have the burden of establishing, by a preponderance of the evidence, that a condition in subsection (a) has been met such that respondent should be disqualified from conducting business before the Commission. Notice of the final disposition of the disqualification proceedings will be provided to the respondent.
- (e) **Scope of action.** The respondent may be found qualified to conduct business before the Commission, or may be disqualified from conducting business before the Commission for a stated period of time or indefinitely. The Commission may provide notice of the determination of the disqualification proceeding to other

agencies, boards, or Commissions who exercise jurisdiction or regulatory authority over the respondent or the activities involved in the violation. Nothing in this Section shall preclude the Commission from seeking any other remedies or legal proceedings available at law to enforce its orders or rules.

[Source: Added at 26 Ok Reg 1398, eff 7-1-09]

165:30-7-15. Operations conducted under government contract

- (a) Motor carriers conducting intrastate operations under contract with a governmental entity are exempt from Subchapters 3, 13 and 15 of this Chapter.
- (b) Persons conducting intrastate operations in furtherance of a governmental contract for the building or maintenance of roads, bridges, turnpikes or other road building projects are exempt from Subchapters 3 and 15 of this Chapter.
- (c) In an effort to assist law enforcement in identifying operations exempt as a result of a governmental contract, documentation should be carried in each vehicle operated under the contract. The documentation may consist of a complete copy of the contract or a copy of a portion of the contract(s) that contains the following information:
 - (1) The government entity.
 - (2) The contractor (which should also be the motor carrier).
 - (3) A description of the project.
 - (4) The project beginning date.
 - (5) The project ending date or project time span.
- (d) A subcontractor exempted under (b) of this Section, should in addition to the documentation listed in (c) of this Section, additionally carry a copy of the contract, or a portion of the contract, between the contractor and the subcontractor that clearly establishes the operations being performed are within the scope of the governmental contract.

[Source: Added at 29 Ok Reg 951, eff 7-1-12]

165:30-7-17. Insurance filing replacement

- (a) The Transportation Division may require a new insurance filing to be placed on file when the effective date of the current filing is more than three (3) years old.
- (b) Notification of the need for a new insurance filing to be placed on file shall be mailed to the official email or mailing address on file for the license, certificate or permit holder, which shall be considered official notice.
- (c) The new insurance filing shall be placed on file with the Transportation Division within ninety (90) days from the date of the notice.
- (d) Failure of the license, certificate or permit holder to have proper insurance placed on file within ninety (90) days shall subject the license, certificate or permit to revocation.
- (e) A notice to revoke shall be sent to the official email or mailing address on file with the Transportation Division. The license, certificate or permit holder will be allowed an additional thirty (30) days to comply with the provisions of this section.
- (f) Failure of the license, certificate or permit holder to comply with the provisions of this section shall cause the license, certificate or permit to be revoked without further notice.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-7-27. Definitions

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

"Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic filing" means the usage of a computer to submit an application, insurance filing or information required using an electronic system supplied by or approved by the Corporation Commission.

"Electronic mail address" is the primary electronic mail address, commonly referred to as an "email address" provided by the registered user.

"Electronic signature" means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"Electronic system" means a system supplied or used by the Corporation Commission to receive and process information, documents and payments electronically.

"Register" means the process for a person to request authority from the Corporation Commission to use an electronic system.

"Technical failure" means a malfunction of an electronic system's hardware, software, and/or telecommunications facility which results in the inability of a registered user to submit a document, supply information or make payment. It does not include the failure of a registered user's equipment, software, and/or telecommunications facility.

"User" means a registered user whose user identification and password are used to submit documents, information or payments electronically.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-7-29. Registration and signatures

- (a) To gain access to an electronic system, the User must make application or submit a request with the Transportation Division as specified on the appropriate Commission website.
- (b) The request shall contain information as required by the specific system in which the User has requested access.
- (c) In the event the electronic system is not maintained by the Corporation Commission, the User must contact the system administrator to gain access.
- (d) Users of the electronic system shall comply with all applicable instructions and the User agreement for electronic system usage.
- (e) Electronic signatures are required. By use of an electronic signature, the person represents that all requirements of the applicable authority requiring the person's signature have been satisfied and all duties and obligations imposed by law have been fulfilled.
- (f) An electronic signature is deemed to constitute a signature on the document for purposes of all signature requirements imposed and or/any other applicable law. An electronic signature shall have the same force and effect as a handwritten signature.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-7-31. Electronic system usage

- (a) Electronic systems are generally available twenty-four (24) hours a day, seven (7) days a week. Filing information or a document electronically does not, however, alter the filing deadline for that information or document. The official filing time is the filing time indicated on the electronic filing.

- (b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.
- (c) All documents submitted electronically to the Transportation Division shall conform to the rules and procedures for electronic filing. Any filing not conforming to the rules and procedures for electronic filing may be rejected by the Transportation Division.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

165:30-7-33. Technical failure

- (a) Technical failure of an electronic system may occur. Users should provide information, documents or payments in advance of any deadline to ensure timely filing.
- (b) A User whose deadline passes without appropriate information, documents or payments made as the result of a technical failure of the electronic system may seek appropriate relief from the Commission. Relief regarding enforcement actions taken by law enforcement, other than by the Commission, cannot be sought at the Commission.
- (c) Failures not originating with the electronic system, such as phone line problems, problems with the user's internet service provider, or hardware or software problems, will not constitute a technical failure or excuse an untimely filing.
- (d) A User may be able to make changes to information or documents after they have been electronically submitted, depending upon the application process. If a correction cannot be made, relief will have to be sought using established rules and procedures.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

SUBCHAPTER 9. INTERSTATE EXEMPT MOTOR CARRIERS [REVOKED]

PART 1. APPLYING FOR AN IRC AND IRC REQUIREMENTS [REVOKED]

165:30-9-1. Obtaining an Interstate Registration Certificate (IRC) [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-2. Insurance [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 2384, eff 7-1-01; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-3. Identification device [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-4. Deleterious Substance Disposal License (Deleterious Substance Transport License) [REVOKED]

[Source: Revoked at 10 Ok Reg 4447, eff 1-1-94 (emergency); Revoked at 10 Ok Reg 4497, eff 1-1-94 (emergency); Revoked at 11 Ok Reg 3735, eff 7-11-94]

165:30-9-5. Current address [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-6. Markings [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 23 Ok Reg 2325, eff 7-1-06; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-7. Deleterious Substance Transport Permit [REVOKED]

[Source: Added at 12 Ok Reg 1005, eff 1-1-95 (emergency); Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Revoked at 25 Ok Reg 1546, eff 7-1-08]

PART 3. CONDUCTING OPERATIONS [REVOKED]

165:30-9-21. Compliance with laws and regulations [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-22. Legal possession of cargo [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-23. Leasing of equipment [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

PART 5. MISCELLANEOUS [REVOKED]

165:30-9-41. Name changes [REVOKED]

[Source: Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-42. Pollution abatement [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-43. Suspension or revocation of an IRC [REVOKED]

[Source: Amended at 10 Ok Reg 4447, eff 1-1-94 (emergency); Amended at 10 Ok Reg 4497, eff 1-1-94 (emergency); Amended at 11 Ok Reg 3735, eff 7-11-94; Amended at 14 Ok Reg 2539, eff 7-1-97; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-44. Contempt complaint [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 1-1-94 (emergency); Added at 10 Ok Reg 4497, eff 1-1-94 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-45. Reinstatement of an IRC [REVOKED]

[Source: Added at 11 Ok Reg 3727, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-9-46. Violations [REVOKED]

[Source: Added at 21 Ok Reg 774, eff 7-1-04; Revoked at 25 Ok Reg 1546, eff 7-1-08]

SUBCHAPTER 10. INTERSTATE MOTOR CARRIERS

PART 1. COMPLIANCE

165:30-10-1. USDOT number required

(a) All motor carriers engaged in interstate commerce, operating a commercial motor vehicle as defined by 49 C.F.R. 390.5, must obtain their USDOT number prior to commencing operations.

(b) Motor carriers required to obtain a USDOT number may not engage in interstate commerce within, into or out of Oklahoma without having an active USDOT number.

(c) All motor carriers engaged in interstate commerce shall comply with all provisions of 49 C.F.R. 390.21 with regard to vehicle markings.

(d) All motor carriers engaged in interstate commerce must comply with 49 C.F.R. 390.19.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-10-2. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-3. Liability insurance

(a) All interstate motor carriers shall have valid insurance on file with FMCSA, as required by FMCSA.

(b) All interstate motor carriers not required to file insurance with FMCSA, shall carry a copy of its current and valid liability insurance security verification form in each vehicle and present it to an officer upon his/her request.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-4. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-5. Deleterious Substance Transport Permit

An interstate carrier transporting a deleterious substance(s) shall comply with all provisions of OAC 165:30-3-11 and OAC 165:30-3-13.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-6. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-7. Hazardous waste transportation

An interstate carrier transporting hazardous waste shall comply with all provisions of OAC 165:30-17.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-9. Minimum standards

All motor carriers shall comply with all provisions of 165:30-3-34.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

PART 3. CONDUCTING OPERATIONS

165:30-10-11. Lease agreement

An interstate motor carrier shall comply with all provisions of 49 C.F.R. 376.11 with regard to lease agreements.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-12. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-13. Shipping documentation

All motor carriers shall comply with the provisions of 165:30-3-32.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-10-14. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-15. Compliance with laws and regulations

(a) An interstate motor carrier engaged in operations regulated by the FMCSA must comply with all FMCSA regulations.

(b) An interstate motor carrier shall conduct its operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Commission.

(c) No motor carrier engaged in interstate commerce shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, the rules of this Commission; or, the statutes of the State of Oklahoma. No motor carrier or private carrier shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.

(d) Violation of the rules of this Subchapter may result in the motor carrier being prohibited from using the public highways of the State of Oklahoma or any other penalties deemed appropriate by the Commission pursuant to authority granted to the Commission.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-16. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-17. Loading capacity

An interstate motor carrier shall comply with all provisions of OAC 165:30-3-71.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-18. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-19. Pollution abatement

An interstate motor carrier shall comply with all provisions of OAC 165:30-3-92.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

PART 5. VIOLATIONS

165:30-10-31. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission Rules of Practice, OAC 165:5, regarding the procedure in proceedings as for contempt, the procedures set forth in 165:30-3-76 may be followed for violation for any requirement or provision of law or the rules of this Subchapter.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-32. Violations

- (a) Every for-hire motor carrier, shipper, private motor carrier, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirement of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred (\$500.00) Dollars per violation per day or as otherwise provided for by law.
- (b) All motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted road signs.
- (c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or rules of this Agency.
- (d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, public safety or welfare, upon direction of the Transportation Division Director or his designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.
- (e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the motor carrier.

[Source: Added at 25 Ok Reg 1546, eff 7-1-08]

PART 7. INTERSTATE MOTOR CARRIERS OPERATING IN INTRASTATE COMMERCE

165:30-10-41. Intrastate authority required

An interstate motor carrier must obtain intrastate authority from the Commission prior to commencing intrastate operations.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-42. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-43. Exceptions to intrastate renewal requirements

An interstate carrier with intrastate authority must continue to conduct its operations in accordance with OAC 165:30-3 or OAC 165:30-15, with the exception of the following:

- (1) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to comply with OAC 165:30-3-3 or OAC 165:30-15-5.
- (2) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to renew its identification devices annually, after the first year of the license has elapsed.
- (3) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to carry a copy of its intrastate license with current identification device annually, after the first year of the license has elapsed.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-44. [RESERVED]

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07]

165:30-10-45. Miscellaneous

- (a) An interstate motor carrier with valid intrastate authority issued pursuant to OAC 165:30-3 or OAC 165:30-15, must maintain liability insurance on file as prescribed in OAC 165:30-3-11 or OAC 165:30-15-6, to retain its intrastate authority.
- (b) If a motor carrier's authorization to operate interstate is canceled, whether voluntary or involuntary, the motor carrier must immediately make application to the Commission for intrastate authority renewal and identification devices. Failure to make application within sixty (60) days shall cause the motor carrier's intrastate license to expire.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 29 Ok Reg 951, eff 7-1-12]

SUBCHAPTER 11. INTERSTATE REGULATED MOTOR CARRIERS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

165:30-11-1. Purpose [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-2. Definitions [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 through 7-14-95 (emergency); Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 15 Ok Reg 3041, eff 7-15-98; Revoked at 25 Ok Reg 1546, eff 7-1-08]

PART 3. REGISTRATION OF AUTHORITY AND REGISTRATION REQUIREMENTS [REVOKED]

165:30-11-11. Initial registration of ICC authority [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Amended at 15 Ok Reg 3041, eff 7-15-98; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-12. Annual or supplemental registration [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-13. Change of registrant's principal place of business [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-14. Insurance [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-15. Registration receipts [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-16. Change of name, address and/or ownership of registrant [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-17. Markings [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Amended at 12 Ok Reg 1005, eff 1-1-95 (emergency); Amended at 12 Ok Reg 2077, eff 7-1-95; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-18. Deleterious Substance Transport Permit [REVOKED]

[Source: Added at 12 Ok Reg 1005, eff 1-1-95 (emergency); Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Revoked at 25 Ok Reg 1546, eff 7-1-08]

PART 5. CONDUCTING OPERATIONS [REVOKED]

165:30-11-31. Compliance with laws and regulations [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-32. Legal possession of cargo [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-33. Leasing of equipment

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

PART 7. MISCELLANEOUS [REVOKED]

165:30-11-41. Pollution abatement [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-42. Suspension or revocation of an ICC regulated registration [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-43. Contempt complaint [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-44. Reinstatement of an ICC regulated registration [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-45. Auditing of ICC regulated interstate motor carrier [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-46. Cooperation with other participating states [REVOKED]

[Source: Added at 10 Ok Reg 4447, eff 8-5-93 (emergency); Added at 10 Ok Reg 4497, eff 8-5-93 (emergency); Added at 11 Ok Reg 3735, eff 7-11-94; Revoked at 25 Ok Reg 1546, eff 7-1-08]

165:30-11-47. Violations [REVOKED]

[Source: Added at 21 Ok Reg 774, eff 7-1-04; Revoked at 25 Ok Reg 1546, eff 7-1-08]

SUBCHAPTER 12. UNIFIED CARRIER REGISTRATION

165:30-12-1. Unified Carrier Registration

(a) The Commission shall comply with the provisions of the procedures adopted by the UCR Board.

(b) An interstate motor carrier, freight forwarder, leasing company or broker subject to UCR shall be known as a UCRant.

(c) A UCRant shall pay its applicable UCR fee to its base state, in accordance with the UCR procedures. The applicable UCR fee may include amounts owed for prior years as well as the fee for the current year.

- (d) UCR fees, once paid, will not be refunded unless provided for in the Unified Carrier Registration Agreement issued pursuant to 49 U.S.C.A. § 14504a.
- (e) Failure of a UCRant to pay its applicable UCR fee to its base state shall subject the UCRant to contempt complaint proceedings.
- (f) Interstate carriers excluding vehicles operating intrastate only from the UCR fee must comply with 165:30-10-45.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 35 Ok Reg 1044, eff 10-1-18]

SUBCHAPTER 13. INTRASTATE HOUSEHOLD GOODS CERTIFICATES

PART 1. OBTAINING AUTHORITY

165:30-13-1. Procedures for issuance of certificates or permits to motor carriers of household goods previously holding certificates or permits or performing transportation of household goods under a motor carrier license [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 13 Ok Reg 2419, eff 7-1-96]

165:30-13-2. Obtaining a household goods certificate

- (a) No motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the intrastate, including intracity, transportation of household goods for hire without first obtaining from the Commission a certificate as provided in this Section.
 - (1) An applicant for a certificate shall file with the Commission a written application on the appropriate form prescribed by the Commission (MCF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.
 - (2) The application shall be assigned a PIN, which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the authority or for additional authority by the same applicant shall be filed under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for authority. Each subsequent application shall also bear a sub-number in sequence.
 - (3) A certificate shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.
 - (4) The filing of an application for a certificate does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited except pursuant to a certificate issued by the Commission, and only after all requirements have been met, and identification devices have been obtained.
 - (5) The application for a household goods certificate shall contain the following information:
 - (A) Name of applicant, trade name, email address, mailing address, principal place of business address which shall be the registered address for purposes of this Subchapter, telephone number and domicile county of the applicant. The applicant's name must be a legal entity. A trade name or "doing business as" (DBA) may be designated, but cannot be a corporate name or LLC or LLP or

another organized entity. If the applicant is an organized entity, a copy of the certificate of incorporation or other instrument as issued by the Oklahoma Secretary of State's Office shall be attached to the application.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors and listing the email, mailing and physical addresses of each.

(C) Declaration of its USDOT number. Carriers without a USDOT number must apply for a USDOT number. A USDOT number must be issued to the applicant prior to a certificate being issued.

(D) Declaration of its safety rating and provide a safety summary report.

(E) A size and weight summary report.

(F) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(G) A description of all terminal and dock facilities to be utilized for household goods transportation operations. If no facilities exist within the state, the address where vehicles will be parked must be provided.

(H) The name and address of a process agent for Oklahoma must be filed and maintained for any applicant that does not maintain a physical address in Oklahoma.

(I) A declaration that the applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(b) Every person operating as a motor carrier of household goods pursuant to this Subchapter shall obtain a copy of this Chapter and be familiar with its content as it pertains to motor carriers of household goods.

(c) The Commission may consider any written protests or written complaints filed prior to granting or renewing a household goods certificate. If the Commission elects not to grant or renew a household goods certificate, the application shall be set for public hearing in accordance with Commission rules. At the hearing, the applicant shall have the burden of establishing it has the ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma.

(d) After the hearing, the Commission may grant or deny the application in whole or in part; or may impose conditions, stipulations and limitations on the authority as stated in the order.

(e) Applicant may be issued a provisional household goods certificate not to exceed ninety (90) days from the date the application is filed, provided all requirements, with the exception of the educational compliance requirements, for the certificate have been met. Applicant must provide a written request for the provisional certificate. If the provisional certificate is issued, a copy of the provisional certificate must be carried in each vehicle operated by the Applicant.

(f) A certificate shall be valid for one year from date of issuance. Applicants for renewal of a certificate shall comply with OAC 165:30-3-3.

(g) A copy of the current certificate under which a carrier operates shall be carried at all times in each power unit by the motor carrier.

(h) A motor carrier of household goods engaged in intercorporate hauling shall be subject to this Subchapter.

(i) No household goods certificate shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(j) An intrastate motor carrier of household goods may additionally engage in intrastate for-hire transportation of property without an intrastate motor carrier license, but may not engage in the intrastate transportation of passengers, deleterious substances or hazardous materials without complying with Subchapter 3 of this Chapter.

(k) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 247, eff 11-1-95 (emergency); Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-13-3. Temporary authority [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-4. Reissuance of certificate

(a) Intrastate household goods certificates and permits issued prior to November 1, 2009, shall expire sixty days after the effective date of this Section.

(b) Within sixty days of the effective date of this Section, intrastate motor carriers of household goods holding a valid certificate or permit on November 1, 2009, shall apply for a household goods certificate as set forth in this Subchapter. The filing fee as set forth in OAC 165:30-13-2 (a) (1) shall be waived.

(c) This Section does not apply to any household goods certificates or permits that are suspended or revoked prior to the effective date of this Section.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

PART 3. HOUSEHOLD GOODS CERTIFICATE REQUIREMENTS

165:30-13-11. Insurance

All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-11.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-12. Identification device

(a) Every motor carrier operating upon the public highways of the State of Oklahoma shall obtain and display a current identification device, issued by this Commission, for each power unit operated by said motor carrier.

(1) Only one (1) identification device is required for each power unit.

(2) The annual fee for each identification device will be as prescribed by law or Commission rule.

(3) Identification devices expire simultaneously with the expiration date of the annual certificate issued to the motor carrier.

(b) No identification device may be sold or otherwise transferred; except if such motor carrier provides a newly acquired vehicle in substitution therefore, each identification device on the discontinued vehicle, if such device is still in the

possession of the motor carrier, may be transferred to the substitute vehicle or any subsequently substituted vehicle.

(c) It is the duty of every motor carrier to remove and destroy identification devices upon transfer or sale of a power vehicle.

(d) Identification devices found to be in the possession of a carrier not authorized will be confiscated and returned to the Commission by a motor carrier enforcement officer.

(e) No identification devices will be issued to any motor carrier who does not meet all statutory, regulatory and Commission requirements.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-13. Annual report [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-14. COD shipments [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-15. Markings

Every motor carrier of household goods shall comply with the provisions of 165:30-3-17.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-16. Current address requirement

All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-16.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-17. Adoption of interstate tariff - filing of affidavit [REVOKED]

[Source: Added at 18 Ok Reg 2384, eff 7-1-01; Revoked at 27 Ok Reg 1773, eff 7-1-10]

PART 5. CONDUCTING OPERATIONS

165:30-13-20. Estimates

(a) Household goods carriers must provide written binding or non-binding estimates.

(b) The written estimate must clearly provide:

(1) Whether it is a binding or a non-binding estimate. Non-binding estimates must be based upon a reasonably accurate estimate of the charges for transportation and accessorial services to be performed.

(2) The form of payment that will be honored at delivery such as cash, certified check, money order, type of credit card, etc.

(3) The date of the estimate.

(4) The signatures of the carrier and of the shipper.

(5) If the household goods carrier's charges will be based upon inventoried items, a written itemized inventory for each shipment must be prepared and attached to the bill of lading.

- (6) The shipment will be transported at the released value of \$.60 per pound, at no additional cost to the shipper, unless the shipper elects full value protection.
- (c) Household goods carriers assessing charges based upon weight must obtain weight tickets of the vehicle before loading and after loading. The weight tickets must include:
- (1) The complete name and location of the scale.
 - (2) The date of each weighing.
 - (3) The signature of the weigh master.
 - (4) The identification of the weight entries as being the tare, gross or net weights.
 - (5) The last name of the shipper as it appears on the bill of lading (if the vehicle is loaded).
 - (6) The bill of lading number.
- (d) In the event of a binding estimate based upon weight, the shipper may elect to waive the weighing of the vehicle before loading and/or after loading, but such waiver must be specifically noted and initialed on the written estimate.
- (e) A shipper shall be granted the ability to observe the vehicle weighing or re-weighing as requested.
- (f) Household goods carriers assessing charges not based upon weight shall clearly specify the parameters for which charges will be assessed.
- (g) Services performed under an estimate are subject to the 110% rule, which means the household goods carrier must deliver the goods once the shipper pays 110% of the estimated charges. The 110% rule still applies to partial shipments when a prorated percentage is paid.
- (h) Additional charges may be added based upon mutual agreement of the carrier and the shipper. These charges must be in writing and signed by both parties. Additional charges may not be added after the goods are loaded, except as provided for in OAC 165:30-13-28.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-13-22. Consumer protection information

- (a) The Commission shall develop consumer protection information to be provided to each prospective household goods shipper or consignor.
- (b) The consumer protection information shall contain the following:
- (1) Intrastate and intracity household goods carriers are regulated by the Commission.
 - (2) Written estimates are required.
 - (3) The types of services provided by household goods vary.
 - (4) Explanation of valuation.
 - (5) Information on how to file a claim.
 - (6) The following recommendations:
 - (A) Contact more than one household goods carrier for an estimate so services and costs can be compared.
 - (B) Display of a USDOT number does not indicate the carrier holds an active household goods certificate. Contact the Commission to ensure the prospective household goods carrier is certificated.
 - (C) Contact the local Better Business Bureau regarding the prospective household goods carrier.
 - (D) Understand the terms and conditions of the contract.
 - (E) Understand the final charges the shipper will be required to pay.

(7) Any other information, derived from the Household Goods Act of 2009 or this Chapter, the Commission deems pertinent.

(c) The Commission shall post the consumer protection information online, where it will be accessible to both household goods carriers and the general public.

(d) Every household goods carrier shall provide the consumer protection information to each prospective shipper or consignor when a written estimate is provided.

(e) Household goods carriers may reprint the consumer protection information for handout as provided by the Commission or include the information in their own brochure, including additional information and logos as desired, provided all information required by the Commission is accurately contained within the carrier's brochure and no information inserted by the carrier contradicts or nullifies the Commission required information.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-24. Valuation and liability

(a) All household goods carriers shall obtain a written valuation selection from the shipper prior to shipment. A household goods carrier must ensure the shipper selects one of the two (2) following valuations:

(1) **Released value.** Released value is the minimum amount a household goods carrier is liable to a shipper for lost or damaged goods. An intrastate household goods carrier may not charge a shipper an extra charge for a released value selection. Under released value, a household goods carrier is responsible, at its option, to replace, repair or settle in cash any article(s) that is lost, damaged destroyed or otherwise not delivered, at an amount of \$.60 per pound of the weight of any article.

(2) **Full value.** Full value requires a household goods carrier to replace, repair or settle in cash any article(s) that is lost, damaged, destroyed or otherwise not delivered to the final destination while in the intrastate household goods carrier's custody. The carrier is required, at its option, to repair the article to the extent necessary to restore it to the same condition as when it was received by the carrier; pay the shipper for the cost of the repairs; replace the article with an article of like kind and quality; or, pay the shipper for the cost of article replacement, up to the amount of declared value of the shipment.

(b) Shippers electing full value protection shall declare the total value of their shipment.

(c) Shippers electing full value protection must declare, in writing, any articles that exceed a value of \$100 per pound, entitling the shipper to full recovery of the declared value of the article(s), not to exceed the declared value of the shipment.

(d) A household goods carrier shall not be liable for physical loss of or damage to any articles from external cause while being carried or held storage-in-transit due to:

(1) An act, omission or order of shipper.

(2) A defect or inherent vice of the article, including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein.

(3) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack.

- (4) A government or sovereign power, or by any authority maintaining or using military, naval or air forces.
- (5) An agent of any such government, power, authority or forces.
- (6) Any weapon of war employing atomic fission or radioactive force whether in time of peace or war.
- (7) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such an occurrence.
- (8) Seizure or destruction under quarantine regulations.
- (9) Confiscation by order of any government or public authority.
- (10) Risks of contraband or illegal transportation or trade.
- (11) Terrorist activity, including action in hindering or defending against an actual or expected terrorist activity. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Terrorist activity means any activity which is unlawful under the laws of the United States or any state and which involves any of the following:

- (A) The hijacking or sabotage of any conveyance including an aircraft vessel, cab, truck, van, trailer, container or vehicle, or warehouse or other building.

- (B) The seizing or detaining and threatening to kill, injure or continue to detain another individual in order to compel a third person, including a governmental organization, to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detailed.

- (C) An assassination.

- (D) The use of any biological agent, chemical agent or nuclear weapon or device or explosive, firearm or other weapon or dangerous device, other than for mere personal monetary gain with intent to endanger directly or indirectly the safety of one or more individuals or to cause substantial damage to property.

- (E) A threat, attempt or conspiracy to do any of the foregoing.

- (12) Delay caused by strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person(s) taking part in any such occurrence or disorder, and from loss or damage when carrier, after notice to shipper or consignee of a potential risk of loss or damage to the shipment from such causes, is instructed by the shipper to proceed with such transportation and/or delivery, notwithstanding such risk.

- (13) Acts of God.

- (14) Delay caused by highway obstruction or faulty or impassable highways or lack of capacity of any highway or bridge or caused by breakdown or mechanical defect of vehicles or equipment or from any cause other than negligence of the carrier, nor shall the carrier be bound to transport by any particular schedule, means, vehicle or otherwise than with reasonable dispatch.

(e) Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination,

(f) The shipper shall indemnify carrier against loss or damage caused by inclusion in the shipment of explosives or dangerous articles or goods.

(g) The shipper, upon tender of the shipment to carrier, and the consignee, upon acceptance of delivery of shipment from carrier, shall be liable, jointly and severally, for all unpaid charges payable on account of a shipment including, but not limited to, sums advanced or disbursed by a carrier on account of such shipment. The extension of credit to either shipper or consignee for such unpaid charges shall not thereby discharge the obligation of the other party to pay such charges in the event the party to whom credit has been extended shall fail to pay such charges.

(h) If for any reason, other than the fault of the household goods carrier, delivery cannot be made to the address shown on the bill of lading or to another address of which carrier has been notified, the household goods carrier may, at its option, cause articles contained in the shipment to be stored in a warehouse selected by it at the point of delivery or at other available points at the cost of the owner, subject to a lien for all accrued charges.

(i) If shipment is refused by consignee at destination, or if shipper, consignee or owner of property fails to receive or claim it within fifteen (15) days after written notice by US mail addressed to shipper and consignee at post office addresses shown on the bill of lading, or if shipper fails or refuses to pay applicable charges in accordance with the written estimate, bill of lading and/or any valid amendments thereto, the household goods carrier may sell the property as follows:

(1) Upon notice at public auction to highest bidder for cash at a public sale to be held at a time and place named by carrier, thirty (30) days notice of which sale shall have been given in writing to shipper and consignee, and there shall have been published at least once a week for two consecutive weeks in a newspaper of general circulation at or near the place of sale, a notice thereof containing a description of the property as described in the bill of lading and the names of the consignor and consignee.

(2) Any perishable articles contained in said shipment may be sold at public or private sale without such notice if, in the opinion of the carrier, such action is necessary to prevent deterioration or further deterioration.

(3) The proceeds of any sale shall be applied toward payment of shipment charges and toward expenses of notice, advertising and sale, and of storing, caring for and maintaining property prior to sale. The balance, if any, shall be paid to the owner of the property.

(j) A shipper may not refuse a partial shipment due to loss of or damage to one or more articles.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-26. Bill of Lading

(a) No household goods shipments may be loaded until a valid bill of lading has been prepared. A bill of lading must contain:

(1) Date.

(2) The identification number for the shipment (may be a bill of lading number).

(3) The household goods carrier's information as follows:

(A) Legal name and dba (if any).

(B) Mailing address and physical address (if different from mailing address).

(C) Telephone number.

(D) USDOT number as linked to the intrastate household goods certificate.

- (E) Other motor carrier information, as required in this subsection, that will participate in the transportation of the shipment.
- (4) The shipper's information as follows:
- (A) Name.
 - (B) Mailing address and physical address (if different from mailing address).
 - (C) Telephone number.
- (5) Shipment information as follows:
- (A) Agreed upon pick up date and delivery date or agreed period of the entire move.
 - (B) Origin and destination of shipment.
 - (C) The inventory list signed by both parties or an inventory list waiver signed by the shipper.
 - (D) Identification information of the vehicle on which the shipment is loaded.
- (6) Payment and charges as follows:
- (A) Denote if the estimate was binding or non-binding.
 - (i) If non-binding, a reasonably accurate estimate of the amount of the total charges, the maximum amount (subject to the 110% rule) that must be paid at the time of the delivery to relinquish possession of the shipment.
 - (ii) If binding, the amount of charges that must be paid to relinquish possession of the shipment along with the terms of payment.
 - (B) The form of payment that will be honored upon delivery (which must be the same as shown on the estimate).
 - (C) The terms and conditions for payment of the total charges, including notice of any minimum charges.
 - (D) The maximum amount of payment that will be required at the time of delivery to obtain possession of the shipment.
 - (E) The declared value of the shipment or, if the shipper does not select the full value protection, the released value of the shipment.
 - (F) The cost to the shipper for full value shipment valuation, if selected by the shipper.
 - (G) Evidence of any insurance coverage sold to or procured for the shipper from an independent insurer, including the cost incurred for the insurance.
 - (H) A complete description of any accessorial services ordered and the charges associated with the services.
 - (I) Whether the shipper will be notified in advance of the charges before delivery. If yes, the shipper must provide fax number or address where the notifications are to occur and via method (fax, email, overnight courier, certified mail, etc.) as well as any additional charges associated with the notification.
- (7) Acknowledgments and Signatures as follows:
- (A) In the event the motor carrier of household goods reasonably believes an accessorial service is needed to safely transport a shipment, and the shipper refuses to pay for such a service, the carrier must refuse to accept the shipment and note this on the bill of lading.

- (B) Acknowledgment by the shipper that the consumer protection information "Moving in Oklahoma" was received at the time or prior to receipt of the written estimate.
- (C) Specification of the selection of the released rate of sixty cents (.60) per pound per article which is considerably less than the value of most articles transported or the full value protection with declared value of shipment specified.
- (D) Signature of carrier.
- (E) Signature of shipper.

- (b) A copy of the bill of lading must be provided to the shipper at the time of the shipper's signature. The bill of lading must be carried in the vehicle and presented to any law enforcement officer upon request.
- (c) A bill of lading may be amended only prior to the loading of the shipment and upon mutual agreement between the carrier and the shipper except as provided for in OAC 165:30-13-28. The amendment must be signed by both parties.
- (d) The bill of lading may not contain any language purporting to release or discharge the household goods carrier from liability, but may include a statement the property was received in apparent good condition except as noted on the delivery receipt.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-13-27. Blank or incomplete documents

A household goods carrier may provide a blank or incomplete non-binding estimate, bill of lading or other blank or incomplete documents pertaining to the move, as long as all the relevant shipping information is contained within the document to determine the final charges except the actual final shipment weight or other information necessary to finalize the shipping charges. These blank or incomplete areas or forms must be so noted at the time of the carrier's and shipper's signatures.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-28. Additional services

- (a) If the household goods carrier believes additional services are necessary to properly service a shipment after the bill of lading has been issued, the following actions must occur:
 - (1) The shipper must be allowed a minimum of one hour to determine whether it wants the additional services performed.
 - (2) If the shipper agrees to pay for the additional services, a written attachment to be made a part of the bill of lading contract must be signed by the shipper.
- (b) The shipper is not required to pay for the additional services until a minimum of thirty (30) days after delivery.
- (c) If the shipper requests additional services after the bill of lading has been issued, the following actions must occur:
 - (1) The household goods carrier must advise the shipper of the charges associated with the additional services.
 - (2) If the shipper agrees to pay for the additional services, a written attachment to be made a part of the bill of lading contract must be signed by the shipper.
- (d) The household goods carrier may require full payment at delivery for the additional services, and for 100% of the original binding estimate.

(e) When the household goods carrier is not aware of the need for shuttle services for shipment delivery, and shuttle services are required for shipment delivery, the household goods carrier may require full payment at delivery for the shuttle service.

[Source: Added at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-31. Compliance with laws and regulations

(a) All motor carriers of household goods shall conduct their operations in accordance with all applicable laws of the USDOT, State of Oklahoma and this Subchapter. All certificates heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Subchapter as fully as if those laws and rules were set forth verbatim therein.

(b) No motor carrier of household goods shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, this Subchapter or, the statutes of the State of Oklahoma. No motor carrier of household goods shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Subchapter or statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person under the influence of alcohol, amphetamines, stimulants or other drugs, in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-32. Shipping documentation [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-33. Records

(a) Every motor carrier shall maintain accurate records of all operations, including work orders, estimates, bills of lading, freight bills, warehouse receipts, and complete information as to shipper, consignee, origin, destination, commodities hauled, charges, work performed, equipment used and date of shipment or work performed. All records shall be open to inspection at any time by an authorized agent of the Commission.

(b) All records required by this Subchapter shall be maintained at the location last designated by the motor carrier as its principal office. If no location in Oklahoma is so designated, upon demand, the records shall be made available at a location designated by the Commission, at the expense of the motor carrier.

(c) All books, records, accounts and other documents required by this Subchapter must be retained for a period of not less than three (3) years.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-34. Minimum standards

(a) Every vehicle used for transportation of household goods shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma, the regulations of the USDOT and the rules of the Department of Public Safety.

(b) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.

(c) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-35. Credit [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-36. Loss, damage and concealed claims

(a) Every motor carrier of household goods shall be liable for all loss, damage or injury it causes to goods or property while the same is being carried by it.

(b) A written claim shall be submitted to the household goods carrier and shall contain:

- (1) Tender of any agreed upon freight charges.
- (2) Facts sufficient to identify the shipment(s) of property involved.
- (3) A copy of the bill of lading.
- (4) Assertion of liability for alleged loss, damage, injury or delay.
- (5) A claim for the payment of a specific or determinable amount of money.
- (6) The basis for the amount of the claim, such as the date the article was purchased, original cost, actual cash value at the time of loss or damage, a repair estimate, etc.
- (7) When the loss of an entire package or shipment is involved, the consignee will provide a written certified statement the property has not been received from any other source.

(c) A claim shall be filed within nine (9) months after delivery to consignee, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed, except as provided for in (h) of this Section.

(d) A lawsuit shall be instituted against the household goods carrier within five (5) years from the date a notice is received by the claimant that the claim was denied or any portion of said claim was disallowed by the carrier.

(e) Every motor carrier of household goods, upon receipt of a claim in writing for loss of or damage to cargo during transportation, some portion of which was performed by that carrier, regardless of the form in which the claim is presented, shall:

- (1) Acknowledge receipt of the claim in writing within thirty (30) days after receipt thereof by the household goods carrier.
- (2) Commence an investigation in good faith to determine whether the carrier acknowledges or denies liability for the loss or damage.
- (3) Either pay the claim in full, or as agreed to by mutual compromise, or deny liability for loss or damage in writing within ninety (90) days after receipt of the original claim by the carrier. Such action shall not be withheld or postponed pending receipt of payment or acknowledgment of liability from connecting carriers.

(f) Acknowledgment of liability shall be accompanied by payment in full of the value of property lost or damaged except where subject to released value. When a shipper, in the event of loss or damage and without prior approval from the consignee, elects to release a shipment at a value less than the full value of the

property shipped, said shipper will indemnify to the consignee the difference between the released value and the full value of the property shipped.

(g) Where intrastate shipments are received by the carrier of household goods from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier with written exceptions covering loss or damage thereto, the carrier shall have the burden of proof to establish nonliability for such loss or damage. Terms and conditions of the bill of lading contract referring to excepted causes shall remain applicable.

(h) Where intrastate shipments are received by the carrier of household goods from the shipper in apparent good order and with no exceptions noted on the bill of lading, and delivered by the carrier in the same manner with no exceptions noted, such concealed loss or damage claims must be submitted to the carrier by the shipper. Inspections covering loss or damage found after delivery must be requested to the delivering carrier in writing within fifteen (15) days after the delivery of the shipment involved. If more than fifteen (15) days have passed it is incumbent upon the consignee to offer reasonable evidence to the carrier or a representative of the carrier that loss or damage was not incurred by the consignee after delivery by the carrier.

(i) Every motor carrier of household goods shall maintain a separate numbered file on each claim for loss or damage, and shall keep in the file all documents, acknowledgments, instruments, correspondence, memoranda and other writings relating to the claim. Claim files shall be available at all times for inspection by Commission personnel and shall be retained for two (2) years after final disposition.

(j) If a carrier fails to process loss or damage claims as provided herein, or if it fails to express declinations of the claims in writing with proof of nonliability, the carrier may be found in contempt by the Commission after proper notice and hearing. Failure to pay any fine or otherwise resolve the complaint may result in a hearing by the Commission to determine if the operating authority of the carrier shall be revoked.

(k) Whenever property transported by a household goods carrier is damaged, or alleged to be damaged, and is as a consequence thereof not delivered or is rejected or refused upon tender thereof to the owner, consignee or person entitled to receive such property, the household goods carrier shall, after giving due notice to the owner and other parties that may have an interest therein and unless advised to the contrary after giving such notice, will undertake to sell or dispose of such property directly or by the employment of a competent salvage agent.

(1) The household goods carrier will dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein.

(2) The household goods carrier will make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment involved and claim, if any filed thereon.

(3) The household goods carrier will assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(4) Upon receipt of a claim on a shipment on which salvage has been processed in the manner required in this subsection, the household goods carrier will record in its claim file the lot number assigned, the amount of money recovered if any from the disposition of such property and the date of transmittal of such money to the person or persons lawfully entitled to

receive the same.

(5) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particular of each such transaction or relationship, or both as the case may be.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-37. Leasing of equipment

(a) All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-37.

(b) Motor carriers of household goods shall not rent equipment, with or without driver, to a private carrier or to a shipper.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

PART 7. NAME CHANGES

165:30-13-51. Name changes

(a) An application to change the name or business name of the holder of an motor carrier of household goods certificate, without any change in the legal identity of the holder or any change in the ownership of the certificate, shall be filed on the appropriate form prescribed (TDF 3) under the permanent PIN of the holder with appropriate sub-number designation and with such filing fee as prescribed by law or by OAC 165:5. No notice or hearing shall be necessary unless the Commission so requires. Notice, if required, shall be as the Commission shall direct.

(b) Any change in legal identity of the holder of a motor carrier of household goods certificate, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust shall require an original application for a certificate.

(c) Incorporation by a sole proprietor in which the sole proprietor is the sole shareholder of the corporation shall be deemed a name change. Incorporation by a partnership in which the partners are the sole shareholders of the corporation shall be deemed a name change.

(d) The merger of a corporate holder of a motor carrier of household goods certificate with another corporation under circumstances that the holder is not the survivor therein, shall require an original application for a certificate.

(e) The acquisition, through stock ownership or otherwise, of operating control of the business of the holder of a motor carrier of household goods certificate, by another holder of a certificate or by majority stockholders of a corporate holder, shall require an original application for a certificate.

(f) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation, shall require an original application for a certificate.

(g) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to circumvent the rules of this Chapter is prohibited.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-52. Transfer of certificate or permit [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

**165:30-13-53. Transfer upon death of holder of certificate or permit
[REVOKED]**

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

PART 9. VIOLATIONS

165:30-13-71. Loading capacity-Safety compliance

All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-71.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-72. Leasing of authority

No motor carrier of household goods certificate, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner permit the use thereof, or the exercise of any rights or privileges thereunder by another. Violation of this Section shall be grounds for revocation of the certificate, and shall be grounds for denial of an application for authority to operate as an intrastate motor carrier of household goods.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-73. Advertising

(a) All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-75.

(b) Any person who willfully advertises to perform transportation services for which the person does not hold a proper certificate shall be subject to the penalties prescribed for contempt of the Commission.

(c) All advertisements must contain the motor carrier of household goods' USDOT number linked to the carrier's household goods certificate.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-74. Contempt complaint

All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-76.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

PART 11. SUSPENSION OR CANCELLATION OF AUTHORITY

165:30-13-91. Voluntary suspension or discontinuance of service [REVOKED]

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Revoked at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-92. Involuntary suspension or revocation of a household goods certificate

(a) Any motor carrier of household goods certificate may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter.

(b) An application to revoke or suspend a motor carrier of household goods certificate may be filed by a member of the staff of the Commission or by a person adversely affected by the acts alleged. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Commission's Rules of Practice, OAC 165:5.

(c) After hearing, the Commission may grant or deny the application, and may suspend, amend or revoke the certificate, or any part thereof or rights thereunder, or the Commission may assess a fine or impose limitations or conditions upon the continuation of operations under the certificate as stated in the order.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-93. Reinstatement of certificate

All motor carriers of household goods shall comply with all provisions of OAC 165:30-3-103.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 27 Ok Reg 1773, eff 7-1-10]

165:30-13-94. Violations

(a) Every motor carrier of household goods, shipper, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or requirements of this Chapter; or who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed One Thousand (\$1,000.00) Dollars for the first violation and for the second violation within a year, a penalty not to exceed Five Thousand (\$5,000.00) Dollars, or as otherwise provided for by law.

(b) All motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or the rules of this Agency.

(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, safety or welfare, upon direction of the Transportation Division Director or his/her designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.

(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the motor carrier.

[Source: Added at 12 Ok Reg 2077, eff 7-1-95; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10]

SUBCHAPTER 15. INTRASTATE PRIVATE CARRIERS

PART 1. GENERAL PROVISIONS

165:30-15-1. Purpose

The public policy of this State, as declared by the Legislature, requires private carriers shall be regulated by the Commission to protect the public interest, the environment and the highways of the State of Oklahoma and ensure compliance with applicable safety, size and weight laws, rules and regulations.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency); Added at 13 Ok Reg 2419, eff 7-1-96]

PART 3. OBTAINING A PRIVATE CARRIER LICENSE AND LICENSE REQUIREMENTS

Editor's Note: ¹This Part initially included EMERGENCY Sections 165:30-15-11 through 165:30-15-16. However, in a later permanent action, the same numbers were used for different rules and placed in Part 5. The emergency rules initially numbered in Part 3 were either renumbered and moved into Part 5 or allowed to expire without being superseded by a permanent action. See the Source Note in each Section for more specific information.

165:30-15-4. Obtaining a license

(a) No intrastate private carrier, utilizing equipment with an actual weight, registered weight or combination weight or GVWR/GCWR in excess of twenty-six thousand (26,000) pounds and/or GCWR in excess of twenty-six thousand (26,000) pounds when the trailer's GVWR is greater than ten thousand (10,000) pounds, shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of property without first obtaining from the Commission a license as provided in this Section. A private carrier license is not required for a bona fide farmer transporting commodities from farm to market or market to farm; registered and valid non-profit organizations or any private carrier operating equipment leased or rented from a company that leases or rents vehicles on a commercial scale, provided the lease or rental contract is for thirty-one (31) days or less and a copy of the contract is carried in the vehicle. A license issued under this Subchapter shall not include transportation as a for-hire motor carrier. For-hire motor carriers must comply with Subchapter 3 and/or Subchapter 13 of this Chapter.

(1) An applicant for a private carrier license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number ("PIN"), which shall be the permanent identification number for all matters relating to the license granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any private carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Subchapter shall be met within sixty (60) days from date of application recommending the license be

issued. Failure to comply may result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one (1) year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for private carrier intrastate operations shall be issued until applicant has a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Subchapter and all applicable state statutes.

(6) The application shall require the following:

(A) Name, a single trade name (if any), email address, mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all officers, if any, and listing the email, mailing and physical addresses of each.

(C) The type of operations for which the applicant is applying.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business in Oklahoma).

(E) Declaration of its USDOT number, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months. Carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission.

(F) A size and weight summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.

(G) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(H) A description of all terminal, dock or motor pool facilities.

(I) A declaration that the Applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers and private carriers.

(8) A private carrier desiring to modify its license shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (6)(D)-(G) of this subsection.

(9) A copy of the current license under which a carrier operates shall be carried at all times in each power unit by the private carrier.

(b) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all requirements, with the

exception of the educational compliance requirements, for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(c) No intrastate private carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(d) An intrastate private carrier additionally conducting intrastate motor carrier operations under a valid motor carrier license, certificate or permit need not obtain a private carrier license.

(e) If a hearing is held, the applicant shall have the burden of establishing its ability to conduct operations in a safe and reasonable manner and in compliance with all applicable rules and laws of the State of Oklahoma and that it has furnished or will furnish proper proof of all insurance required by this Chapter and all applicable state statutes. The Commission may grant or deny the application or may impose conditions, stipulations and limitations on the license.

(f) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-15-5. License renewals

(a) Any private carrier desiring to continue intrastate private carrier operations as granted in its license, shall, prior to the date of license expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed and attested to as follows:

- (1) Application of sole proprietorship must be signed by owner.
- (2) Application of partnership must be signed by one of the partners.
- (3) Application of corporation must be signed by officer.

(b) All intrastate private carrier licenses issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year, but may be renewed for up to three years. Carriers renewing licenses for more than one year must maintain all requirements of that license as prescribed in Part 3 of this Subchapter in order for the license to be valid.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) A renewal application may be set for hearing in the discretion of the Commission for good cause. All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

(e) An intrastate private carrier desiring to renew its license should apply for renewal of its license a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate private carrier license shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate private carrier operations shall be performed under an expired private carrier license.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 18 Ok Reg 2384, eff 7-1-01; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 23 Ok Reg 509, eff 12-19-05 (emergency); Amended at 23 Ok Reg 2325, eff 7-1-06]

165:30-15-6. Insurance

(a) No intrastate private carrier required to obtain a private carrier license whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an Oklahoma State Insurance Commission authorized provider. No private carrier required to obtain a private carrier license shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by a NAIC certified state insurance commission licensed provider. No holder of a license shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) Every intrastate private carrier of property is required to obtain a private carrier license, and shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury and property damage in minimum amounts, of combined single limits, for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or other (excluding cargo), as follows:

- (1) Transporting non-hazardous commodities or commodities not mentioned in (B)-(C) of this subsection - \$350,000.
- (2) Transporting deleterious substances - \$750,000.
- (3) Transporting hazardous waste, materials, substances, explosives, poison gas or highway controlled radioactive materials as defined in and as required by 49 CFR, Parts 100 through 399.

(c) The Commission may by order grant authority to operate or to continue operating as a private carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section.

(d) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(e) Insurance certificates or surety bonds may be canceled without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or cancelled, the carrier provides an affidavit stating no operations have been conducted and the effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(f) Insurance certificates or surety bonds not properly cancelled or expired shall be considered expired one (1) year after the carrier's authorization to operate has been cancelled or expired.

(g) Insurance certificates or surety bonds approved by this Commission shall be replaced by more recent insurance certificates or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(h) No certificate of insurance shall be filed with the Commission which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(i) Every certificate of insurance filed with the Commission shall automatically provide that the public is protected from damage sustained through operations of any and all vehicles operated by the private carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the license.

(j) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(k) When insurance is provided by more than one insurer in order to aggregate security limits for private carriers, a separate insurance certificate and endorsement is required of each insurer. For each motor carrier, no more than one (1) primary insurance filing and no more than two (2) excess insurance filings shall be approved.

(l) Every private carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force on file with the Commission shall automatically and without notice suspend the license of a private carrier until proper insurance is filed.

(m) Whenever the license of a private carrier is suspended for failure to maintain in force insurance required by this Section on file with the Commission, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).

(n) Whenever a private carrier fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the private carrier's license shall be cancelled by operation of law, and without notice. A license so cancelled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the private carrier was actually covered by proper insurance or proper certificate during the suspension or cancellation period, and that failure to file with the Commission was not due to the private carrier's own negligence.

(o) Any private carrier conducting operations under a suspended or cancelled license shall not be eligible to apply for a new license for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-15-7. Current address requirement

(a) Any notice required by law, the Commission's Rules of Practice, OAC 165:5, or this Subchapter to be served upon or mailed to any holder of a private carrier license shall be delivered or mailed to the last known email or mailing address as reflected by the records of the Commission. It is the duty of every holder of a private carrier license to notify the Transportation Division by specific written request (TDF 17) of any change in the email address, address of the principal place of business or mailing address thereof.

(b) Any non-resident private carrier who has not filed a written designation of service agent with the Commission shall be deemed to have designated the Secretary of State of Oklahoma for the purpose of service of process by the Commission.

(c) Where such notice is required by law, Commission's Rules of Practice, OAC 165:5, or this Subchapter is returned undeliverable, it will be grounds for revocation of the private carrier license.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-15-8. Name changes

(a) An application to change the name or business name of the holder of an intrastate private carrier license, without any change in the legal identity of the holder or any change in the ownership of the license, except as provided in subsections (c), (d) or (e) below, shall be filed on the appropriate form prescribed (TDF 3) under the permanent PIN of the holder with appropriate sub-number designation and with such filing fee as prescribed by law or by Commission rule. No notice or hearing shall be necessary unless the Commission so requires. Notice, if required, shall be as the Commission shall direct.

(b) Any change in legal identity of the holder of an intrastate private carrier license, except as provided in subsections (c), (d) or (e) below, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust, shall require an original application for a license.

(c) Incorporation by a sole proprietor in which the sole proprietor is the majority shareholder of the corporation, limited liability corporation or limited liability partnership shall be deemed a name change. Incorporation by a partnership in which the partners are the majority shareholders of the corporation shall be deemed a name change.

(d) A change in legal entity from a corporation, limited liability corporation or a limited liability partnership to a sole proprietorship, a partnership, a limited liability corporation or a limited liability partnership in which the sole proprietor, partners or shareholders hold the majority of all issued and outstanding shares of the corporation shall be deemed a name change.

(e) The merger of two or more corporations in which the survivor is the holder of a current license shall be deemed a name change.

(f) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation shall not be deemed a name change.

(g) The employment of incorporation, change of name or similar action directly or indirectly as a device to circumvent the rules of this Subchapter is prohibited.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97]

165:30-15-9. Identification device

(a) Every private motor carrier operating upon the public highways of the State of Oklahoma shall obtain and display a current identification device issued by this Commission, for each power unit operated by said private motor carrier and make it available for inspection upon request.

(1) Only one (1) identification device is required for each power unit.

(2) The annual fee for each identification device will be as prescribed by law or Commission rule.

(3) Identification devices shall expire simultaneously with the expiration date of the annual license issued to the motor carrier.

(b) No identification device may be sold or otherwise transferred.

(c) Identification devices found to be in the possession of a carrier not authorized will be confiscated and returned to the Commission by the motor carrier enforcement officer.

(d) No identification devices will be issued to any private motor carrier who does not meet all statutory, regulatory and Commission requirements.

(e) Identification device(s) must be acquired prior to the expiration of each annual expiration of a multiple year renewal license to extend the motor carrier license. Failure to timely acquire the identification device(s) will cause the motor carrier license to expire. Failure to acquire the identification device(s) within 30 days of the expiration of the license will cause the motor carrier license to automatically expire and become subject to reinstatement rules as prescribed in OAC 165:30-3-103.

[Source: Added at 21 Ok Reg 774, eff 7-1-04; Amended at 25 Ok Reg 1546, eff 7-1-08]

PART 5. CONDUCTING OPERATIONS

165:30-15-11.¹ Deleterious Substance Transport Permit

All intrastate private carriers transporting any deleterious substance(s) shall comply with all provisions of 165:30-3-13.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97]

EDITOR'S NOTE: ¹An emergency rule called "Obtaining a license" was promulgated at this number (165:30-15-11) and expired on 7-14-96 without being superseded by a permanent action. For the text of the emergency rule numbered at 165:30-15-11 and effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

EDITOR'S NOTE: ²The emergency rule for "Deleterious Substance Transport Permit" was numbered at 165:30-15-14 and was later promulgated as a permanent rule at this number (165:30-15-11).

165:30-15-12.¹ Markings

Every motor vehicle of 26,001 pounds GVWR or greater operated by an intrastate private carrier shall comply with the provisions of 165:30-3-17.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 1251, eff 5-12-97; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 15 Ok Reg 3041, eff 7-15-98; Amended at 18 Ok Reg 23, eff 10-11-00 (emergency); Amended at 18 Ok Reg 2384, eff 7-1-01]

EDITOR'S NOTE: ¹An emergency rule called "License renewals" was promulgated at this number (165:30-15-12) and expired on 7-14-96 without being superseded by a permanent action. For the text of the emergency rule numbered at 165:30-15-12 and effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

EDITOR'S NOTE: ²The emergency rule for "Markings" was numbered at 165:30-15-16 and was later promulgated as a permanent rule at this number (165:30-15-12).

165:30-15-13.¹ Compliance with laws and regulations

All intrastate private carriers shall comply with all provisions of 165:30-3-31.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96]

EDITOR'S NOTE: ¹An emergency rule called "Insurance" was promulgated at this number (165:30-15-13) and expired on 7-14-96 without being superseded by a permanent action. For the text of the emergency rule numbered at 165:30-15-13 and effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

EDITOR'S NOTE: ²The emergency rule for "Compliance with laws and regulations" was numbered at 165:30-15-26, and was later promulgated as a permanent rule at this number (165:30-15-13).

165:30-15-14.¹ Shipping documentation

All intrastate private carriers operating a motor vehicle with a GVWR or GCWR in excess of 26,000 pounds shall comply with all provisions of 165:30-3-32.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96; Amended at 27 Ok Reg 1773, eff 7-1-10]

EDITOR'S NOTE: ¹An emergency rule called "Deleterious substance transport permit" was promulgated at this number (165:30-15-14) and was superseded by a permanent rule numbered at 165:30-15-11.

EDITOR'S NOTE: ²An emergency rule called "Legal possession of cargo" was added at 165:30-15-27, but was later superseded by a permanent rule called "Shipping documentation" at this number (165:30-15-14).

165:30-15-15.¹ Minimum standards

All intrastate private carriers shall comply with all provisions of 165:30-3-34.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96]

EDITOR'S NOTE: ¹An emergency rule called "Current address requirement" was promulgated at this number (165:30-15-15) and expired on 7-14-96 without being superseded by a permanent action. For the text of the emergency rule numbered at 165:30-15-15 and effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

EDITOR'S NOTE: ²The emergency rule for "Minimum standards" was numbered at 165:30-15-28 and was later promulgated as a permanent rule at this number (165:30-15-15).

165:30-15-16.¹ Leasing of equipment

All private carriers engaged in intrastate commerce, utilizing equipment other than carrier owned, shall be required to carry a copy of a lease agreement or contract in the vehicle at all times.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)²; Added at 13 Ok Reg 2419, eff 7-1-96]

EDITOR'S NOTE: ¹An emergency rule called "Markings" was promulgated at this number (165:30-15-16) and was superseded by a permanent rule numbered at 165:30-15-12.

EDITOR'S NOTE: ²The emergency rule for "Leasing of equipment" was numbered at 165:30-15-30 and was later promulgated as a permanent rule at this number (165:30-15-16).

165:30-15-17. Leasing of license

No intrastate private carrier license, nor any part thereof, or rights thereunder shall be leased; nor shall the holder thereof sublet or in any manner permit the use thereof, or the exercise of any rights or privileges thereunder by another, except as provided in this Section. Violation of this Section shall be grounds for revocation of the license, and shall be grounds for denial of an application for a new or renewed license.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97]

165:30-15-26. Compliance with laws and regulations [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-13, effective 7-1-96.

165:30-15-27. Legal possession of cargo [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-14, effective 7-1-96.

165:30-15-28. Minimum standards [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-15, effective 7-1-96.

165:30-15-29.² Name changes [EXPIRED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency)¹]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-96 (after the 7-14-96 expiration of the emergency action), the text of 165:30-15-29 was no longer effective. For the official text of the emergency rule that was effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

EDITOR'S NOTE: ²On 5-12-97, a permanent rule called "Suspension or discontinuance of license" was added at this number (165:30-15-29), creating a duplication in numbering. The rule was editorially renumbered and codified at 165:30-15-35.

165:30-15-30.² Leasing of equipment [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-16, effective 7-1-96.

EDITOR'S NOTE: ²On 5-12-97, a permanent rule called "Reinstatement of a private carrier license" was added at this number (165:30-15-30), creating a duplication in numbering. The rule was editorially renumbered and codified at 165:30-15-36.

PART 7. VIOLATIONS, SUSPENSION OR CANCELLATION

165:30-15-31. Loading capacity-safety compliance

All intrastate private carriers shall comply with the provisions of 165:30-3-71.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency); Added at 13 Ok Reg 2419, eff 7-1-96]

165:30-15-32. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Oklahoma Corporation Commission Rules of Practice, OAC 165:5 regarding the procedure in proceedings as for contempt, the procedures as set forth in 165:30-3-76 may be followed for violation of any provision of law or of the rules of this Subchapter.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency); Added at 13 Ok Reg 2419, eff 7-1-96]

165:30-15-33. Pollution abatement

All private carriers shall comply with the provisions of 165:30-3-92.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency); Added at 13 Ok Reg 2419, eff 7-1-96]

165:30-15-34. Violations

(a) Every for-hire motor carrier, shipper, private motor carrier, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirements of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred (\$500.00) Dollars per violation per day or as otherwise provided for by law.

(b) All motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or rules of this Agency.

(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, safety or welfare, upon direction of the Transportation Division Director or his designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.

(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the motor carrier.

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency); Added at 13 Ok Reg 2419, eff 7-1-96; Amended at 14 Ok Reg 2539, eff 7-1-97; Amended at 21 Ok Reg 774, eff 7-1-04; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-15-35. Suspension or discontinuance of license

(a) An intrastate private carrier may request cancellation of its license without notice or hearing.

(b) Any intrastate private carrier requesting cancellation of its license while in good standing may reapply for a new license at any time.

(c) Any intrastate private carrier license may be suspended or revoked by the Commission, or the holder thereof assessed a fine or other lawful punishment for violation of, or failure to comply with, any requirement or provision of law or of this Chapter.

(d) An application to revoke or suspend an intrastate private carrier license may be filed by a member of the staff of the Commission or by a person adversely affected by the acts alleged. It shall be in the form of an application, and proceedings thereon, including notice and hearing if required, shall be as prescribed in the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(e) Any violation of other state statutes or regulations shall be cause to initiate an application for revocation by staff or other adversely affected persons.

(f) After hearing, the Commission may grant or deny the application, and may suspend or revoke the license, or any part thereof or rights thereunder, or the Commission may assess a fine or impose limitations or conditions upon the

continuation of operations under the license as stated in the order.

(g) Any private carrier conducting operations under a suspended or cancelled license, shall not be eligible to apply for a new license for a period of not less than ninety (90) days. Except for insurance violations as noted in 165:30-3-11, the ninety (90) day period shall begin the date a Commission order is signed suspending or canceling a private carrier license. This subsection shall not apply to private carrier licenses which have expired.

(h) The employment of incorporation, stock transfer, merger, change of name or similar action directly or indirectly as a device to evade subsection (f) of this Section is prohibited.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97¹; Added at 14 Ok Reg 2539, eff 7-1-97]

*EDITOR'S NOTE:*¹Editorially renumbered from 165:30-15-29, to avoid a duplication in numbering.

165:30-15-36. Reinstatement of a private carrier license

An intrastate private carrier whose license has been cancelled by law or by order of the Commission may make application for reinstatement in accordance with the provisions as set forth in 165:30-15-103.

[Source: Added at 14 Ok Reg 1251, eff 5-12-97¹]

*EDITOR'S NOTE:*¹Editorially renumbered from 165:30-15-30, to avoid a duplication in numbering.

165:30-15-39. Loading capacity-safety compliance [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

*EDITOR'S NOTE:*¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-31, effective 7-1-96.

165:30-15-40. Leasing of license [EXPIRED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency)¹]

*EDITOR'S NOTE:*¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-96 (after the 7-14-96 expiration of the emergency action), the text of 165:30-15-40 was no longer effective. For the official text of the emergency rule that was effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

165:30-15-41. Contempt complaint [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

*EDITOR'S NOTE:*¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-32, effective 7-1-96.

165:30-15-42. Pollution abatement [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

*EDITOR'S NOTE:*¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-33, effective 7-1-96.

165:30-15-43. Suspension or discontinuance of license [EXPIRED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency)¹]

*EDITOR'S NOTE:*¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-96 (after the 7-14-96 expiration of the emergency action), the text of 165:30-15-43 was no longer effective. For the official text of the

emergency rule that was effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

165:30-15-44. Reinstatement of a private carrier license [EXPIRED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 through 7-14-96 (emergency)¹]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-96 (after the 7-14-96 expiration of the emergency action), the text of 165:30-15-44 was no longer effective. For the official text of the emergency rule that was effective from 11-1-95 through 7-14-96, see 13 Ok Reg 247.

165:30-15-45. Violations [SUPERSEDED]

[Source: Added at 13 Ok Reg 247, eff 11-1-95 (emergency)¹]

EDITOR'S NOTE: ¹This emergency rule was superseded by a permanent rule numbered at 165:30-15-34, effective 7-1-96.

SUBCHAPTER 16. INTERSTATE PRIVATE CARRIERS

165:30-16-1. USDOT numbers and markings

All motor carriers engaged in interstate private commerce shall comply with all provisions of OAC 165:30-10-1.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-16-2. Lease agreement

All motor carriers engaged in interstate private commerce shall comply with all provisions of 49 C.F.R. 376.11 with regard to lease agreements.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-3. Shipping documentation

All motor carriers engaged in interstate private commerce shall be required to carry at all times documents that establish legal possession of cargo.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-4. Compliance with laws and regulations

(a) All motor carriers engaged in interstate private commerce shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Commission. All registrations heretofore or hereafter filed with the Commission are subject to applicable provisions of law and of the rules of this Subchapter as fully as if those laws and rules were set forth verbatim herein.

(b) No motor carrier engaged in interstate private commerce shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment for hire that does not comply with safety criteria established by the Statutes of Oklahoma or by the Department of Public Safety. No motor carrier shall permit any person to operate a motor vehicle for hire when such person is intoxicated or under the influence of alcohol or under the influence of amphetamines, stimulants or other drugs. Any vehicle which fails to meet safety criteria, or which is operated by a person under the influence of alcohol, amphetamines, stimulants or other drugs, shall be prevented from continued use of the public highways of the State of Oklahoma.

(c) Violation of the rules of this Subchapter may result in the motor carrier being prohibited from using the public highways of the State of Oklahoma or any other

penalties deemed appropriate by the Commission pursuant to authority granted to the Commission.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-5. Minimum standards

(a) Every vehicle used for interstate private commerce shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma, the regulations of the USDOT and the rules of the Department of Public Safety.

(b) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.

(c) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-6. Loading capacity

All interstate private carriers shall comply with all provisions of OAC 165:30-3-71.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-7. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission Rules of Practice, OAC 165:5, regarding the procedure in proceedings as for contempt, the procedures set forth in 165:30-3-76 may be followed for violation for any requirement or provision of law or the rules of this Subchapter.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-8. Pollution abatement

All motor carriers engaged in interstate private commerce shall comply with all provisions of OAC 165:30-3-92.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-9. Deleterious Substance Transport Permit

All interstate private carriers transporting any deleterious substance(s) shall comply with all provisions of OAC 165:30-3-13 and OAC 165:30-3-11.

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-16-11. Violations

(a) Every private motor carrier, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirement of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred (\$500.00) Dollars per violation

per day or as otherwise provided for by law.

(b) All private motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted road signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or rules of this Agency.

(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, public safety or welfare, upon direction of the Transportation Division Director or her/his designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.

(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the private motor carrier.

[Source: Added at 29 Ok Reg 951, eff 7-1-12]

SUBCHAPTER 17. HAZARDOUS WASTE TRANSPORTERS

PART 1. GENERAL PROVISIONS

165:30-17-1. Purpose and applicability

(a) The rules in this Subchapter are intended to implement a uniform registration and permitting program for motor carriers who transport hazardous waste in interstate or intrastate commerce of a type and amount that requires the shipment to be accompanied by a Uniform Hazardous Waste Manifest contained in 40 CFR, Part 262; and to conform to the procedures and requirement contained in the report submitted to the secretary of transportation pursuant to Section 22 of the HMTUSA by the Alliance for Uniform Hazardous Materials Transportation Procedures (49 USC app 1801-1813 amended by Sec. 20).

(b) The rules in this Subchapter are intended to reflect or complement the procedures as set forth by the Alliance. In the event of conflict, the procedures as set forth by the Alliance will prevail.

(c) Motor vehicles owned and operated by a local, state, or federal government, or any other political subdivision, are not subject to the provisions of this Subchapter.

(d) The Transportation Division may enter into agreements with federal agencies, a national repository or other participating states as necessary to allow the reciprocal registration and permitting of motor carriers transporting hazardous waste. The agreements may include procedures for determining a base state, the collection and distribution of registration fees, dispute resolution, the exchange of information for reporting and enforcement purposes, and other provisions necessary to fully implement, administer and enforce the uniform program.

(e) This Subchapter preempts and supersedes any hazardous waste transportation registration or permitting program administered or enforced by any state agency, city, county, or other political subdivision of the state.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-2. Cooperation with other base states

The Commission will cooperate with other base states in exchanging information and transmitting funds relating to motor carriers registered and permitted under the Alliance.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

PART 3. APPLYING FOR HAZARDOUS WASTE REGISTRATION AND PERMIT

165:30-17-11. Selection of base state

- (a) A motor carrier transporting or intending to transport hazardous waste in and/or through a participating state must register and/or permit in a participating state.
- (b) If the motor carrier's principal place of business is in a participating state, the motor carrier must use its principal place of business state as its base state.
- (c) If the motor carrier's principal place of business is not in a participating state, the motor carrier shall select the participating state in which it operates the most miles (based upon IRP percentages).
- (d) A motor carrier's base state may change due to the motor carrier changing its principal place of business or due to the entry of new states into the uniform program. Procedures set forth by the Alliance will be followed as it pertains to the changing of a motor carrier's base state.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-12. Obtaining a hazardous waste registration and permit

- (a) A motor carrier with its principal place of business in Oklahoma, or that designates Oklahoma as its base state, shall register as a hazardous waste transporter with and obtain a permit from the Commission before transporting a hazardous waste in or through Oklahoma. A motor carrier that designates another participating state as its base state shall register as a hazardous waste transporter and obtain a permit from that state before transporting a hazardous waste in or through the state of Oklahoma.
- (b) A motor carrier who engages in interstate or intrastate transportation of a hazardous waste and who is required to register its hazardous waste transportation in Oklahoma shall file parts I, II and IV of the uniform application (UPW) with the Commission and pay the prescribed fees for registration and permits for its Oklahoma waste transportation as well as fees for reciprocal states.
- (c) Upon a motor carrier's compliance with this Subchapter, the Commission shall issue a Hazardous Waste Registration and/or Permit to the motor carrier within ninety (90) days. Motor carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11. Failure to do so shall subject the registration or permit to revocation.
- (d) The Commission shall not issue a registration or permit to a motor carrier if the Commission determines that a motor carrier's conduct would constitute grounds for suspension or revocation under this Subchapter. The Transportation Division may elect to request additional information from the motor carrier to support the motor carrier's application for registration and/or permit. Additional information requested shall be based upon the motor carrier's compliance with the federal motor carrier safety regulations.
- (e) A registration is valid for one (1) year and a permit is valid for three (3) years unless the motor carrier fails to renew its registration, the permit is suspended or revoked or there is a substantial change in the motor carrier's operations during the permitting period.
- (f) Each motor carrier shall file a Part I - Registration of the uniform application (UPW - Part I) on an annual basis. However, for the first year after the effective date of this Subchapter, the Transportation Division may stagger the registration date for motor carriers. Registration fees shall be apportioned for any quarterly time frame exceeding one (1) year.

(g) Each motor carrier shall additionally file a Part II - Permitting of the uniform application (UPW - Part II) every (3) three years. However, for the first year after the effective date of this Subchapter, the Transportation Division may divide the total pool of applicants to be granted a uniform permit into three (3) classes. The first class may be granted uniform permits with a term of one (1) year; the second class may be granted uniform permits with a term of two (2) years; and the third class may be granted uniform permits for three (3) years. Permit fees shall be apportioned for any permit time not equaling a three (3) year time frame.

(h) Each uniform registration and permit application shall contain certification by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant. Such certification shall contain the following statement, "I certify that, to the best of my knowledge and after due investigation, the information contained in this application is true, accurate, and complete" and shall contain the name, title, and telephone number of the official certifying the application. Such certification must be signed and dated by the official certifying the application.

(i) No registration or permit shall be issued to a motor carrier with outstanding fines owed to another state agency.

(j) A registered and permitted motor carrier shall maintain a copy of its valid registration and permit for Hazardous Waste in each vehicle when transporting a hazardous waste.

(k) The hazardous waste registration and permit are nontransferable.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-17-13. Filing of proof of proper liability insurance

All motor carriers shall comply with the provisions of 165:30-3-11.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-14. Letter of filing

(a) A motor carrier may provide a written request for a letter of filing that, if issued, will allow a motor carrier to operate in the base state and reciprocal states for a period of up to 90 days while the motor carrier's application for registration and permit is being processed.

(b) The Commission shall not issue a letter of filing to a motor carrier until the motor carrier has complied with initial requirements of this Subchapter pending staff's review of the motor carrier's safety compliance. The letter of filing may be rescinded if the motor carrier fails to fully comply with all requirements of this Subchapter.

(c) A letter of filing cannot be issued by the Commission to a motor carrier whose principal place of business is located in a reciprocal state or to a motor carrier who is currently registered with a reciprocal state.

(d) A copy of the letter of filing shall be carried in each vehicle transporting hazardous waste operated by the applicant.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-15. Filing fee calculation

(a) Part I of the uniform application, (UPW - Part I) requires a processing fee of \$50.00 and must be submitted annually for renewal of registration. An amount, as set forth by the Alliance, shall be added to the annual registration processing fee to

be collected by the Commission and remitted to the Alliance.

(b) Each motor carrier shall submit with its registration application a double apportioned vehicle waste transporter registration fee which shall be equal to the percentage of Oklahoma transportation (IRP %) multiplied by the total number of vehicles the motor carrier operates, rounded up to the next whole number, multiplied by the percentage of the motor carrier's total hazardous waste activity multiplied by a per-vehicle fee of \$100.00.

(c) A motor carrier may use data from its most recently complete fiscal year or the most recent complete calendar year in calculating the percentages required in this Subchapter for transportation conducted during the previous year.

(d) Part II of the uniform application, Permitting, requires a permit review fee of \$500.00.

(e) Fee calculation for reciprocal states is found in the Uniform Program Fee Worksheet (Schedules A - D and Summary) of the uniform application.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-16. Ownership of registration and permit

Hazardous waste permits shall be considered personal to the holder thereof and shall be issued only to some definite legal entity. The motor carrier may list a single trade name provided the trade name is not a definite legal entity. Permits are not subject to lease, nor shall the holder thereof sublet or permit the exercise, by another.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

PART 5. CONDUCTING OPERATIONS

165:30-17-31. Shipping documentation

Each shipment shall be accompanied by a uniform hazardous waste manifest as specified in 40 CFR, Part 262 or other manifest as required by the state.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-32. Markings

All motor carriers shall comply with the provisions of 165:30-3-17.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-33. Leasing of equipment

All motor carriers engaged in interstate commerce will be required to carry a copy of the lease contract in each and every power unit.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-34. Name changes

(a) Any change in legal identity of the holder of a hazardous waste, except as provided in subsections (b), (c) or (d) below, including but not limited to incorporation or dissolution of a corporation, formation or dissolution of a partnership or creation or dissolution of a trust, shall require an original application for a registration and permit.

(b) Incorporation by a sole proprietor in which the sole proprietor is the majority shareholder of the corporation, limited liability corporation or limited liability partnership shall be deemed a name change. Incorporation by a partnership in

which the partners are the majority shareholders of the corporation shall be deemed a name change.

(c) A change in legal entity from a corporation, limited liability corporation or a limited liability partnership to a sole proprietorship, a partnership, a limited liability corporation or a limited liability partnership in which the sole proprietor, partners or shareholders hold the majority of all issued and outstanding shares of the corporation shall be deemed a name change.

(d) The merger of two or more corporations in which the survivor is the holder of a current license shall be deemed a name change.

(e) The transfer of stock in a corporation that shall result in any entity controlling fifty one percent (51%) or more of the aggregate number of voting shares of the corporation shall not be deemed a name change.

(f) A request for a name change shall be in writing and shall be accompanied by copy of the Certificate of Incorporation, Amended Certificate of Incorporation or similar documentation (if applicable) and a \$50.00 name change filing fee. The request for name change must be signed by the owner (if an individual). If a partnership is adding or removing a partner(s) all partners (whether existing, added or removed) must sign the request and current demographics information must be provided. If a corporation has amended its name, a corporate office must sign the request. If the officers of the corporation have changed, a listing of all officers including the email, mailing and physical addresses of each must additionally be attached to the request.

(g) Proper insurance filings or bonds must be placed on file with this Commission reflecting the new name.

(h) The employment of incorporation, change of name or similar action directly or indirectly as a device to circumvent the rules of this Subchapter is prohibited.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-17-35. Address changes

A motor carrier shall notify the Commission in writing of any change in the motor carrier's email, mailing or physical address or telephone number.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01; Amended at 36 Ok Reg 602, eff 8-1-19]

PART 7. VIOLATION, SUSPENSION OR REVOCATION OF A PERMIT

165:30-17-51. Inspections, reviews and audits

(a) The Commission will use its enforcement powers to ensure motor carrier compliance with federal safety regulations, state laws and the rules of this Commission.

(b) Authorized employees of the Commission shall perform the following duties:

- (1) Physically inspect vehicles, tanks, containers, cargo and/or drivers;
- (2) Perform on-site examinations of a motor carrier's operations including physical inspections and review of a motor carrier's operating systems;
- (3) Examine a company's records to verify information on which a permit is based;
- (4) An in-house review of a motor carrier's records sent by the motor carrier to the Commission;
- (5) Inspect vehicles and drivers; and,
- (6) Investigate alleged violations triggered by a public inquiry or complaint.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-52. Advertising

Any person who advertises to perform hazardous waste transportation services for which he does not hold a registration and permit shall be in violation of this Section and subject to the penalties prescribed for contempt of the Commission.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-53. Suspension, revocation and denial

(a) The Commission may suspend or revoke a permit issued under this Subchapter or order the suspension of the transportation of hazardous waste in Oklahoma by a motor carrier who has obtained a permit from another participating state under the uniform program if the Commission determines that a motor carrier has:

- (1) Committed a violation of 49 CFR, Parts 100 to 180, 382, 383, 387 or 390 to 397, while engaging in hazardous waste transportation if the violation posed an imminent hazard to the public or the environment;
- (2) Made a knowing falsification of a material fact in a uniform application;
- (3) Received an unsatisfactory safety rating from the Commission or the USDOT;
- (4) Failed to maintain proper liability insurance on file;
- (5) Failed to comply with requirements identified in this Subchapter;
- (6) Exhibited reckless disregard for the public and the environment; or,
- (7) Vehicle or driver out-of-service percentages higher than the national average.

(b) In determining if a motor carrier has exhibited reckless disregard for the public and the environment in violation of this Subchapter, the Commission shall consider;

- (1) Whether the motor carrier has engaged in a pattern of violations of 49 CFR, Parts 100 to 180, 382, 383, 387, or 390 to 397, or regulations governing the management of hazardous waste, while engaging in hazardous materials transportation, when the violations are viewed in relation to the number of truck-miles of hazardous material transportation and the number of vehicles in the motor carrier's fleet;
- (2) The actual or potential level of environmental damage resulting from an incident or a violation of the federal regulations referred to in this Section;
- (3) The response by the motor carrier to an incident or a violation of the federal regulations referred to in this Section;
- (4) The motor carrier's history of violations for the past three years;
- (5) Any mitigating factors;
- (6) Outstanding fines owed to the Commission or another state agency; and,
- (7) Other factors as justice requires.

(c) The Director of the Transportation Division may deny the issuance of a motor carrier's application based upon reasons as specified in this Section. An application may merit the Division's request for additional information from the motor carrier to show compliance with safety regulations.

(d) A motor carrier who wishes to contest a denial, suspension, or revocation is entitled to a hearing under the procedures as specified in the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-54. Reinstatement of a hazardous waste permit

If the permit holder believes the Commission has revoked its permit without good cause, the registrant may petition the Commission for relief, as prescribed in the Commission's Rules of Practice, OAC 165:5.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-55. Violations

The Commission may issue an order requiring violations of this Subchapter to be corrected. An order may include a fine of up to a maximum of \$500.00 for each violation of this Subchapter identified during a single inspection, investigation, or audit unless a different amount is specified under state or federal guidelines.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

165:30-17-56. Contempt complaint

In addition to the procedures set forth in state statutes and in the Commission's Rules of Practice, OAC 165:5 regarding the procedure for contempt proceedings, the procedures as set forth in 165:30-3-76 may be followed for violation of any requirement or provision of law or the rules of this Subchapter.

[Source: Added at 18 Ok Reg 23, eff 10-11-00 (emergency); Added at 18 Ok Reg 2384, eff 7-1-01]

PART 9. HAZARDOUS WASTE TRANSPORTATION FUND

165:30-17-71. Creation of the hazardous waste transportation fund [EXPIRED]

[Source: Added at 18 Ok Reg 23, eff 10-11-00 through 7-14-01 (emergency)¹]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon the expiration of an emergency action enacting a new section, the section is no longer effective. Therefore, on 7-15-01 (after the expiration of the emergency action), the text of section 165:30-17-71 was no longer effective. For official text of the emergency rule that was effective from 10-11-00 through 7-14-01, see 18 Ok Reg 23.

SUBCHAPTER 18. OVERWEIGHT VARIANCE PERMITS [REVOKED]

165:30-18-1. Overweight Variance Permits [REVOKED]

[Source: Added at 32 Ok Reg 823, eff 8-27-15; Revoked at 33 Ok Reg 633, eff 9-1-16]

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

Editor's Note: Effective 7-1-04, the rules in this Subchapter were transferred from the Oklahoma Tax Commission's rules [OAC 710:60-4-1 through 710:60-4-20]. Pursuant to Senate Bill 141 (2004), "rules promulgated by the Tax Commission related to the administration of the International Registration Plan authorized by Section 1120 of Title 47 of the Oklahoma Statutes, the International Fuel Tax Agreement authorized by Section 607 of Title 68 of the Oklahoma Statutes, or the enforcement of Section 1115.1 of Title 47 of the Oklahoma Statutes [were] transferred to and [became] a part of the administrative rules of the Corporation Commission." As directed by SB 141, an Editor's Notice was published in the

Oklahoma Register [21 Ok Reg 2927], announcing the transfer of these rules from OAC 710:60-4-1 through 710:60-4-20 to OAC 165:30-19-1 through 165:30-19-20. For additional information relating to this transfer, see Senate Bill 141 (2004).

165:30-19-1. Purpose

The provisions of this Subchapter have been promulgated to facilitate the administration, enforcement, and collection of fees under the International Registration Plan (IRP) and Oklahoma Motor Vehicle Licensing and Registration Act (47 O.S. §§ 1101 et seq.).

[Source: Transferred from OAC 710:60-4-1 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06]

165:30-19-2. Definitions

In addition to terms defined in the IRP, the Uniform Operational Audit Procedure Guidelines, and the IRP Policies and Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means any person making an application with the Oklahoma Corporation Commission seeking to register a vehicle or vehicles pursuant to the IRP.

"Application" means a filing with the Oklahoma Corporation Commission, seeking to register a vehicle or vehicles with the Commission pursuant to the IRP.

"Apportioned registration" means the proportional registration of a vehicle pursuant to the terms of the IRP and this Subchapter.

"Carrier" means a fleet operator which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"Credentials" means identification plates and cab cards.

"Established account" means any prorated account for which a properly completed original application has been received by the IFTA/IRP Section and all corresponding and assessed fees have been paid in full.

"Grace period" means two (2) months following the expiration of the registration year.

"Interstate" means between or through two (2) or more jurisdictions.

"Intrastate" means from one (1) point within a jurisdiction to another point within the same jurisdiction.

"New operation" means a vehicle or fleet of vehicles not previously registered pursuant to the provisions of the IRP. "New operation" does not include an existing fleet that is expanding the number of vehicles or area of operation.

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Proportional registration" means registration of an apportionable vehicle pursuant to the terms of the IRP and this Subchapter.

"Records" means and includes operational records.

"Registration agent" means a person hired by an applicant or registrant to prepare and/or file applications, supplemental applications, and other documents required for proportional registration in Oklahoma.

"Regular business hours" means 8:30 a.m. to 4:30 p.m. local time.

"Reporting period" or **"mileage year"** means the period of twelve (12) consecutive months immediately prior to July 1 of the year preceding the year of

registration or license.

[Source: Transferred from OAC 710:60-4-2 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-19-3. Registration

(a) Before a vehicle can be proportionally registered in the state of Oklahoma the applicant or registrant must:

(1) Have an established place of business located in Oklahoma. Absent an established place of business in any IRP jurisdiction, an applicant must satisfy the residency requirements in 165:30-19-6, prior to being allowed to base plate in Oklahoma. Under no circumstances can an independent contractor be used to establish a place of business or residence on behalf of a registrant.

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant:

(A) The application must include the email address, mailing address and telephone number of the applicant. In addition to providing the applicant's telephone number, the applicant may provide the telephone number of a third party who has knowledge of the applicant's whereabouts and is able to contact the applicant within a reasonable period upon request. An applicant or registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone number under this Section.

(B) If the application is signed by someone other than the applicant or registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) If the applicant is leased to a motor carrier, the applicant must provide a copy of the lease to satisfy Oklahoma's financial responsibility requirements (47 O.S. § 7-602). If multiple vehicles are under lease, a letter from the motor carrier listing each vehicle's year, make, model and vehicle identification number (VIN) under lease to the carrier may be provided in lieu of the lease, provided a copy of all leases shall be made available to the Commission upon request. The Commission does not perform analysis to ensure compliance with applicable CFRs on lease agreements provided to the Commission for administrative purposes under this Chapter. It is the lessor's responsibility to ensure leases are compliant with the federal CFR's.

(7) Provide proof of ownership;

(8) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

- (9) Pay all applicable fees to complete registration. Continuous registration is required; therefore registration fees shall be assessed from the last vehicle registration date or the date of sale.
- (10) Provide the USDOT number and the social security number, federal employee identification number or taxpayer identification number of the carrier responsible for safety of each vehicle in the apportioned application.
- (11) Be the owner, the lessee, the motor carrier responsible for safety or an entity contracted by the owner or motor carrier responsible for safety.
- (b) Application for registration may be made at any time during a registration year.
- (c) Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (<http://www.occeweb.com>).
- (d) No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.
- (e) If an approved IRP application must be unapproved, corrected, and/or re-approved due to additional information submitted by the applicant after the initial approval or due to an error committed by the applicant, a reprocessing fee may be assessed as established by OAC 165:5-3-1.
- (f) Since registration with the Plan can affect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.
- (1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant thirty(30) days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.
- (2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.
- (g) Non-expiring commercial trailer license plates are issued for trailers used in commercial enterprises regardless of their size or weight (other than trailer mounted special mobilized machinery and trailers used for transporting forest products). Once statutory registration fee(s) and any additional fees set by the Commission established by OAC 165:5-3-1 are remitted, a license plate will be issued upon the initial registration or any subsequent transfer of ownership. Trailer renewal fees, as established by statute and OAC 165:5-3-1, shall be paid annually to maintain active registration status.
- (h) Buses operating in more than one IRP jurisdiction are the only buses eligible for registration by the Commission and are subject to applicable rules of this Chapter. Registration fees for such vehicles are generally based on seating capacity.

[Source: Transferred from OAC 710:60-4-3 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 31 Ok Reg 1024, eff 9-12-14; Amended at 33 Ok Reg 633, eff 9-

165:30-19-4. Title requirements and proof of ownership

(a) Owners of vehicles registered in Oklahoma must possess an Oklahoma title as proof of ownership unless the vehicle has been previously registered in another jurisdiction and engaged in interstate commerce.

(b) Proof of ownership must be submitted for all vehicles being registered through an original or supplemental application. Documents necessary to prove ownership include:

- (1) A copy of the front and back of the Oklahoma title, an Oklahoma title receipt or vehicle registration in the owner's name;
- (2) If previously registered in another jurisdiction and engaged in interstate commerce, a copy of another jurisdiction's IRP cab card indicating ownership or a copy of the IRP cab card and the front and back of the out of state title; and/or,
- (3) A lease-purchase agreement by which the applicant or registrant, under the terms of the agreement, is to become the owner of the vehicle at the end of the lease period for nominal or no additional consideration, and the vehicle is currently titled in the name of the leasing company and has been registered for interstate commerce with another jurisdiction.

[Source: Transferred from OAC 710:60-4-4 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-19-5. Established place of business

(a) **General provisions.** To verify an applicant's or registrant's established place of business in Oklahoma, the applicant or registrant must provide proof of a physical structure, designated by a street number or road location and open during regular business hours, which contains within it:

- (1) A person or persons conducting the fleet applicant's or registrant's business; and
- (2) The operational records of the fleet, unless such records can be made available in accordance with the provisions of Section 1602 of the International Registration Plan.

(b) **Specific compliance provision (IRP Decis. 99-4).** An "established place of business" as utilized in these rules and in Section 305 of the International Registration Plan cannot be provided for the applicant or registrant by or in the form of a registration agent or other third party.

(c) **Physical structure.** A physical structure, owned, leased, or rented by the applicant or registrant, wherein operational records of the fleet can be made available for audit purposes, must be evidenced by:

- (1) A current real estate tax bill;
- (2) Photocopies of rent receipts or mortgage payments which indicate the business address;
- (3) A current real estate rental contract and an original power of attorney conforming with Section 20 of Title 16 of the Oklahoma Statutes, if the contract is signed by someone other than the applicant or registrant; or,
- (4) Proof of insurance coverage.

(d) **Person or persons conducting applicant's or registrant's business.** The person conducting the trucking-related business of the applicant or registrant must be in the permanent employment of the applicant or registrant, as evidenced by submission of the applicant's or registrant's federal employer's identification or

other identification number and verification by the Commission that the applicant or registrant is an employer for the purposes of Oklahoma Withholding.

(e) **Specific compliance provision** (IRP Decis. 99-4). An applicant or registrant may not utilize a registration agent or its employees to satisfy the requirement of the presence of a person or persons in this state conducting the applicant's or registrant's business.

(f) **Use of registration agent.** Nothing in this Section shall be construed as prohibiting a registration agent from preparing or filing proportional registration applications or other documents for an applicant or registrant who meets the requirements set forth in this Section.

(g) **Resubmission of documentation.** Registrants with accounts in good standing may not be required to resubmit the established place of business indicia each year, provided that the established place of business remains unchanged since previously documented to the satisfaction of the Commission. To avail itself of this provision, the registrant must certify to the Commission under penalties of perjury that the registrants' established place of business has not changed. Nothing herein shall prevent the Commission from periodically requiring registrants to re-submit documentation of their established place of business. Registrants will periodically be required to resubmit established place of business documentation in accordance with the schedule established by the Commission.

(h) **False or fraudulent submission.** Applicants who knowingly provide false or fraudulent information or abuse the provisions of 165:30-19-3 shall have their registration credentials immediately revoked and will be denied further application.

[Source: Transferred from OAC 710:60-4-5 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-19-6. Registration as a resident

(a) Applicants who have no established place of business in any IRP jurisdiction may register in Oklahoma once they prove to the satisfaction of the Commission that they are residents of the State of Oklahoma. Such applicants may register in Oklahoma, provided that they furnish a street address, and a telephone number, and satisfactorily demonstrate that the applicant is indeed a resident of the State of Oklahoma and can be located in Oklahoma for purposes of audit.

(b) The street address in Oklahoma must be the street address where the applicant's records are maintained or where the records will be delivered for the purpose of audit. An applicant may not utilize the address of a registration agent to satisfy the requirement of an address in Oklahoma.

(c) The applicant must submit at least three (3) current documents that indicate the applicant can be located in Oklahoma for purposes of audit. Documentation acceptable for meeting the requirements of this subsection includes:

- (1) An Oklahoma-issued driver's license;
- (2) An income tax filing from an Oklahoma address;
- (3) Documentation of ownership of real property in Oklahoma;
- (4) An Oklahoma utility bill in the name of the registrant;
- (5) An Oklahoma vehicle title in the name of the registrant;
- (6) Oklahoma incorporation documents;
- (7) Documentation showing registration to conduct business as a foreign corporation in Oklahoma;
- (8) Documentation showing the principle owner of the corporation is a resident of Oklahoma; or,

- (9) Other evidence of bona fide residency.
- (d) The Transportation Division shall make its decision on whether the applicant has met its burden of proof based on the totality of the evidence presented.

[Source: Transferred from OAC 710:60-4-6 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-19-7. Operational records

Operational records shall be documents supporting miles traveled in each jurisdiction and the total miles traveled. These documents can be fuel reports, trip sheets, logs, or computer runs that can be supported by source documents, when requested. An acceptable source document to verify fleet mileage is some type of Individual Vehicle Distance Record (IVDR). IVDRs should contain the following basic information:

- (1) Date of trip (starting and ending);
- (2) Trip origin and destination;
- (3) Routes of travel and/or beginning and ending odometer readings;
- (4) Total trip mileage (including all movement, loaded, empty, deadhead, and/or bobtail miles);
- (5) Mileage by jurisdiction;
- (6) Unit number or vehicle identification number;
- (7) Vehicle fleet number;
- (8) Registrant's name; and
- (9) Driver's signature and/or name.

[Source: Transferred from OAC 710:60-4-7 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-19-8. Maintenance and availability of operational records

- (a) Operational records must be maintained for a period of three (3) years after the close of the registration year for which the records were included in the application. Failure to maintain the required records may result in an assessment in accordance with Section 1015 of the IRP.
- (b) Failure to make records available upon proper request shall result in an assessment in accordance with Section 1015 of the IRP.
- (c) Failure to maintain or make records available may also subject the registrant to denial of apportion privilege.

[Source: Transferred from OAC 710:60-4-8 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 32 Ok Reg 823, eff 8-27-15; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-19-9. Failure to pay additional fee assessments

Failure to pay any additional fees shall constitute cause for denial, suspension or revocation of the registration and reciprocal privileges of the registrant, and notification to other IRP jurisdictions.

[Source: Transferred from OAC 710:60-4-9 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 31 Ok Reg 1024, eff 9-12-14]

165:30-19-10. Renewal applications

When an application for renewal of proportional registration is not received on or before the first day of the month of expiration, the applicant cannot be assured that a registration cab card and plate will be issued for display of credentials prior to the enforcement date. Registrants whose renewal application is

not received on or before the expiration date must renew all vehicles in their fleet unless proof of disposition of these vehicles is provided. If this proof shows that the vehicle(s) were disposed of after expiration, those vehicles must be included in the renewal fleet. Registrants whose renewal application is not received on or before the expiration date shall be subject to enforcement for display of credentials on the day following the expiration date.

[Source: Transferred from OAC 710:60-4-10 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-19-11. Enforcement

- (a) Credentials for the current registration year may be displayed upon receipt, but shall be displayed on the vehicle by 12:01 a.m., on the enforcement date, since enforcement for display of current registration year credentials will begin on the enforcement date, unless extended by the Commission.
- (b) Registrants whose renewal application is not received on or before the expiration date cannot avail themselves of the grace period and shall be subject to enforcement.
- (c) Vehicles apprehended for improper registration credentials may be subject to arrest and fine in the jurisdiction in which the violation occurs.
- (d) IRP apportioned registration does not include special fuel requirements, operating authority or over dimensional and overweight permits.

[Source: Transferred from OAC 710:60-4-11 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06]

165:30-19-12. Supplemental application

- (a) After an original application has been filed, vehicles can be added, deleted, or registration weight increased by filing a supplemental application form.
- (b) Registration fees for supplemental applications are calculated from the date of purchase or lease, unless the vehicle was previously registered in the fleet, then the fees shall be calculated upon an annual rate. For registrants who do not have possession of equipment on the date they purchased it, fees may be calculated from the date the equipment came into possession of the registrant. Registrants who wish to avail themselves of this provision must provide documentation of the receipt date of the equipment to the Transportation Division. In no case should the effective date of the registration be after equipment is placed in service.
- (c) When a supplemental application is filed to add a unit and delete a similar unit, a credit of the registration fees paid on the deleted unit will be given toward registration of the added unit for those states that allow credit. Credit is only available for vehicles subsequently added to the fleet in the registration year in which the credit was created. In no event shall credit be allowed for fees beyond such registration year. Credits are not transferable between fleets. In order for credit to be given on the registration fees, the cab card and license plate for the deleted vehicle must be returned with the supplemental application, or an affidavit of destruction must be submitted with the supplemental application. Under no circumstances can a license plate be transferred from one vehicle to another. No refund for unused deletion credits will be given for a deleted vehicle.
- (d) Supplemental applications may be filed with a future effective date to add a unit before the unit is placed in service. In no case shall the registration effective date be more than sixty (60) days after the filing date of the supplemental application. When a unit is added with a future effective date but the unit does not become part of the fleet, no refund of the fees will be allowed. The unit may be deleted and the

resulting deletion credits may be used toward the addition of subsequent unit.

(e) If the license plate is lost, an affidavit may be submitted in lieu of the plate.

(f) When the motor carrier responsible for safety changes during a registration year, the registrant is required to file for a cab card change for each vehicle. The cab card change application shall include the new motor carrier responsible for safety's USDOT number and taxpayer identification number (social security or federal employee).

[Source: Transferred from OAC 710:60-4-12 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-19-13. Amended mileage/adding states [REVOKED]

[Source: Transferred from OAC 710:60-4-13 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 32 Ok Reg 823, eff 8-27-15; Revoked at 35 Ok Reg 1044, eff 10-1-18]

165:30-19-14. Audits

(a) If operational records are not maintained at a location within the State of Oklahoma and cannot be made available for audit at a location within Oklahoma, the registrant may be required to reimburse the Corporation Commission, for expenses incurred for performance of an audit at a location outside Oklahoma.

(b) Registrants selected for audit whose fleet size exceeds two hundred (200) vehicles are required to submit detailed records in the electronic format established by the Commission in order to conduct an audit.

[Source: Transferred from OAC 710:60-4-14 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-19-15. Mileage

(a) Any actual distance operated during the reporting period must be filed with the renewal application. If no actual distance was incurred in any jurisdiction during the reporting period, then the average-per-vehicle distance per member jurisdiction chart must be used to renew the fleet registration.

(b) If a registrant does not travel in more than one (1) jurisdiction for an entire registration year plus an additional six (6) months, the registrant is presumed not to intend to travel in more than one (1) jurisdiction, and therefore does not qualify for apportioned registration. That presumption may be overcome by current documentation of actual out of state travel presented by the registrant, which must be confirmed and approved by the Transportation Division.

[Source: Transferred from OAC 710:60-4-15 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 32 Ok Reg 823, eff 8-27-15; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-19-16. Application disapproval

(a) An application will be denied if it is not properly completed. It is the responsibility of the applicant or registrant to submit all information required by the application instructions and attach all necessary documentation.

(b) The applicant or registrant or his agent will be notified if an application is denied and the reasons therefore or if additional information is needed.

(c) An application that has been denied may be resubmitted by the applicant or registrant but will be processed as a new application upon receipt of the resubmission.

(d) If the applicant believes that the application was wrongfully denied, the applicant may, within thirty (30) days from the notice of denial, file a written protest of the denial with the Transportation Division under the provisions of OAC 165:5.

(e) No extensions, temporary operating authority, or temporary credentials will be issued for vehicles listed on a denial application.

[Source: Transferred from OAC 710:60-4-16 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 31 Ok Reg 1024, eff 9-12-14]

165:30-19-17. Temporary registration

New fleet vehicles, or vehicles being added to any existing fleet, must have some form of temporary registration prior to operation if permanent IRP credentials have not been issued. All forms of temporary registration are valid for the period shown and will be honored by all IRP jurisdictions when properly completed and validated.

(1) Temporary registration may be obtained directly from the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948 by filing a supplemental application with all required documents.

(2) Temporary registration or credentials may only be issued to new accounts after all required registration fees are paid.

(3) Self-issue temporary registrations are available only to established Oklahoma-based IRP registrants, and may be used for vehicle(s) added to the fleet, substitute license plates and weight increase applications to the registrant's account. Self-issued temporary registrations may not be used for renewal vehicles.

(A) Registrants with self-issue temporary authority are allowed to acquire temporary registration prior to the submission of a supplemental application. To be eligible to self-issue temporary registration, a registrant must:

- (i) Have no delinquencies;
- (ii) Be base plated in Oklahoma for the past two full registration years;
- (iii) Be the motor carrier responsible for safety;
- (iv) Be base plated in accordance with OAC 165:30-19-5 requirements; and,
- (v) Have over one hundred (100) power units in the apportioned fleet.

(B) Properly completed temporary registrations allow for immediate temporary registration for vehicles added to the fleet, duplicate cab cards, substitute license plates, and weight increase applications. Upon issuance, a copy of the temporary registration should be placed in the vehicle. Within fifteen (15) days of issuance, a completed supplemental application with all required documentation must be submitted for processing.

(C) Misuse of the temporary registration or failure to maintain proper accountability may result in the Prorate Section's refusal to issue the registrant self-issue temporary registrations.

(4) The issuance of temporary registration creates a debt to the State of Oklahoma who is then indebted to the participating jurisdictions of the

International Registration Plan. Registrants must pay registration fees for the remainder of the registration year for which a temporary registration is issued. Registration fees must be paid in full within thirty (30) days for the effective date of the temporary registration.

(A) Fees shall be calculated beginning with the effective date of the temporary registration, or the date determined by the Transportation Division, if earlier, and continue through the end of the registration year.

(B) In addition to collection actions, failure to pay the fees described in (A) above will cause the loss of apportioned registration privileges.

(C) The Transportation Division may withhold issuance of future temporary registration, to those registrants who have failed to timely file a registration application, or pay the registration fees associated with any vehicle, for which a temporary registration authorized by 47 O.S. § 1124.1 has been issued.

(D) The Transportation Division may revoke previously issued registration credentials and/or deny future registration privileges to registrants who use temporary registration issued under 47 O.S. § 1124.1 without paying registration fees.

[Source: Transferred from OAC 710:60-4-17 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 26 Ok Reg 1398, eff 7-1-09; Amended at 31 Ok Reg 1024, eff 9-12-14; Amended at 33 Ok Reg 633, eff 9-1-16; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-19-18. Compliance confirmation

(a) New registrants may be contacted within six (6) months of registration to determine if required records are being maintained and give guidance on maintaining proper records. Initial contact will be by telephone or in writing. If the initial contact is unsuccessful, contact will be made by visiting the registrant's established place of business or residence.

(b) New registrants who are not maintaining proper records at the time of initial contact will be provided guidance on maintaining proper records.

(c) The Commission will then notify the registrant who has received guidance pursuant to subsection (b), in writing, of the date on which proper second-year operational records must be made available by the registrant for inspection.

(d) If at that time, the registrant is unable to provide proper second-year operational records, the registrant will not be allowed to apportionally register in Oklahoma for the third year without a complete pre-registration audit of the renewal application.

(e) The Administrator of the IRP Section may deny or revoke the issuance of a registrant's IRP credentials based upon the registrants' motor carrier being placed out of service by the Federal Motor Carrier Safety Administration.

(f) A registrant who wishes to contest a denial, or revocation, of registrants' credentials is entitled to a hearing under the procedures contained in Subchapter 25 of the Commission's Rules of Practice, OAC 165:5.

[Source: Transferred from OAC 710:60-4-18 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-19-19. Trip permits and hunters permits

(a) A seventy-two (72) hour trip permit provides full registration to trucks, truck-tractors, trailers, semi trailers, and motorbuses, which are not registered in

Oklahoma.

- (1) The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.
- (2) Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a seventy-two (72) hour trip permit before proceeding through the State of Oklahoma.
- (3) Trip permits are available from the Transportation Division of the Commission and Commission contracted wire services. The cost of the permit is set forth by 47 O.S. § 1124 (B) with any processing fee as set by Commission rule. Trip permits obtained through permit services may have additional fees associated with issuance. Once a trip permit is issued, no refunds will be allowed.
- (4) An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.
- (5) A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.
- (6) Only one (1) copy of a seventy-two (72) hour permit receipt will be given to applicant.
- (7) A trip permit effective date shall not be more than seventy-two (72) hours from the time it is issued.

(b) An unladen permit, otherwise known as a hunters permit, provides temporary registration to an apportionable vehicle at the unladen weight of the vehicle for a period of forty-five (45) days.

- (1) Hunters permits are typically obtained by a vehicle owner to move the vehicle, without any load, to another jurisdiction when apportioned registration credentials are no longer valid due to the severance of a lease with a motor carrier.
- (2) A Hunters permit is recognized as valid registration in all IRP participating jurisdictions at a weight not to exceed the unladen weight of the vehicle or the combined unladen weights of the power unit and trailer, provided however, an unregistered trailer must obtain a separate permit.
- (3) Hunters permits are available from the Commission at a fee as prescribed by 47 O.S. § 1124 (C) with any processing fee as set by Commission rule. Once an unladen permit is issued, no refunds will be allowed.
- (4) The operator of a motor vehicle possessing an expired, altered or undated hunters permit shall be deemed to be in violation of state statutes and the rules of this Commission and shall be subject to full registration and penalty.
- (5) An unladen permit effective date shall not be more than seventy-two (72) hours from the time it is issued.

[Source: Transferred from OAC 710:60-4-19 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 27 Ok Reg 1773, eff 7-1-10; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 31 Ok Reg 1024, eff 9-12-14; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-19-20. Incorporation by reference

(a) **Reference to the International Registration Plan ("IRP").** When reference is made to the International Registration Plan or "IRP", it shall mean, unless the context clearly indicates otherwise, the registration reciprocity agreement among

the various states of the United States and the provinces of Canada, including the Audit Procedures Manual, which provides for payment of license fees for apportionable vehicles on the basis of fleet miles operated in the various jurisdictions, to which Oklahoma is a signatory state, as published by International Registration Plan, Inc., as currently amended.

(b) **Incorporation.** The following Articles are, unless otherwise specifically provided, incorporated by reference in their entirety:

- (1) Articles I through XV and all appendices of the International Registration Plan ("IRP"); and,
- (2) The International Registration Plan Audit Procedures Manual.

(c) **Inclusion of IRP citations and definitions.** When a provision of the IRP is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) **Inconsistencies or duplication.** In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where rules set out in this Subchapter are more particular. The provisions incorporated by reference are subject to any limitations provided by Oklahoma law.

(e) IRP can be found online at <http://www.irponline.org>

[Source: Transferred from OAC 710:60-4-20 by SB 141 (2004), eff 7-1-04 (Editor's Notice published at 21 Ok Reg 2927); Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 32 Ok Reg 823, eff 8-27-15]

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-1. Purpose

The provisions of this Subchapter have been promulgated to facilitate the administration, enforcement, and collection of motor fuel taxes under the International Fuel Tax Agreement (IFTA) and Oklahoma Motor Fuel Tax Code (68 O.S. §§ 601 et seq.).

[Source: Added at 23 Ok Reg 509, eff 12-19-05 (emergency); Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-2. Definitions

In addition to terms defined in the IFTA, the IFTA Audit Manual, and the IFTA Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means any person making an application with the Oklahoma Corporation Commission seeking to license a fleet pursuant to the IFTA.

"Application" means a filing with the Oklahoma Corporation Commission, seeking a license with the Commission pursuant to the IFTA.

"Carrier" means a fleet operator, which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"Credentials" means IFTA identification license and decals.

"Fleet" means one or more vehicles

"Grace period" means two months following the expiration of the license year.

"Interstate" means between or through two or more jurisdictions.

"Intrastate" means from one point within a jurisdiction to another point within the same jurisdiction.

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Person" means an individual, corporation, partnership, association, trust, or other entity

"Qualified Motor Vehicle" means a motor vehicle used, designed, or maintained for transportation of persons or property and:

(A) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or

(B) Having three or more axles regardless of weight; or

(C) Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

"Recreational Vehicle" means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

"Records" means all documents, files, and work product and includes but is not limited to, operational records.

"Registration" means the qualification of motor vehicles normally associated with a prepayment of fees for the privilege of using the highway and the issuance of license plate and a registration card or temporary registration-containing owner and vehicle data.

"Registration agent" means a person hired by a licensee to prepare and/or file applications, reports and other documents required for IFTA licensing and reporting in Oklahoma.

"Reporting Period" means a period of time consistent with the calendar quarterly periods of January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31.

"Revocation" means withdrawal of a license and privileges by the licensing jurisdiction.

"Temporary Permit" means a permit issued by the Oklahoma Corporation Commission or its agent to be carried in a qualified vehicle in lieu of carrying the IFTA license and the display of the permanent annual decals. A temporary permit is valid for a period of 30 days to give the carrier adequate time to affix the annual permanent decals.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-21-3. Application and renewal

Any person based in Oklahoma operating a qualified motor vehicle(s) in two or more member jurisdictions is required to license under this Agreement, except as indicated in IFTA Articles of Agreement Sections R310 and R500.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-4. Fuel permits

(a) In lieu of motor fuel tax licensing under IFTA, persons may elect to satisfy motor fuels use tax obligations for up to one hundred twenty (120) consecutive hours by purchasing a Fuel Permit.

(b) Fuel permits are valid for a period of one-hundred twenty (120) hours from the time the permit is effective, and may be obtained from the Commission or one of

the authorized fuel permitting services. Once a fuel permit is issued, no refunds will be allowed.

(c) A fuel permit effective date shall not be more than seventy-two (72) hours from the time it is issued.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 29 Ok Reg 951, eff 7-1-12; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-21-5. Application for license

A person shall file an application for licensing with the Commission on the prescribed form. The fuel tax license application shall have the following specified content:

- (1) The account identification number specified in IFTA Procedures Manual Section P200;
- (2) Name and social security number of owner(s), partners or corporate officers;
- (3) Legal business name (if different from the name given above);
- (4) Physical location of the business;
- (5) Mailing address of the business;
- (6) Email address;
- (7) Signature and date;
- (8) Number of IFTA decals required by licensee;
- (9) Decal fee, as set forth in OAC 165:5;
- (10) Statement of existence of bulk storage in all member jurisdictions;
- (11) A statement that the applicant agrees to comply with reporting, payment, recordkeeping, and license display requirements as specified in the International Fuel Tax Agreement. The applicant further agrees that base jurisdiction may withhold any refunds due if applicant is delinquent on payment of fuel taxes due any member jurisdiction. Failure to comply with these provisions shall be grounds for revocation of license in all member jurisdictions; and
- (12) A statement to the effect that the applicant certifies with his or her signature that, to the best of his or knowledge, the information is true, accurate, and complete and any falsification subjects him or her to appropriate penalties of perjury.
- (13) The USDOT number of the applicant.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-21-6. Designation of licensee

Tax licensing under the International Fuel Tax Agreement shall be in the name of the licensee. IFTA Articles of Agreement Section R500 designates the party responsible for reporting and payment of fuel taxes in the case of lessors/lessees, independent contractors, and household goods agents.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-7. Application processing

(a) Upon receipt of an IFTA fuel tax license application from a new or renewing applicant, the Commission shall check all entries on the application to ensure that they are complete. If the Commission feels more information is required, the licensee should immediately be contacted requesting the required information. Upon being satisfied that the application is correct and all fees prescribed by law or

Commission rule have been paid, the Commission shall issue the fuel tax credentials for the fleet.

(b) The Transportation Division may withhold issuing requested decals if fulfilling the request would result in the licensee having over 25% more decals in their possession than their fleet size. If the Division withholds decals under this provision, it will only withhold that portion of the decal request that causes the licensee's decal inventory to exceed the 25% figure.

(c) IFTA licensees are required to account for all decals issued to them under the IFTA program. Licensees must ensure that decals are assigned only to vehicles that are subject to the fuel and distance requirements of the IFTA program of the licensee. Decals, not issued to vehicles subject to fuel and distance requirements, must be produced for inspection upon request of the Transportation Division. Failure to adequately account for decals, or produce decals for inspection, may subject the licensee to penalty of \$250 per decal.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 26 Ok Reg 1398, eff 7-1-09]

165:30-21-8. Non-issuance of license

A license will not be issued if the applicant has been previously licensed under the IFTA and that license is still under revocation by any member jurisdiction or the application contains any misrepresentation, misstatement, or omission of information required in the application.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-9. Bond requirement

To protect the interests of the State of Oklahoma and the member jurisdictions of the International Fuel Tax Agreement, the Commission may, for cause, require licensees to file a surety bond payable to the State of Oklahoma for motor fuel taxes accruing against the licensee as a result of the IFTA program. Bonds may be required for failure to file timely returns, or remittances, or when an audit indicates problems severe enough that, in the Commission's discretion, a bond is required to protect the interests of Oklahoma and the member jurisdictions.

(1) Bonds may be required from licensees who have filed two or more delinquent IFTA tax returns, made two or more delinquent remittances, or made two or more payments drawn on accounts with insufficient funds, within the most recent 12 calendar months.

(2) A surety bond required for one of the above reasons must be in place before a licensee's suspended account can be reinstated.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 33 Ok Reg 633, eff 9-1-16]

165:30-21-10. Bond amount

Licensees who are required to post a surety bond shall provide the equivalent of at least twice the estimated average tax liability for the reporting period for which the licensee will be required to file a tax return. The Commission will direct that licensees required to post surety for severe audit problems, provide surety in the amount of the established audit liability, or at least twice the estimated average tax liability for the reporting period for which the licensee will be required to file a tax return depending on the circumstances, or BOTH if the Commission deems the problem severe enough.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-11. License renewal

(a) A renewal license and decals for the following calendar year will be issued upon application and payment of all fees prescribed by law or rules of the Commission, if the license has not been revoked or canceled, all returns have been filed, and all motor fuels use taxes, penalties and interest due have been paid.

(b) Licensees whose renewal application is not received on or before the expiration date shall be subject to enforcement for display of credentials on the day following the expiration date.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-12. Denial, revocation, and reinstatement

(a) The Administrator of the IFTA Section may deny the issuance of a motor carrier's IFTA license based upon the motor carrier's failure to provide IFTA returns and/or remittances to other member jurisdictions, or to prove it is qualified to obtain a IFTA license, or may revoke an IFTA license issued under 68 O.S. § 607

(E) if he determines a motor carrier has:

- (1) Made a knowing falsification of a material fact in a uniform application;
- (2) Failed to timely file a quarterly IFTA tax return;
- (3) Failed to timely pay in full a liability indicated on a quarterly IFTA tax return;
- (4) Failed to timely pay in full a liability determined by an audit of the motor carrier's records;
- (5) Paid any amount due under the IFTA program with a check drawn on an account with insufficient funds;
- (6) Any other just cause to protect the interests of the state of Oklahoma and/or the IFTA member jurisdictions.

(b) The Administrator of the IFTA Section may reinstate or deny reinstatement of an IFTA license if the following conditions exist:

- (1) A suspended motor carrier license may be reinstated if the motor carrier remedies the action that caused the suspension and pays the reinstatement fee of \$100.
- (2) If a bond is required, a suspended motor carrier license shall not be reinstated until the motor carrier has provided said bond.
- (3) A suspended motor carrier license may be denied reinstatement for habitual violations of this Section.
- (4) In lieu of requiring a bond, the Administrator may reinstate a license if the licensee agrees to make future remittances in certified funds.
- (5) A licensee may be suspended for their failure to make remittances under (4) in certified funds.

(c) A motor carrier who wishes to contest a denial, revocation, or a reinstatement denial is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

(d) A motor carrier is subject to a contempt citation when its IFTA License is revoked.

(e) A field contempt citation may be issued to any motor carrier operating with a revoked Oklahoma IFTA license.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 24 Ok Reg 1814, eff 7-1-07; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-21-13. Reporting requirements

(a) Every person licensed under 68 O.S. § 607 shall make and transmit to the Commission, on or before the last day of April, July, October and January of each year, upon a form prescribed and furnished by the Commission, a verified quarterly return, showing the total distance traveled by the licensee in all jurisdictions and the total volume (in gallons) of motor fuel or diesel fuel purchased or received in each jurisdiction on which the motor fuel tax levied by that jurisdiction has been paid to that jurisdiction. The return will also show the total distance and the total taxable distance traveled by the licensee in each IFTA jurisdiction, and the total volume (in gallons) of motor fuel or diesel fuel consumed in each IFTA jurisdiction. The total volume (in gallons) of motor fuel or diesel fuel purchased or received in each IFTA jurisdiction shall be deducted from the total number of gallons of motor fuel or diesel fuel consumed by the licensee in each jurisdiction to determine the number of gallons of motor fuel or diesel fuel upon which each jurisdiction's motor fuel tax is to be computed and paid.

(b) Every person licensed under this article who travels less than five thousand (5,000) miles distance in all jurisdictions other than Oklahoma, based upon the four most recently filed consecutive quarterly returns, may request approval, at the option of the Commission, to file an annual return in lieu of filing the quarterly return.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-21-14. Due and delinquency dates

Every licensee at the time of filing each quarterly report shall report and pay to the Commission the full amount of tax due for the preceding quarter at the rates provided for on the return. The completed report and tax remittance are due and payable on the first day of the succeeding quarter for which the report is filed, and if not paid, is delinquent from and after the last day of such month. If the last day of the month falls on a Saturday, Sunday, or legal holiday, the next business day shall be considered the final filing date.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06]

165:30-21-15. Penalty

(a) When any licensee fails to submit to the Commission any report required or the full amount of the tax due hereunder before the delinquency date, the licensee shall pay, in addition to the interest provided for herein, a penalty of Fifty Dollars (\$50.00) or 10% of the tax due, whichever is greater, for each occurrence.

(b) Penalty may be waived by the Commission for good cause shown when requested in writing by the licensee within 30 days of assessment or the filing of a return showing penalty due. The Transportation Division is authorized by the Commission to waive penalty amounts equal to or less than \$1,000 for good cause shown. Good cause while not limited to the items below may include:

- (1) Commission error causing the delinquency,
- (2) Extended history of timely filing (at least two years) and payments prior to the delinquency, or
- (3) Natural disaster causing the delinquency.

(c) Licensees who desire a waiver of penalty amounts greater than \$1,000 must file an appeal with the Court Clerk's Office in accordance with Commission administrative procedures.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 25 Ok Reg 1546, eff 7-1-08]

165:30-21-16. Interest

(a) When any licensee fails to make a required tax remittance to the Commission before the delinquency date, the licensee shall pay, in addition to the penalty provided for herein, interest in the amount as prescribed in the IFTA. When delinquencies of a fractional month occur, the effected jurisdictions will not receive their tax payments until the following transmittal month. Therefore, interest on delinquencies for a fractional portion of a month shall be calculated at the full month rate.

(b) In accordance with the International Fuel Agreement, the Commission cannot waive interest assessed and/or paid by a licensee on behalf of other jurisdictions. Licensees desiring other jurisdiction(s) interest waivers must receive written authorization from the other jurisdiction(s) and present such waivers to the Transportation Division. Upon confirmation, the Transportation Division may remove the amounts from an assessment, or if previously paid, refund those amounts to the licensee.

(c) Interest due on Oklahoma's portion of fuel taxes remitted on an IFTA quarterly return may be waived by the Commission for good cause shown. Good cause, while not limited to the items below, may include:

- (1) Commission error causing the delinquency,
- (2) Extended history of timely filing (at least two years) and payments prior to the delinquency, or
- (3) Natural disaster causing the delinquency.

(d) Licensee's who desire waiver of interest amounts greater than \$1,000 must file an appeal with the Court Clerk's Office in accordance with OCC administrative procedures.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 29 Ok Reg 951, eff 7-1-12]

165:30-21-17. Incorporating the International Fuel Tax Agreement

(a) When reference is made to IFTA, it shall mean, unless the context clearly indicates otherwise, the motor fuel use tax reciprocity agreement between the United States contiguous states and certain Canadian provinces, including the Procedures Manual and the Audit Manual, which allows a licensee to report and pay motor fuel use taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability, as published by International Fuel Tax Association, Inc., as amended. IFTA can be found online at <https://www.iftach.org>.

(b) The following Articles are, unless otherwise specifically provided, incorporated by reference in their entirety:

- (1) Articles I through XXI of the International Fuel Tax Agreement (IFTA);
- (2) The International Fuel Tax Agreement Audit Manual; and
- (3) The International Fuel Tax Agreement Procedures Manual.

(c) When a provision of the IFTA is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular. The provisions incorporated by reference are subject to any limitations provided by Oklahoma law.

[Source: Added at 23 Ok Reg 2325, eff 7-1-06; Amended at 34 Ok Reg 977, eff 9-11-17]

165:30-21-18. Operational records

Operational records shall be documents supporting miles traveled in each jurisdiction and the total miles traveled. These documents can be fuel reports, trip sheets, logs or computer runs that can be supported by source documents, when requested. An acceptable source document to verify fleet mileage is some type of Individual Vehicle Distance Record (IVDR). IVDRs should contain the following basic information:

- (1) Date of trip (starting and ending);
- (2) Trip origin and destination;
- (3) Routes of travel and/or beginning and ending odometer readings;
- (4) Total trip mileage (including all movement, loaded, empty, deadhead, and/or bobtail miles);
- (5) Mileage by jurisdiction;
- (6) Unit number or vehicle identification number;
- (7) Vehicle fleet number;
- (8) Registrant's name; and
- (9) Driver's signature and/or name.

[Source: Added at 34 Ok Reg 977, eff 9-11-17]

165:30-21-19. Maintenance and availability of operational records

(a) An IFTA licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four (4) years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. Failure to maintain the required records may result in an assessment in accordance with the IFTA Procedures Manual.

(b) Failure to make records available upon proper request shall result in an assessment in accordance with the IFTA Procedures Manual.

(c) Failure to maintain or make records available may also subject the licensee to revocation of its IFTA license or denial of the issuance of a license.

[Source: Added at 34 Ok Reg 977, eff 9-11-17]

165:30-21-20. Audits

(a) If operational records are not maintained at a location within the State of Oklahoma and cannot be made available for audit at a location within Oklahoma, the licensee may be required to reimburse the Corporation Commission, for expenses incurred for performance of an audit at a location outside Oklahoma.

(b) Licensees selected for audit whose fleet size exceeds two hundred (200) vehicles are required to submit detailed records in the electronic format established by the Commission in order to conduct an audit.

[Source: Added at 34 Ok Reg 977, eff 9-11-17]

SUBCHAPTER 23. MOTOR LICENSE AGENTS ("MLA")

165:30-23-1. Responsibility for errors in application and computation

(a) A motor license agent shall be responsible for errors in tax application, computations, and/or fee computations and collections while performing registration of vehicles pursuant to Section 1120 of Title 47 of the Oklahoma Statutes.

(b) Upon demand for payment, the motor license agent must, within 15 days, remit the full amount of any error determined to be due, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to remit monies due.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-23-2. Allowable fees and charges

(a) No fees may be charged to a taxpayer/registrant by a MLA for any service rendered pertaining to the processing of IRP applications other than fees as set forth in 47 O.S. § 1141.1, 1143 or any other Oklahoma statute that sets forth a MLA fee.

(b) All fees assessed a taxpayer/registrant must be documented in the MLA's records so they may be identified as to type, upon inquiry by the affected taxpayer/registrant or the Corporation Commission.

(c) All fees assessed a taxpayer/registrant by a MLA must be itemized and contained on a receipt provided to the taxpayer/registrant upon payment.

(d) Fees assessed for services not included on the IRP invoice shall be separately receipted.

(e) Non-IRP fee receipts shall be retained in the MLA's records and uploaded to the imaged documentation contained with the IRP registration application. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. Each fee must be clearly identifiable and authorized by Oklahoma statutes.

[Source: Reserved at 24 Ok Reg 1814, eff 7-1-07; Added at 35 Ok Reg 1044, eff 10-1-18]

165:30-23-3. Responsibility for agency shortages

(a) A motor license agent shall be responsible for paying any balance determined to be due pursuant to Section 1120 of Title 47 of the Oklahoma Statutes as a result of a field audit conducted by the Commission.

(b) Upon demand for payment, the motor license agent must, within 15 days, remit the full amount of any shortage determined to be due, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to remit monies due.

[Source: Added at 24 Ok Reg 1814, eff 7-1-07]

165:30-23-5. Motor license agent conduct

(a) All transactions must be paid by the registrant at the time of processing. A motor license agent shall not process any transaction or release any item on credit before the taxpayer pays the tax and/or fee owed.

(b) A motor license agent shall not engage in any activity that will result in an actual or perceived conflict of interest.

(c) A MLA granted permission to process IRP applications shall service all IRP customers who desire the service. Commission permission given to a MLA to process IRP applications may be rescinded in the event a MLA refuses to process certain IRP applications or violates any provision of this subchapter.

[Source: Added at 33 Ok Reg 633, eff 9-1-16; Amended at 35 Ok Reg 1044, eff 10-1-18]

SUBCHAPTER 25. HARVEST PERMITS

165:30-25-1. Harvest permits

(a) Motor carriers engaged in the interstate or intrastate commercial transportation of farm products in a raw state on a seasonal basis may desire to meet their vehicle

registration, fuel permitting and/or intrastate operating authority requirements via a harvest permit.

(b) An applicant for a harvest permit shall file with the Commission a written application on the appropriate form prescribed by the Commission (TOSS1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(c) The applicant shall be assigned a personal identification number (PIN) which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to extend the harvest permit or to obtain an additional harvest permit by the same applicant shall be filed under the same PIN.

(d) A harvest permit shall be personal to the holder thereof and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity. A trade name or "doing business as" (DBA) may be designated, but cannot be a corporate name or LLC or LLP or another organized entity.

(e) The filing of an application for a harvest permit does not of itself authorize operations by the applicant. Such operations are prohibited until all requirements have been met and a harvest permit has been issued. All requirements for compliance with this Section shall be completed within ninety (90) days from receipt of the application or the application will be denied and any filing fees paid forfeited.

(f) The harvest permit application shall require the following:

(1) USDOT number of the applicant.

(2) Applicant's Name and DBA, if any.

(3) Type of applicant.

(4) Mailing, physical addresses, and optional email address.

(5) Taxpayer identification number.

(6) Vehicle listing which contains the following information for each vehicle to be operated under the permit:

(A) Owner of the vehicle.

(B) Vehicle registrant, if other than the owner.

(C) Make, model, year, and VIN.

(D) License plate number, State or Province of registration and registration expiration date.

(7) A liability insurance certificate valid in Oklahoma for a minimum of three hundred fifty thousand dollars (\$350,000) for each vehicle to be operated under the permit. The insured's name on the insurance certificate must match the owner or registrant's name as shown on the registration of the vehicle. A Form E liability insurance certificate issued on behalf of the motor carrier may be submitted in lieu of individual insurance certificates.

(8) Declaration stating the applicant shall comply with federal safety regulations and the state's size and weight laws and rules.

(9) Requested permit duration.

(10) Required permit effective date.

(g) No harvest permit shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) A copy of the harvest permit must be carried in each vehicle operated under the permit.

SUBCHAPTER 26. NONCONSENSUAL WRECKER AND TOWING SERVICES

PART 1. NONCONSENSUAL WRECKER AND TOWING SERVICES RATE CHANGE APPLICATIONS

165:30-26-1. Purpose

The purpose of this Subchapter is to define the specific financial, statistical, and other information required to be filed and made available with an application proposing an increase or change in rates, charges, or fees charged for the provision of nonconsensual wrecker or towing services. This Subchapter is intended to define the information required to be filed and made available in connection with a proposed rate increase or rate change in order to facilitate an investigation of and hearing on such proposed rate increase or rate change. This Subchapter does not preclude the filing or provision of any additional data, information, or calculations not herein specified, nor does this Subchapter preclude the Oklahoma Corporation Commission ("Commission") from requiring additional information as it deems necessary.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

165:30-26-2. Definitions

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

"Accounting method" means generally accepted accounting practices recognized by the American Institute of Certified Public Accountants or other accounting methods approved by the Commission.

"Application package" means the application, the narrative explanation of the justification for the rate increase or rate change, all exhibits, schedules, testimony and evidence necessary to support the application.

"Day" means calendar day unless specifically defined otherwise.

"Deficient filing" means a filing which does not substantially comply with the formal or procedural requirements of this Subchapter and the Commission Rules of Practice.

"Director" means the Director of the Transportation Division of the Oklahoma Corporation Commission.

"Nonconsensual towing rate complaint" means any communication, whether verbal or written, from any person, which alleges that any wrecker service has billed rates, charges, or fees not authorized or in excess of those authorized by Commission Order. The Commission is not obligated to act on any complaint in which insufficient information is presented to establish that a violation has occurred.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

165:30-26-3. Application; application package; and staff response to filed application package

(a) Applicant shall file with the Commission Court Clerk its request for a rate increase or rate change in a complete application package. Applicant shall also submit the filing fee with the application package, which is set forth in the Commission Rules of Practice. Applicant shall submit six (6) copies of the

- application package to the Commission Court Clerk at the time of filing.
- (b) The application shall be in the form required by the Commission Rules of Practice for commencement of a cause.
- (c) The application package shall contain the following:
- (1) A narrative explanation of the justification for the rate increase or rate change;
 - (2) The application shall contain all exhibits, schedules, testimony, and evidence necessary to support the application and shall be assembled in sections with index tabs identifying each section for referencing convenience;
 - (3) Filed testimony shall reference the exhibits, schedules, and evidence in the same manner used to file the application package;
 - (4) All exhibits, schedules, testimony, and evidence shall be both factually and mathematically correct using generally accepted accounting methods.
- (d) Service of the application shall be as required by the Commission Rules of Practice.
- (e) The applicant shall maintain the application package. The application shall include information to inform all Respondents and other interested parties of the location where the application package is being maintained. Such information shall include the name, address, telephone number, fax number, and e-mail address of the person maintaining the application package. The applicant shall make the application package available to all Respondents and other interested parties for examination between the hours of 8:00 a.m. and 5:00 p.m. on Monday through Friday, excluding legal holidays as defined in the Commission Rules of Practice. The application package shall also be available for public inspection at the Office of the Commission Court Clerk.
- (f) Unless otherwise indicated, all applicable provisions in the Commission Rules of Practice shall be followed in all nonconsensual wrecker and towing service causes.
- (g) Within twenty-one (21) business days of the receipt of an application package, the Director shall file with the Commission and provide to the applicant a copy of the staff response regarding the compliance or deficiency of the application and/or application package. The Division's staff response under this subsection shall only be required to assess the procedural filing compliance with Commission statute and rules, not on the merits of the requested rate change.
- (h) If the Director finds the application and/or application package is not in substantial compliance with the requirements of this Subchapter, the staff response shall state that the filing is a deficient filing. The deficiencies and the requirements necessary to cure the deficiencies shall be stated in the staff response. If the deficiencies noted in the staff response are not corrected within forty-five (45) calendar days of the date of the staff response, the application package shall be rejected. Resubmission of a rejected package shall be considered a new application package, and the application filing fee set forth in the Commission Rules of Practice shall be submitted with this filing.
- (i) An applicant may file exceptions to the staff response within ten (10) business days of receipt. Such exceptions shall be set for hearing before the Commission sitting en banc as soon as practically possible unless the parties agree to another date or the Commission directs otherwise. An order affirming a determination of deficiency renders the application rejected. If the application is rejected, the applicant may resubmit a new application package.

165:30-26-4. Limitations on filing rate cause

At the time of filing a request for a rate increase or rate change or at the time of entering an appearance in a rate increase or rate change cause, the filer shall not have any outstanding obligation to the Commission or to a consumer as the result of a nonconsensual towing rate complaint.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

PART 3. RESPONSE TO NONCONSENSUAL TOWING RATE COMPLAINTS

165:30-26-10. Receipt of nonconsensual towing rate complaints

(a) Any nonconsensual towing rate complaint received by the Commission or any of its Divisions shall be recorded immediately upon receipt in such format as the Commission may designate.

(b) A written acknowledgement of receipt of a nonconsensual towing rate complaint will be communicated to the complainant, alleged violator, and other relevant parties, if known, within seven (7) calendar days following receipt of the nonconsensual towing rate complaint and shall provide the status of the nonconsensual towing rate complaint at that time. The written acknowledgement shall contain information necessary to identify the tow. The wrecker service invoice number, vehicle identification number, date, and time of the tow are examples of the kind of information that may be provided. The written acknowledgement shall also request initial records needed to commence the complaint investigation. Nothing herein restricts the Commission from requiring and examining additional records necessary to fully investigate a complaint.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

165:30-26-11. Review of nonconsensual towing rate complaints

(a) The appropriate Division of the Commission shall immediately review each nonconsensual towing rate complaint and promptly refer any complaint concerning matters not regulated by the Commission to the appropriate state or federal agency.

(b) Nonconsensual towing rate complaints that are not referred shall be reasonably and sufficiently investigated, which may include on site investigation, to determine whether or not an action or actions should be initiated by the Commission.

(c) Nonconsensual towing rate complaints must be filed within the wrecker service documentation retention requirements of the Oklahoma Department of Public Safety.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

165:30-26-12. Nonconsensual towing rate complaint resolution and contesting a Violation Notification.

(a) Nonconsensual towing rate complaint resolution is not achieved until either a written determination is issued or the Violation Notification process, initiated by a Notice of Probable Violation (NOPV) letter, is closed by the Transportation Division.

(b) If the complaint investigation results in a NOPV requiring restitution and/or a penalty, or other action is necessary, the disallowed amount must be remitted within twenty (20) calendar days of the NOPV to avoid enforcement action against the wrecker or towing service. The NOPV shall specify each charge that was in

violation of the Commission's rate order(s) and will list a member of Transportation Division staff as a point of contact. Restitution payments must be remitted to the person taking responsibility for the tow bill, whereas, penalties assessed must be remitted to the Commission along with a copy of the written determination.

(c) Any individual or entity that wishes to contest the NOPV must do so within twenty (20) calendar days of the date of mailing, by regular mail, of the NOPV by filing a Transportation Docket (TD) cause application conforming to Commission rules found in Subchapter 7 of this Chapter and the Commission's Rules of Practice (OAC 165:5). In the event the expiration of the twenty (20) days falls on a weekend or holiday for which the Commission is not open for regular business, the application may be filed the following business day the Commission is open to be considered timely filed.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13; Amended at 36 Ok Reg 602, eff 8-1-19]

165:30-26-13. Closure

Nonconsensual towing rate complaints referred to other agencies, nonconsensual towing rate complaints that involve issues not within the Commission's jurisdiction, and nonconsensual towing rate complaints that involve issues for which an adequate remedy has already been implemented shall be closed in writing and a copy of the referral or other closure document shall be sent to the complainant, alleged violator, and other relevant parties, if known, within seven (7) calendar days of closure.

[Source: Added at 30 Ok Reg 1042, eff 7-1-13]

165:30-26-14. Nonconsensual towing rate complaints and audits

(a) The Commission hereby establishes a progressive system of actions to be taken by the Commission, or its designee, to achieve compliance with a Commission nonconsensual towing order. Violations of a Commission nonconsensual towing order may be established as a result of a nonconsensual towing rate complaint investigation or an audit.

(b) For purposes of progressive actions, the date shown on the service invoice serves as the violation date. The dated written notice of a violation issued by the Commission, or its designee, serves as the Violation Notification.

(c) The following stipulations are in place for violations established as a result of a complaint investigation:

(1) A Violation Notification will contain instructions on the proper rate calculation procedure and will be provided to the wrecker service. The Violation Notification will list the violations and remediation requirements. The Violation Notification may require the repayment of the overcharge to the person who paid for the services. The wrecker service shall comply with the written instructions within twenty (20) calendar days of the Violation Notification.

(2) Each subsequent Violation Notification of the same provision of a Commission nonconsensual towing order within an eighteen (18) month period will be treated as a progressive violation.

(A) A violation may progress to the next level only when the date of the second or succeeding Violation Notification is later than the previous violation date.

(B) Each progressive action may consist of a new remediation requirement as well as each of the preceding remediation action requirements.

(3) For the second Violation Notification of the same violation during aneigheten (18) month period, a penalty may be assessed in accordance with (f) of this Section. In addition, the Commission or its designee may recommend the wrecker service be temporarily removed from the Oklahoma Department of Public Safety and/or other political subdivision's rotation log. Any such recommendation for removal will include the justification for such request.

(4) For the third and any subsequent Violation Notification of the same violation during aneigheten (18) month period, the Commission or its designee may recommend to the Oklahoma Department of Public Safety that the license of the wrecker service be suspended or revoked. Any political subdivision with which the wrecker service maintains a contract to provide nonconsensual wrecker or towing services may also be notified of the violation(s) along with the justification for such notification.

(d) Audits of wrecker services may be conducted with or without specific cause. Typically, audits are conducted as a normal part of rate determination and economic analysis, as a result of a nonconsensual towing rate complaint, as a referral from another political subdivision or as a follow up to a previously conducted audit. Audit periods cannot extend beyond the records retention period as required by the Department of Public Safety in OAC 595:25.

(e) Violations discovered as the result of an audit shall be reviewed by the Director of the Transportation Division or his designee. Progressive action remedies in addition to penalties in accordance with (f) of this Section may be assessed or the Commission may issue an order requiring that violations of this Subchapter be corrected. The order may include a fine up to a maximum of \$500.00 for each violation.

(f) For violations established as a result of a nonconsensual towing rate complaint or as a result of an audit, the following penalties may be assessed by the Director of the Transportation Division:

- (1) A penalty in an amount up to \$175.00 for the second violation;
- (2) A penalty in an amount up to \$375.00 for the third violation; or,
- (3) A penalty in an amount up to \$500.00 for the fourth and subsequent violations.

[Source: Added at 31 Ok Reg 44, eff 9-10-13 (emergency); Added at 31 Ok Reg 1024, eff 9-12-14; Amended at 34 Ok Reg 977, eff 9-11-17; Amended at 35 Ok Reg 1044, eff 10-1-18]

165:30-26-18. Display of nonconsensual towing rates

(a) Each wrecker service licensed by the Department of Public Safety and placed upon an official rotation log to perform nonconsensual tows shall be required to conspicuously display a copy of the current Oklahoma Corporation Commission Nonconsensual Towing Maximum Wrecker Rate Chart at each location where a person will be paying for a vehicle release.

(b) The Maximum Wrecker Rate Chart size and text must be large enough to be easily read by the person paying for the vehicle release and contain fully legible text and figures.

(c) The Maximum Wrecker Rate Chart may be download from the Agency's website.

[Source: Added at 33 Ok Reg 633, eff 9-1-16]

APPENDIX A. POWER OF ATTORNEY [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 through 7-14-95 (emergency); Revoked at 18 Ok Reg 2384, eff 7-1-01]

APPENDIX B. CONCURRENCE [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 (emergency); Revoked at 12 Ok Reg 2077, eff 7-1-95]

APPENDIX C. TITLE PAGE [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 through 7-14-95 (emergency); Revoked at 18 Ok Reg 2384, eff 7-1-01]

APPENDIX D. TARIFF REFERENCES [REVOKED]

[Source: Revoked at 12 Ok Reg 1005, eff 1-1-95 through 7-14-95 (emergency); Revoked at 18 Ok Reg 2384, eff 7-1-01]

CHAPTER 32. RAILROADS

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 71 et seq.; 66 O.S., §§ 1 through 309]

[Source: Codified 7-1-95]

SUBCHAPTER 1. GENERAL PROVISIONS

165:32-1-1. Authority and purpose

(a) Article IX, Sections 2 through 19 of the Oklahoma Constitution, 17 O.S. §§ 61 to 116.9, and 66 O.S. § 1 et seq. give the Commission the authority and responsibility to oversee, regulate, and control railroad companies in Oklahoma, and to enact rules and regulations in connection therewith. Pursuant to such constitutional and statutory authority, the Commission has adopted this Chapter and fixed the following standards for railroads. Any other railroad safety provisions, rules, or standards, previously adopted by this Commission, except variances by Commission order, to the extent of any conflict, are superseded by this Chapter. This Chapter is a compilation of previous Commission railroad safety rules and orders. Order No. 33847 as applied to railroads in Oklahoma is revoked as of the effective date of this Chapter.

(b) Except as provided in OAC 165:32-1-2 (e), any order of the Commission granting relief which would constitute an exemption from any provision of this Chapter shall not be superseded by this Chapter.

(c) This Chapter is intended to provide safety standards for railroads within the State of Oklahoma.

(d) To the extent federal authority preempts Commission regulation in this Chapter, federal law will control.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 15 Ok Reg 3053, eff 7-15-98]

165:32-1-2. Application and scope of rules

(a) This Chapter shall apply to the operations of any railroad corporation, as defined by the laws of the State of Oklahoma, operating within the State of Oklahoma under the jurisdiction of the Commission, and to all persons employed by such corporations and performing work in the State of Oklahoma, except in cases where the Commission shall otherwise order.

(b) The adoption of this Chapter shall in no way preclude the Commission from altering or amending it in whole or in part after notice and hearing, or from allowing or requiring additional or different service, equipment, facility, or standards than are prescribed by this Chapter, either upon complaint or application or upon the Commission's own motion. Nothing provided in this Chapter shall relieve any railroad from any duty prescribed by the laws of the State of Oklahoma.

(c) A railroad may prescribe safety rules and regulations not inconsistent with this Chapter.

(d) Whenever compliance with any provision or requirement of this Chapter would be unduly burdensome, or cause an unreasonable hardship or an excessive expense, or result in an unusual difficulty, or if other good cause can be shown, the Commission may, upon application by the railroad and after notice and hearing, suspend or excuse compliance therewith or make such other requirements as it shall deem appropriate. For good cause shown, the Commission may grant temporary relief pending the hearing. If, after the effective date of this Chapter, a railroad seeks an exception or variance from this Chapter, then upon approval by the Commission, the variance shall carry the number of the applicable Commission order.

(e) In any case where a controversy arises in connection with the interpretation of any provisions of this Chapter or the applicability thereof, the Commission will make such orders as it may deem appropriate upon application of any interested party and after notice and hearing.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-1-3. Definitions

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

"Commission" means the Oklahoma Corporation Commission.

"Continuous direction" means the movement of a locomotive engine or engines, coupled with or without cars, over any public rail highway crossing in any direction and maintaining that direction until the crossing is unoccupied.

"Crossing surface" means a combination of material such as treated timbers, reinforced concrete panels, and composite or rubber tiles that are combined with rail components such as the flangeway and flange filler, to produce a surface that makes it possible for vehicles to cross over the railroad track in comfort and safety.

"Noxious plants" means poison ivy, poison oak, or poison sumac, at any height or maturity.

"Public crossing" means a location where the tracks cross a road which is under the jurisdiction of and maintained by a public authority and which is open to public travel.

"Private Crossing" means a location where a physical crossing is present but the road does not meet the conditions for a public crossing and for which a private crossing agreement may have been entered into between landowner and railroad.

"Rank weeds" means all vegetation which can conceal or harbor rodents, refuse or vermin.

"Sight rectangle" means a rectangle which would have a beginning point from the center of the main track and the center point of the grade crossing extending along the center of the street or roadway approach for a distance of fifty feet (50') or to the railroad right-of-way property line, whichever is less, then extend along the property line for a distance of two hundred fifty feet (250') in either direction from the original beginning point.

"Sight triangle" means a triangle which would have a beginning point from the center point of the main track and the center point of the grade crossing extending along the center of the street or roadway approach for a distance of fifty feet (50') or to the railroad right-of-way property line, whichever is less, then extend at an angle until arriving at a point on the center of the main track two hundred fifty feet (250') from the original beginning point.

"Thickets" means any dense growth, briar patch, or wild shrubbery having stems or trunks one inch(1") or less in diameter.

"Trash" means, but is not limited to, refuse, litter, leaves, paper, combustible materials, offal, rubbish, waste, debris, and useless or unused or uncared for matter of all kinds.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 15 Ok Reg 3053, eff 7-15-98; Amended at 18 Ok Reg 2414, eff 7-1-01; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-1-4. Location and retention of records

(a) Any records which may be required to be generated or maintained pursuant to provisions in this Chapter, shall be kept in the normal course of business, which may include electronic media, within Oklahoma at the office or offices of the railroad, and shall be open and available for examination by the Commission or its representatives; provided that if the general office of the railroad is located outside of Oklahoma, the records may be kept in the normal course of business at the general office. Upon the Commission's request, each railroad shall identify the location of the office or offices at which the various classes of records are kept, and shall file with the Commission such reports as the Commission may require.

(b) Unless otherwise specified in this Chapter, all records required by this Chapter shall be preserved by the railroad in their original form and for a period of time not less than 2 years.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-1-5. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-1-6. Timetables and trackcharts

Upon request, railroads shall provide the Commission and the Oklahoma Department of Transportation with train-volume and operating speed data.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14]

165:32-1-7. Flammable materials

(a) Railroads and other persons, firms, or corporations maintaining or operating any railroad line, track or facility in the State of Oklahoma shall take all reasonable measures necessary to keep under control all flammable materials in the immediate areas of their tracks and on their rights-of-way.

(b) If such materials are disposed of by burning, the railroad shall take reasonable precautions to prevent the fire from spreading to railroad facilities or adjacent properties.

(c) Railroads and other persons, firms, or corporations operating any railroad locomotives over tracks within the State of Oklahoma shall ensure each locomotive is equipped with an efficient spark arrester or other spark deterrent system.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-1-8. Blocking crossings

(a) Every railroad shall be operated in such a manner as to minimize obstruction of emergency vehicles at public highway grade crossings.

(b) Any state, county or municipal entity may file a Transportation Docket (TD) cause application, conforming to the procedural requirements of OAC 165:5, requesting an order from the Commission requiring a separation of grade at a

crossing based on blockages that affect public safety. Such applications must include an engineering and budget proposal and assignment of costs. The assignment of cost must be reasonable and must include supporting justification for such assignment. If the budget proposal is part of a federal-aid project, railroad contributions requested in the application shall not exceed federal regulatory requirements unless by agreement.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 18 Ok Reg 2414, eff 7-1-01; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-1-9. Notice of accidents

A true and correct copy of all accident/incident reports pertaining to accidents/incidents occurring within the State of Oklahoma, which are prepared for the Federal Railroad Administration pursuant to 49 CFR Section 225 et seq. shall be submitted to the Commission in a timely manner.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-1-10. Fences

(a) A property owner owning land adjacent to a railroad track in the State of Oklahoma may make application for a lawful fence on a form provided by the Commission, which application shall include the following:

- (1) Signature of property owner.
- (2) General description of property, by Section, Township and Range, if possible.
- (3) Description of the property line or portion thereof to be fenced, including measurements or railroad mile pole locations, if known.
- (4) Statement as to whether all other sides of the property owned by the landowner are fenced and capable of retaining livestock.
- (5) Statement as to whether livestock is being raised on the property to be fenced, and if so, whether for commercial or personal purposes.
- (6) Attached to the application shall be a copy of written communication transmitted on behalf of the landowner to the railroad requesting the railroad to furnish the landowner a lawful fence.

(b) No application for a lawful fence shall be filed with the Commission until forty-five (45) days have expired from the date of the written notice from the landowner to the railroad requesting a lawful fence.

(c) When an accurate and complete application for a lawful fence has been received from a landowner, the Transportation Division shall provide a copy of the application to the affected Railroad's Manager accompanied by a letter requesting a lawful fence within sixty (60) days.

(d) If the lawful fence is not completed when the sixty (60) day period expires, the Transportation Division may file an enforcement action for contempt of Commission rules and order the building of a lawful fence.

(e) A landowner may request dismissal of the application for a lawful fence at any time.

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95; Added at 14 Ok Reg 2557, eff 7-1-97; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-1-11. Weed and trash abatement

(a) Railroads or other persons, firms or corporations operating a railroad company are responsible for the reasonable abatement of all rank weeds, noxious plants, thickets and trash, as defined in this Subchapter, along their rights-of-way and at

crossings within a sight rectangle within the boundaries of any city or town or unincorporated community in Oklahoma.

(b) Railroads or other persons, firms or corporations operating a railroad company are responsible for the reasonable abatement at public crossings of trees, shrubs and other obstructions within or encroaching within a sight triangle. Upon request of the Commission, the sight triangle may be extended to a sight rectangle if it is determined necessary for proper sight distance at the crossing. Devices, signs or structures necessary for the operation of the railroad and railroad equipment in the process of loading, unloading or switching are not considered obstructions.

(c) This responsibility exists as long as the railroad or other person, firm, or corporation operating as a railroad company, is the legal owner of the right-of-way, even if operations have ceased, and/or the tracks and facilities have been removed. Abatement must begin upon notification received from the Commission.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 15 Ok Reg 3053, eff 7-15-98]

165:32-1-12. Penalties

Upon violation of any of the regulations contained in this Chapter, per Title 17 O.S. § 1, the responsible party shall be assessed a fine in an amount up to five hundred dollars (\$500.00) per day per violation by the Commission unless otherwise specified by law.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-1-13. Commission enforcement of blocked crossing citations [EXPIRED]

[Source: Added at 36 Ok Reg 1097, eff 6-27-19 (emergency)¹]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 9-15-20 (after the 9-14-20 expiration of the emergency action), Section 165:32-1-13 was no longer effective. For the official text of the emergency rule that was effective from 6-27-19 through 9-14-20, see 36 Ok Reg 1097.

SUBCHAPTER 3. RAILROAD GRADE CROSSINGS

165:32-3-1. Incorporation of federal regulations [REVOKED]

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Revoked at 31 Ok Reg 1028, eff 9-12-14]

165:32-3-2. General provisions

(a) **Specifications.** After the effective date of this Chapter, railroads shall install 12 inch signal heads during new or upgrade construction of crossing warning devices.

(b) **Crossbucks.** Railroads shall install and maintain one crossbuck on each roadway approach which complies with the minimum standards of the Manual on Uniform Traffic Control Devices ("MUTCD") for highway crossing crossbuck signs.

(c) **Private crossings exempt.** Private crossings are exempt from the regulations contained in this Subchapter.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14]

165:32-3-3. Changes in existing crossing warning devices

(a) **Notice.** No change, except in case of emergencies, shall be made in existing crossing warning devices at any grade crossing unless and until due notice thereof is given in writing to the Commission and the written approval of the Commission

is obtained where such approval is required by this Section. This Section shall not apply to the erection of additional signs, consistent with Commission rules or Orders, nor prevent a railroad from making changes in circuits to accommodate changes, but cannot be reduced.

(b) **Exceptions.** Changes in the existing crossing warning devices may be made without specific authority first having been obtained, provided written communication identifying the location, extent and permanent or temporary nature of the changes is given to the Commission, if the changes consist of any of the following:

- (1) Extending the hours of a flagman.
- (2) Installing bells or additional light units on flashing light signals, or additional units to meet special conditions at crossings where flashing light signals are already established.
- (3) Establishing new or additional lighting, either by flood light or by new or additional lamps placed on gates, signs or other warning equipment.
- (4) Removal of any sign not provided for in the Manual For Uniform Traffic Control Devices (MUTCD) or required by order of the Commission.
- (5) A temporary change, such as one made necessary by highway reconstruction work in progress, or the like.

(c) **Resolution.** Where a major change or reduction in existing crossing warning devices is proposed at any crossing within the limits of a city or town, the Commission may, at its discretion, require the applicant to file an appropriate resolution or other official act, if obtainable, indicating the attitude of the municipal authorities with reference to the proposed change.

(d) **Removal.** The railroad company shall not remove an automatic crossing device or reduce the hours during which any such device is maintained, or substitute any form of warning device for a form already maintained at any public crossing, unless the consent for such removal, reduction or substitution shall have been obtained from the Commission; provided, however, that a human flagman, assigned to temporarily warn the traveling public during an emergency, may be removed without such consent.

(e) **Damage.** Absence of crossing signals and signs, due to accidents or severe weather conditions, shall not be considered a violation of this Subchapter. This does not excuse the company from providing warning by train order or human flagmen in lieu of the missing or damaged sign or signal.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14]

165:32-3-4. Removal of crossing installations

- (a) Within one hundred twenty(120) days after removal of track which was formerly contiguous to a crossing, railroads are required to also remove the crossing surface which is unneeded, and replace the excavated area, matching width, grade and materials, to repair the existing roadway, making it contiguous.
- (b) Railroads are required to remove signal installations deemed not salvageable by the Oklahoma Department of Transportation, on abandoned rail lines, not more than one hundred twenty(120) days after the crossing surface(s) are removed.
- (c) Railroads shall relocate existing warning devices (passive or active) to a distance no less than twelve feet (12') and no greater than twenty feet (20') from the remaining railroad crossing surface(s). Said work to be completed not more than one hundred twenty(120) days after the track(s) or crossing surface(s) are removed.
- (d) If, upon notice and hearing, the Commission finds rail access to be cut on both sides of a public crossing, or the crossing cannot be physically utilized for rail

service, the Commission may order the rails to be removed within the crossing by the railroad or other property owner and the crossing to be resurfaced in conformity with (a) of this subsection. This subsection shall, in no way, affect the easement rights of the crossing property owner.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-3-5. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-3-6. Notice of closure or detour

Railroads shall notify by regular or electronic mail the entity having roadway maintenance jurisdiction (City, County or State), no less than seven (7) calendar days in advance of closing or detouring any roadway for railroad maintenance or construction, unless an emergency exists.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14; Amended at 36 Ok Reg 618, eff 8-1-19]

165:32-3-7. AAR/DOT numbers

Railroads shall display the proper American Association of Railroads/Federal Department of Transportation (AAR/DOT) number at every railroad overpass, underpass, and at-grade crossing.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-3-8. Crossing surface quality

(a) A railroad or other persons, firms, or corporations operating a line of railroad within the State of Oklahoma shall maintain public grade level crossings, in reasonably smooth condition, unobstructed and in good condition pursuant to the United States Department of Transportation Railroad-Highway Grade Crossing Handbook. Such maintenance shall include all surfaces between the rails and three feet (3') on either side of the outer-most rail in the crossing surface; or two feet (2') on either side of the outer-most rail if the crossing is located within the limits of a municipality. To be considered reasonably smooth, unobstructed and in good condition the surface must conform to the following list of non-exclusive requirements and conditions:

- (1) Any crossing panels having material damages greater than two inches (2") in depth must be replaced.
- (2) Concrete, composite or rubber crossing panels with loose components rising above the roadway surface must receive temporary repair within seventy-two (72) hours and be replaced within thirty (30) days from the date and time of notice.
- (3) Timber crossing panels with loose components rising above the roadway surface must be repaired within seventy-two (72) hours after receiving notice of the condition.
- (4) Partial asphalt cover on existing crossing surfaces will be considered a temporary repair.
- (5) Crossing panels that receive temporary asphalt repairs must be replaced within ninety (90) days of original placement of asphalt.
- (6) Crossing panels shall be stable and adequately lagged to the underlying railroad at all times.

(7) The roadway surface will be in the same plane as the tops of the rails for a distance of at least three feet (3') beyond the rails for either single or multiple track crossings where practical.

(b) Any crossing surface that, in the determination of the Commission, poses an unreasonable risk to the life or property of the traveling public shall be rebuilt or repaired within a timeline set by the Commission.

[Source: Added at 36 Ok Reg 618, eff 8-1-19]

SUBCHAPTER 5. TRACK CLEARANCES

165:32-5-1. Definitions

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

"AREMA Manual" means, the American Railway Engineering and Maintenance-of-Way Association's Manual.

"MUTCD" means, the Manual on Uniform Traffic Control Devices, which is the Federal Highway Administration ("FHWA") standard for signs, signals and pavement markings in the U.S.

"Track clearance" means, the shortest horizontal distance between the center lines of adjacent tracks.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14]

165:32-5-2. Applicability to existing structures

All structures, operating appurtenances, pole lines, service facilities, and track arrangements existing on the effective date of this Chapter shall be exempt from these regulations except as may be provided in this Subchapter.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-3. Incorporation of AREMA Manual provisions

This Subchapter adopts and incorporates by reference all of the provisions and standards pertaining to clearances, as are currently published in the AREMA Manual, or as may be amended from time to time.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Amended at 31 Ok Reg 1028, eff 9-12-14]

165:32-5-4. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-5. Bridges [REVOKED]

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Revoked at 31 Ok Reg 1028, eff 9-12-14]

165:32-5-6. Platforms

(a) **Combination platforms.** Platforms may be combined, provided that the lower platform presents a level surface to the face of the wall of the platform with which it is combined. No other combinations will be permitted.

(b) **Platform extensions.** Platforms which were constructed at the prevailing clearances, prior to the effective date of this Chapter, may be extended at those existing clearances.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-7. Interlockers and switch boxes

Switch boxes, switch operating mechanisms necessary for the control and operation of signals, and interlockers projecting 4 inches or less above top of rail, shall each have side clearances of no less than 3 feet.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-8. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-9. Signals, signal poles and switch stands

(a) **Signals and switch stands 3 feet high or less.** Side clearances at signals and switch stands shall be 6 feet when said signals and switch stands are 3 feet high, or less, above top of rail when located between tracks, or where not practical to provide clearances otherwise prescribed in this Subchapter.

(b) **Signals, signal poles and switch stands over 3 feet.** Signals, signal poles and switch stands which stand higher than 3 feet above top of rail shall have all the portions thereof, which exceed higher than 4 feet above top of rail and less than 16 feet above top of rail, be located no less than 8 feet 6 inches from center of track. Those portions below 4 feet and over 16 feet shall not exceed the minimum clearances described above.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-10. Track clearances

(a) **Standard gauge railroad tracks.** The minimum distance between the center line of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting freight cars, shall be 14 feet.

(b) **Main and subsidiary tracks.** The minimum distance between the center line of two parallel main tracks or passing tracks shall be 14 feet. When another track is constructed adjacent to a passing track the clearance may be no less than 14 feet.

(c) **Parallel team, house or industry tracks.** The minimum clearances between center lines of parallel team, house or industry tracks shall be 13 feet.

(d) **Ladder tracks.** The minimum clearance between center lines of ladder track and any parallel track except another ladder track, shall be 17 feet, and the minimum clearance between center lines of ladder track and another parallel ladder track shall be 20 feet.

(e) **Existing tracks.** Existing tracks may be extended at the clearances prevailing prior to the effective date of this Chapter.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-11. Changes

No change in track location or elevation shall be made which will reduce existing vertical or horizontal structural clearance below the minimums specified in this Subchapter, except where tracks are constructed as part of the existing facility, and in such cases the clearance shall conform to existing conditions.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-12. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-13. Partial replacements

Where existing structure provide clearance less than the standards which are specified in this Subchapter, the portion of the structure producing the impaired clearance may be repaired or maintained by partial replacements, which shall in no case reduce the existing clearance.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-14. Rebuilds

When the owner shall replace in its entirety, a portion of a structure which has not previously provided standard clearance, the rebuilt portion must, when complete, provide the full standard clearance as provided by this Subchapter, unless otherwise ordered by the Commission.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-15. Emergencies

No restricted clearances set forth herein, shall apply to shoo-fly tracks or other temporary emergency conditions caused by derailments, washout, slides or other unavoidable disasters.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-16. [RESERVED]

[Source: Reserved at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-17. Construction materials

No restricted clearances set out herein shall apply to ballast, track material, or construction material unloaded on and adjacent to tracks for contemplated use thereon or in the immediate vicinity, nor shall they apply to temporary construction necessary on any construction project.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

165:32-5-18. Exemptions

Exemptions from any of the requirements contained in this Subchapter will be considered by the Commission upon proper application from a carrier, industry representative, or other interested person. The application must be accompanied by a full statement of the conditions existing, and the reason(s) why such exemption is being requested. Any exemption so granted shall be limited to the particular case covered by the application.

[Source: Added at 12 Ok Reg 2107, eff 7-1-95]

SUBCHAPTER 7. RAILROAD WORKPLACE SAFETY [REVOKED]

165:32-7-1. Scope; incorporation by reference [REVOKED]

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Revoked at 31 Ok Reg 1028, eff 9-12-14]

SUBCHAPTER 9. TRACK SAFETY STANDARDS [REVOKED]

165:32-9-1. Scope; incorporation by reference [REVOKED]

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Revoked at 31 Ok Reg 1028, eff 9-12-14]

165:32-9-2. Exemptions [REVOKED]

[Source: Added at 12 Ok Reg 2107, eff 7-1-95; Revoked at 31 Ok Reg 1028, eff 9-12-14]

CHAPTER 35. ELECTRIC UTILITY RULES

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 158.21 et seq. and 160.11 et. seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:35-1-1. Purpose, authority, and scope

(a) The Electric Utilities rules and regulations of this Chapter were adopted by the Oklahoma Corporation Commission by virtue of Article IX, Section 18 et seq., of the Oklahoma Constitution and sundry enactments of the Oklahoma Legislature, which give the Commission the authority and responsibility to supervise, regulate, and control electric utilities in Oklahoma, and to enact rules and regulations in connection therewith.

(b) Pursuant to such statutory authority, the Commission has adopted this Chapter and fixed the following standards for electric utilities, to become effective upon publication as required by Article IX, Section 18 of the Oklahoma Constitution. General Order Nos. 689, 755, 2072, 16061, 13336, 104932, 109443, 110178, 135207, 147881, 179618, 179219, and 186936 as applied to electric utilities in Oklahoma are revoked as of the effective date hereof. Service provisions, rules, standards, and/or terms and conditions of service of electric utilities in Oklahoma, which have been approved by and filed with the Commission by the electric utilities to the extent of any conflict, are superseded by this Chapter.

(c) No tariff, special contract, agreement, rule, or terms and condition of service shall be filed with the Commission by electric utilities, after the effective date of this Chapter, which is in conflict with this Chapter except as provided for in OAC 165:35-1-3(f).

(d) Except as provided in OAC 165:35-1-3, any order of the Commission granting relief which would constitute an exemption from any provision of this Chapter shall not be superseded by this Chapter.

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"ANSI" means the American National Standards Institute.

"Capacity" means the quantity of electric power produced by a generating facility at a point in time, as measured in kilowatts or megawatts.

"Commission" means the Oklahoma Corporation Commission.

"Company submeter" means a kWh measuring device provided by the utility located on line beyond the point of delivery of electrical service providing service to another consumer. Usage from these meters are deducted from the meter at point of delivery.

"Competitive bidder" means any entity that submits a competitive bid in response to a request.

"Competitive bidding process" means a process to solicit offers to provide fuel supplies, electric generation service, fuel transportation services, and other goods or services related to a utility's provision of electric service to end users.

"Complaint" means an expression of dissatisfaction regarding the utility's billings, service procedures, or employee conduct which requests or requires some remedial or corrective action be taken by the utility. Complaints may be made by the consumer or other interested party. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

"Conduit" means any structure, or section thereof, containing one or more ducts, manholes, or handholes, used for any telephone, cable television, electrical, or communications conductors or cables, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

"Consumer rate class" means a division of rates as provided by a utility's tariff for pricing electric service.

"Consumer sector" means a major division of consumers, i.e., residential, commercial, or industrial.

"Consumer submeter" means a kWh measuring device provided by the customer and located on line beyond the point of delivery of electrical service.

"Consumer" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision of the United States, or the State of Oklahoma receiving electric service of any nature from a utility. Any reference to a "customer" or "end-user" or "ratepayer" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporate Support Services" or **"Shared Services"** means human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"CSD" means the Consumer Services Division of the Oklahoma Corporation Commission.

"Delinquent" means a payment not received on or before the due date as posted on a utility's bill.

"Disconnection" means electric service has been discontinued by consumer request or by the utility.

"Economy energy" means electric energy that is purchased during the course of the day to take advantage of the opportunity to purchase power from unexpected surpluses on or available to the grid more cheaply than producing it oneself or purchasing power under existing contracts.

"Electric consuming facility" means anything that utilizes electric energy from a central station source.

"Electric energy" means the quantity of electric power that is generated over a specific interval of time, measured in kilowatt-hours or megawatt-hours.

"Electronic notification" means any automated communication received by e-mail, phone, text message or fax.

"Electric plant" means facilities and equipment owned or operated by a utility, including but not limited to generating stations, substations, transformers, towers, poles, conductors, transportation equipment, conduits, meters, motors, real estate, buildings, and dams.

"Electric service" means the supply of electricity, including generation, transmission, distribution and ancillary services (e.g. spinning and supplemental reserves) for ultimate consumption.

"Electricity" means electric power and energy produced, transmitted, distributed, or furnished by a utility.

"Energy" means a quantity of electricity produced over a given time, as measured in kilowatt-hours.

"FERC" means the Federal Energy Regulatory Commission.

"Filed" means to present a document and have it accepted by the Court Clerk of the Oklahoma Corporation Commission.

"Fuel procurement plan" means a plan that (1) establishes the parameters of a fuel supply portfolio for a utility and (2) strikes an appropriate balance between fuel costs and the related risks to which consumers are exposed (e.g., fuel cost increases and supply disruptions) over the term of the resource plan.

"Fuel supplies" means the coal, oil, natural gas and other fuels that generation facilities consume to produce electricity and the transportation and transmission services used to deliver those fuels.

"Generation facility" means a machine or machines capable of producing capacity, energy or other electricity products.

"Generation service" means the production of energy, capacity and other electricity products to meet customer demands for electricity.

"Generation supplier" means an entity capable of providing generation service.

"Independent power producer" means any generation supplier that is not a utility or an affiliate thereof.

"Integrated resource plan" means a utility's plan as further defined and established in Commission rules found at OAC 165:35-37 to ensure that sufficient supply- and demand-side resources are available to meet its obligation to serve and to achieve public policy objectives, including those prescribed by law, rule, or Commission order.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers, or any other party involved in, or affected by, the provision of electric generation service.

"kW" means kilowatts, and **"kWh"** means kilowatt-hours.

"Legal holiday" means any day declared by law or proclamation of the Governor of Oklahoma to be a legal holiday or a day on which the United States Parcel Service does not deliver mail.

"Load" means the amount of electric power delivered or required at any specific point or points on an electric transmission and distribution system.

"Local forecast" means a statement of what the weather is predicted to be, that is issued by the National Weather Service for a specific county, city, and/or zip-

code area.

"Long-term" means longer than one year.

"Major event" means a catastrophic event that exceeds the design limits of the electric power system, such as an extreme storm, tornado or earthquake, wherein there is a significant loss of service.

"Meter" means any device or devices used to measure or register electric power and energy.

"Meter shop" means a shop used for the inspection, testing, and repair of meters.

"Municipality" means an incorporated city or town in Oklahoma.

"MW" means megawatts, and **"MWh"** means megawatt-hours.

"NEC" means the National Electrical Code issued by the National Fire Protection Association.

"NWS" means the National Weather Service.

"Owner" means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities.

"Planned interruption" means electric service has been suspended by the utility.

"Planning period" means the ten (10) year period that begins on the date that the utility files its integrated resource plan with the Commission.

"Pole" means any pole that carries distribution lines, telecommunications lines, and that is owned or controlled by a public utility, telecommunications company, or consumer-owned utility.

"Pole occupant" means any licensee or other entity that constructs, operates, or maintains attachments on poles or within conduits.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where electric service is furnished to a consumer.

"Prudence review" means a comprehensive review that examines as fair, just, and reasonable, a utility's practices, policies, and decisions regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, consideration of its ultimate used and useful nature.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Purchased-power procurement plan" means a plan that establishes the parameters of a purchased-power portfolio for a utility that meets the utility's planning objectives and strikes an appropriate balance between power supply costs and the related risks to which consumers are exposed (e.g., purchased-power cost increases and power supply disruptions) over the term of the resource plan.

"Records" means documentation maintained by the utility either in electronic or paper form.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer, or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Resources" means supply-side generating facilities including life extension and repowering projects for such facilities (and the output thereof), and non-supply side programs, including energy efficiency programs and demand

response programs.

"RFP" means "request for proposal," the document that publicly opens a competitive bidding process by describing the utility's needs and seeking bids to fulfill those needs.

"Risk management plan" means a systematic method utilized by a utility to, among other things:

(A) Identify risks inherent in procuring and obtaining a supply portfolio;

(B) Establish the means by which the utility plans to address and balance or hedge the identified risks related to cost, price volatility and reliability; and

(C) Address the fuel, purchased-power and utility supply costs implicit in the utility's supply portfolio, and also energy efficiency and demand response programs as a potential hedge against risk.

"RUS" means the Rural Utilities Service.

"Special contract" means a written agreement between a utility and a consumer providing for furnishing electric service on terms different from those prescribed in approved tariffs.

"Stakeholder" means an interested party, as defined above.

"Statistical sampling" means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising for disposition.

"Submit" means to present a document to the Director of the Public Utility Division.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole.

"Tariff" includes every rate schedule, or provision thereof, and all terms, conditions, rules, and regulations for furnishing electric service.

"Unplanned or emergency interruption" means service has been suspended due to circumstances beyond the control of the utility.

"Utility" means any person, firm, partnership, or corporation furnishing electric service to the public in Oklahoma and subject to the regulatory jurisdiction of the Commission.

[Source: Amended at 10 Ok Reg 3561, eff 7-12-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 21 Ok Reg 2085, eff 7-1-04; Amended at 23 Ok Reg 699, eff 2-17-06 (emergency); Amended at 23 Ok Reg 1666, eff 7-1-06; Amended at 25 Ok Reg 1566, eff 7-1-08; Amended at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-1-3. Application of rules

(a) This Chapter shall apply to the operations of any electric utility operating within the State of Oklahoma under the jurisdiction of the Commission.

(b) This Chapter is intended to define good business practice under normal conditions, to ensure adequate service and prevent unfair charges to the public, and to protect the utilities from unreasonable demands.

- (c) In any case where a controversy arises in connection with the interpretation of any provisions of this Chapter or the applicability thereof, the Commission will make such orders as it may deem appropriate upon application of any interested party and after notice and hearing.
- (d) A utility may decline initial service to a consumer until service may be rendered in compliance with this Chapter and applicable municipal ordinances and regulations.
- (e) A utility may prescribe rules and regulations for furnishing service not inconsistent with this Chapter. No such rules shall be valid until filed with and approved by the Commission. A utility may refuse or discontinue service for noncompliance with its service rules only in cases where its approved rules specifically so provide.
- (f) Whenever compliance with any provision or requirement of this Chapter would be unduly burdensome, or cause an unreasonable hardship or an excessive expense, or result in an unusual difficulty, or for other good cause shown the Commission may, upon application of the utility or the consumer and after notice and hearing, suspend or excuse compliance therewith or make such other requirements as it shall deem appropriate. For good cause shown, the Commission may grant temporary relief pending the hearing. If, after the effective date of this Chapter, a utility seeks an exception or variance from this Chapter in its tariffs or terms and conditions of service, such exception or variance shall be clearly shown on such tariffs or terms and conditions of service, sufficient to plainly bring to the Commission's attention to the exact nature of the said exception or variance. Any exception or variance not so marked or identified in such tariff or terms and conditions of service shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the variance should indicate the number of the authoritative Commission order.
- (g) The adoption of this Chapter shall in no way preclude the Commission from altering or amending this Chapter in whole or in part after notice and hearing, or from allowing or requiring additional or different service, equipment, facility, or standards than prescribed by this Chapter, either upon complaint or application or upon its own motion. Nothing provided in this Chapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma.
- (h) A utility shall not be required to take any action to ensure that a consumer follows or takes any action in compliance with any Commission rule or regulation concerning submetering activities, and no utility shall in any way be deemed to be responsible for any failure by a consumer or third party to follow or take actions in compliance with such Commission rules and regulations.
- (i) The utility shall be subject to a fine per day per occurrence for any violation of this Chapter. The fine shall be determined pursuant to 17 O.S. § 1, after notice and hearing.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-1-4. Location and retention of records

- (a) **Record retention.** Unless otherwise specified herein, all records required by this Chapter shall be preserved by the utility in the form and for a period of time not less than that specified by applicable rules of FERC or the RUS; or in absence thereof, for two (2) years.
- (b) **Record location.** All records required by this Chapter shall be made available for review in Oklahoma at the office or offices of the utility and shall be open for

examination by the Commission or its representatives; provided that if the general office of the utility is located outside of Oklahoma, the records may be kept at the general office. Each utility shall maintain records in such detail that the cost of property located and business done in the State of Oklahoma, including cost of fuel for generation purposes, can be accurately and readily ascertained, and the utility shall make available any such records for examination by the Commission or its authorized representative. Each utility shall notify the Commission as to the location of the office or offices at which the various classes of records are kept and shall file with the Commission such reports as the Commission may from time to time require.

(c) **Submetering records.** In the event of the use of company submetering, all submetering records shall be retained for a period of two (2) years and shall be available for inspection by the Commission, the affected consumer and/or duly interested party at a location accessible to the consumer affected by submeters.

(d) **Contact persons.** Each utility shall notify in writing, the PUD Director within thirty (30) days of a change in the company-designated contacts for PUD and CSD issues.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s), and shall be furnished applicable to each operating district, town or any segment of the utility so that PUD will be able to reach the responsible person at any time. If this information is unavailable, the utility may seek a waiver from the PUD Director by making the request in writing.

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues;
- (F) Regulatory matters;
- (G) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (H) Primary emergency;
- (I) After hours emergency;
- (J) Annual reporting;
- (K) Attorney for regulatory matters;
- (L) Community liaison; and
- (M) Engineering operations, meter tests and repairs.

(e) **Other information.** Each utility shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-1-5. Sale or disposal of jurisdictional facilities by utility

(a) Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer, or dispose to another any portion of its jurisdictional plant or property then constituting an integrated operating system, or major fractional part thereof, unless the following criteria are satisfied:

(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdiction;

(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which may have a detrimental impact on rates or service levels of customers, shippers or producers;

(3) This Section shall not apply to discontinuance of service pursuant to OAC 165:35-21, nor to routine retirement or replacement of plant or equipment; and

(4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission

(b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained, and customer deposit records required to be maintained pursuant to OAC 165:35-19-1.

(c) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.

(d) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly fuel filings and monthly reports current.

(e) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by PUD or CSD.

(f) This Subchapter shall not prohibit sale or exchange of individual items of equipment not affecting the service or area of service.

[Source: Added at 16 Ok Reg 2237, eff 7-1-99; Amended at 21 Ok Reg 2091, eff 7-1-04; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-1-6. Submission of distribution system mapping [REVOKED]

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Revoked at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 3. [RESERVED]

SUBCHAPTER 5. RATE, TARIFF, MAP SUBMISSION REQUIREMENTS, AND SUBMISSION OF SYSTEM MAPPING

165:35-5-1. Filing of rate schedules, contracts, agreements, and rules

(a) It shall be unlawful for a utility to furnish, charge for, or receive payment for electric service, except strictly in accordance with a tariff, special contract, or rate schedule approved by and on file with the Commission.

(b) No jurisdictional tariff or rate schedule shall be instituted, added, deleted, changed, closed, or discontinued except pursuant to order of the Commission upon application, and after such notice and hearing as may be ordered by the Commission.

(c) Annual tariff submissions submitted for review and approval by the PUD Director, pursuant to prior Commission order, may be accepted or rejected. If there

is a dispute and resolution is not accomplished, the tariff shall be subject to refund as of the date of notice of filing of a cause before the Commission to resolve the dispute.

(d) A special contract or agreement other than a filed tariff under which electric service is furnished to a consumer shall be deemed a tariff for the purpose for which approved and for purposes of this Chapter. No special contract for electric service shall become effective until it has been filed with and approved by order of the Commission, after notice and hearing when directed by the Commission.

(e) The utility shall maintain the following in each business office or furnish to a member of the public on request:

(1) A copy of every tariff and rate schedule under which electric service is being furnished to consumers within the area serviced by that business office.

(2) A copy of the approved rules and regulations of the utility which govern the furnishing of electric service.

(3) A copy of this Chapter and all amendments thereto.

(f) An agency for collection of utility bills, not operated by utility employees, shall not be deemed a local office for purposes of this Section.

(g) A utility shall submit to PUD a copy of the following:

(1) Every franchise, contract, irrevocable permit, or similar agreement between a utility and a municipality.

(2) Each contract for the wholesale purchase of power or energy.

(3) Every electric power exchange agreement.

(4) Each rate schedule and contract approved by the FERC or the RUS applicable to purchases or sales of power and energy by the utility in Oklahoma.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-5-2. Map Submission Requirements and Submission of System

Mapping

(a) Each utility shall provide upon request within ten (10) business days to the Commission suitable, detailed maps, a size and media as agreed by the utility and the PUD Director, of its general system and shall maintain suitable, detailed maps of its entire system, which shall be made available to the Commission on request. The general system maps may be provided by sections or counties where necessary to meet the size requirements. Such maps shall be brought up to date annually, not later than ninety (90) days after the end of the utility's fiscal year. Electronic submission is preferred; however, all forms of submission will be accepted.

(b) No later than one (1) year after the effective date of this rule, each utility having a distribution system within the State of Oklahoma shall endeavor to provide the locations of the distribution lines within the utility's service territory, including all lines extending more than one mile outside of the utility's service territory, to the PUD Director using geographic information system data or standards as prescribed by the PUD Director. Electronic submission is preferred; however, all forms of submission will be accepted.

(c) For purposes of this subsection, transmission facilities shall be excluded from mapping submissions. Transmission facility maps shall be retained at the utility, and shall be made available onsite upon request by PUD, subject to other regulatory requirements.

(d) The Commission finds, pursuant to Article IX, Section 18 of the Oklahoma Constitution, and 51 O.S. § 24A.22, that all general system maps that are not otherwise publicly available are hereby classified as confidential. All documents and information considered to be confidential must be clearly marked as such. All information classified as confidential shall be used by PUD, an ALJ, any party to filed cause pending before the Commission, and the Commission solely in connection with the review and disposition of all matters relating to this Section. PUD, the ALJ, the Commission and all other parties that receive or review information deemed confidential herein shall keep all such information confidential.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-5-3. Streamlined approval process

- (a) A streamlined approval process shall be available for Commission review of minor changes to the utility's Commission-approved tariffs for optional or non-basic services, for new optional or nonbasic services, and/or minor terms and conditions of service.
- (b) The streamlined approval process will not be available for a general rate change pursuant to OAC 165:70-1-2.
- (c) The projected impact on annual revenues caused by the requested tariff change, when combined with the actual revenues received from other tariff changes obtained under this streamlined approval process within the previous twelve months, shall not exceed one percent of the utility's jurisdictional annual gross operating revenue.

[Source: Added at 13 Ok Reg 2433, eff 7-1-96]

165:35-5-4. Applications for streamlined approval

- (a) The utility seeking approval of an application under the streamlined process shall file an application with the Commission's Court Clerk stating the name of the applicant, the specific change or changes requested, and the anticipated annual revenue effect.
- (b) When the utility files an application for approval under the streamlined process, it shall submit to PUD a complete streamlined application package which conforms to the requirements set forth in this Subchapter. The streamlined application package shall contain a statement by the applicant that the package is in compliance with the filing requirements for streamlined application packages.
- (c) Streamlined application packages shall contain at a minimum the following:
- (1) Evidence that the application meets the requirements contained at OAC 165:35-5-3.
 - (2) Annual impact of such change or new service on the utility's customers, in aggregate and on a per customer basis for each customer class.
 - (3) Documentation and schedules that quantify the annual revenue change anticipated, and the cost of providing the new service, when applicable.
 - (4) Evidence that the change or new service is not unjustly discriminatory.
 - (5) Evidence that good cause exists for the approval of the change or new service.
 - (6) A list of all Commission orders applicable to the applicant issued within the twelve month period prior to filing pursuant to this streamlined procedure.
 - (7) The amount per month of both projected and actual revenues or reductions derived from the applications approved relating to the orders

identified within the filing package within the twelve month period prior to filing.

(8) A statement containing the utility's jurisdictional gross operating revenues for the twelve month period immediately preceding the filing.

[Source: Added at 13 Ok Reg 2433, eff 7-1-96; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-5-5. Response to application for streamlined approval and subsequent pleading

(a) The tariff and/or terms and conditions of service will be effective pursuant to Commission order. If an objection to the streamlined application is filed within thirty (30) calendar days of the original filing, the Commission may set the matter for hearing and shall issue an order approving, denying or modifying the application within sixty (60) calendar days of the date the application was filed, unless otherwise ordered by the Commission.

(b) If an objection is not filed, the Commission shall issue an order approving, denying or modifying the application within forty-five (45) calendar days of the date the application was filed, unless otherwise ordered by the Commission.

(c) Applicant shall respond to data requests for additional data or information within five (5) business days of receiving the request.

[Source: Added at 13 Ok Reg 2433, eff 7-1-96; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-5-6. Streamlined approval - notice and intervention

(a) The applicant shall provide notice of the application for streamlined approval, which shall include notice to the Office of the Attorney General of the State of Oklahoma.

(b) If the application proposes a service or tariff that alters the current rate or offers a new rate for customers, the applicant shall provide notice of the application by publication for two (2) weeks. The first publication shall be no later than fifteen (15) calendar days after the Commission approves the notice. Publication shall be in a newspaper of general circulation published in each county in which are located utility customers affected thereby, unless the Commission orders otherwise.

[Source: Added at 13 Ok Reg 2433, eff 7-1-96; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-5-7. Effect of streamlined approval on subsequent proceedings

Any addition, deletion, or amendment to a tariff or term and condition of service, obtained through the streamlined process shall not preclude an examination of the impact of the change upon the utility's revenue requirement or operations in subsequent proceedings.

[Source: Added at 13 Ok Reg 2433, eff 7-1-96]

SUBCHAPTER 7. PROMOTIONAL POLICIES AND PRACTICES

165:35-7-1. Provisions governing promotional policies and practices

The promotional policies and practices of each utility shall be governed by 17 O.S. Supp. (1981), §180.1 et seq., and future amendments or supplements thereto.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-2. Promotional practices prohibited [REVOKED]

[Source: Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-3. Promotional practices permitted [REVOKED]

[Source: Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-4. Advertising expenditures prohibited [REVOKED]

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-5. Advertising expenditures permitted [REVOKED]

[Source: Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-6. Contributions [REVOKED]

[Source: Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-7-7. Submission of promotional practices

The utility shall submit an annual submission of current promotional practices by May 1, and as programs are updated, to PUD. The report shall include a list and description of all promotional practices and activities. Although submission by the utility shall not assume approval by PUD, it will allow PUD and the utility to review and dialogue as to the appropriateness of the promotional practices, whether or not the expenses should be recovered through rates, and ensure that the promotional practices are provided on a nondiscriminatory basis.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-7-8. Exceptions; prior conditions and rules [REVOKED]

[Source: Revoked at 16 Ok Reg 2237, eff 7-1-99]

SUBCHAPTER 9. EXTENT OF SERVICE

165:35-9-1. Extent of service

(a) **Point of delivery.** The point of delivery of electrical service shall be the point at which the electrical supply system of the utility connects to the wiring system of the consumer.

(b) **Service at primary distribution voltage.** When the consumer accepts service at primary distribution voltage, the delivery point shall be at or near the property line or point of transformation.

(c) **Service at secondary voltage.**

(1) For overhead construction, the point of delivery is that point where the utility's overhead service drop connects to the consumer's service entrance conductors.

(2) For underground construction, the point of delivery is that point where the utility's service lateral connects to the consumer's service entrance conductors.

(d) **Installation and maintenance responsibility.**

(1) A utility shall furnish and install all transformation and/or conductors of proper voltage and adequate capacity and be responsible for maintenance of all electrical wiring and equipment up to the point of delivery for every bona fide applicant for service who has complied with this Chapter and the provisions of the utility's terms and conditions of service as approved by the

Commission. Unless specifically designated in their terms and conditions to the contrary, a utility shall provide its standard size connectors and connect the consumer's service entrance conductors at the point of delivery.

(2) All standard metering equipment stocked by the utility shall be furnished and maintained by the utility. Meters shall be furnished, installed, and maintained by the utility. All meter bases, enclosures, and other associated equipment furnished by the utility shall be maintained by the utility and remain its property. Required installation of this equipment by the consumer shall be in compliance with this subsection. A consumer may locate submetering equipment beyond the point of delivery of electrical service and such equipment shall conform to the NEC.

(3) Subject to OAC 165:35-17-3, all electrical wiring and equipment including meter bases, enclosures, and other associated equipment furnished by the utility, except for the meter furnished by the utility, installed on the consumer's side of the point of delivery shall be at the consumer's expense and shall be installed and maintained by the consumer in accordance with the NEC. In the event of conflict between the NEC and an applicable municipal code, the latter shall prevail. The utility has no duty to conduct inspections of electric wiring and equipment except for such wiring and equipment which is installed, owned, or controlled by the utility.

(e) **Metering equipment at a point other than the point of delivery.** A utility may locate metering equipment at a point other than the point of delivery of electrical service. In such cases where the metering equipment is located on the consumer's side of the point of delivery, the utility may establish requirements for conductors and equipment to provide proper operation, accessibility and security.

(f) **Proper location of the point of delivery.** Either before, or during construction of the consumer's facility, the utility shall, upon request, and without charge, advise the consumer as to the proper location of the point of delivery. Whenever the consumer and the utility are unable to agree upon the point of delivery and equipment to be installed, the utility shall advise the consumer of the Commission's regulatory ability to resolve the dispute. The Commission, upon application of either, shall make a determination as to the appropriate location.

(g) **Permanent discontinuance of delivery of electric service.** When the utility permanently discontinues delivery of electric service to any consumer's premises, the utility shall have the right at any reasonable time thereafter, to enter upon the premises and remove its meter and any other property the utility has located there.

[Source: Amended at 11 Ok Reg 3745, eff 7-11-94; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 11. ALLOCATION OF TERRITORIES/CONSUMERS; CHANGES IN SERVICE/SUPPLIER

165:35-11-1. Allocating territories and/or consumers between utilities

An agreement between utilities for the purpose of allocating territories or consumers shall be valid only if it is entered into by the utilities and approved by the Commission in accordance with the following provisions which provide *"Notwithstanding the effectuation of certified territories established by or pursuant to this act, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the purpose of allocating territories and consumer between such retail electric suppliers and designating which territories and consumers are to be served by which of said*

retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the Commission shall be valid and enforceable. The Commission shall approve such contract if it finds that the contract will promote the purposes of (Section 158.23 of this title) and will provide adequate and reasonable service to all areas and consumers affected thereby." [17 O.S. 1981, Section 158.26]

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-11-2. Change of service

If a change in service to a consumer is required for the convenience or benefit of the utility, the utility shall pay such part of the cost associated with electric change out as determined by mutual agreement or by the Commission in absence of such agreement.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99]

165:35-11-3. Changing retail suppliers in incorporated areas [REVOKED]

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 10 Ok Reg 3561, eff 7-12-93; Amended at 14 Ok Reg 2558, eff 7-1-97; Revoked at 16 Ok Reg 2237, eff 7-1-99]

165:35-11-4. New large load equal to or greater than 1,000 kW notice

Any retail electric supplier, not excluded by 17 O.S. § 158.28 of the Retail Electric Supplier Certified Territory Act, that intends to provide retail electric service to a new electric-consuming facility within the certified territory of another retail electric service provider shall notify that incumbent retail electric service provider and PUD, either in writing or by electronic mail, after a bid has been selected, and no less than three (3) business days prior to implementation of service. This notice shall provide information including but not limited to the following:

- (1) A description of the anticipated location of the new electric-consuming facility, and the identification of the certified territory retail electric service provider.
- (2) A general description of the size of the load to be added.
- (3) Identification of the tariff, on file with PUD, under which the retail electric supplier intends to serve the electric-consuming facility.

[Source: Added at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 13. DISPOSITION OF ELECTRIC ENERGY

165:35-13-1. Resale of electricity

(a) Except as set forth in subsection (b) below, no utility shall knowingly furnish electricity under a retail tariff for purposes of resale, except pursuant to a tariff or special contract approved by and on file with the Commission.

(b) If it comes to the attention of the utility that any consumer is reselling electricity, it shall notify the PUD Director of the name and address of any consumer reselling electricity. Unless otherwise directed, the utility may continue to provide electric service pending review by the PUD Director.

(c) Sales of charging services from an electric vehicle charging station, not owned by a regulated utility, for the purpose of fueling an electric vehicle, including the ability to sell on a kWh basis, shall not be considered resale of retail electricity, and such sales from the electric vehicle charging station shall not be subject to rate

regulation by the Commission. Utility service to an electric vehicle charging station shall be provided subject to the utility's terms and conditions.

[Source: Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-13-2. Resale of power or energy

No utility shall knowingly sell power or energy to any consumer for resale under Commission jurisdiction pursuant to a tariff providing for resale unless the Commission has been advised fifteen (15) calendar days prior to commencement of deliveries. No such sale shall be made unless the purchaser from the utility has tariffs on file with and approved by the Commission, rate schedules, rules, and regulations covering such resale, or is exempt by law from such requirements.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-13-3. Rented single, residence units

Where four (4) or fewer rooms within a residence are rented to the public for residence purposes only, by one owning or occupying the residence and where a single meter is installed, a single application of the residential rate shall apply to the entire service.

165:35-13-4. Point(s) of delivery

In serving a consumer, regardless of classification, the utility shall regard each point of delivery as a separate consumer or contract and shall separately meter and charge accordingly, and shall not combine meter readings for the purpose of giving the consumer a lower rate unless the approved tariffs of the utility provide otherwise. More than one point of delivery to a single consumer at one premise or location will be permitted when the physical or electrical characteristics of the facilities served require more than one point of delivery according to good engineering and operating practices, in which case total usage at multiple points of delivery shall be combined for billing purposes.

165:35-13-5. Meter service measurement

All electric service rendered by a utility shall be on the basis of meter measurement, except for installations where the load is constant and the consumption may be readily computed, or as provided for in its filed rate schedules, or as otherwise authorized by the Commission.

165:35-13-6. Records and reports of measurement of input and output

(a) Each utility shall keep a record of the input and output of its system in kilowatt-hours per month.

(b) The totals of input and output measurements shall be reported each month to PUD on its Forms E.D. and E.T., "Comparative Monthly Report of Revenues and Expenses." A copy of RUS Form 7 may be filed in lieu thereof.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-13-7. Multiple residence units

(a) The basic statewide standard for service to multiple residences, apartment complexes, or similar residential units shall be individual metering, one (1) meter per residence with billing under the applicable residential rate schedule.

(b) Exceptions to the standard for service to multiple residences set forth in (a) of this Section may be granted by the Commission with respect to new and future multiple residence units. A utility or the owner of such a multiple residence unit may submit an application seeking authorization to furnish service at one or more points of delivery. The Commission shall grant such authority if it determines that providing service in the manner requested will encourage:

- (1) Conservation of energy.
- (2) The efficient use of facilities and resources by the utility providing such service.
- (3) Equitable rates to the consumers of such service.

(c) Except as provided in this Chapter, no consumer shall separately meter and separately bill another consumer for electricity. A landlord or innkeeper may include the cost of electricity in rent.

(d) Multiple residences, apartment complexes, or similar residential units being served under and with a single or multiple meters and at a commercial rate schedule may be continued without block billing or, at the option of the consumer, may revert to and have service by individual meters at the applicable residential rate.

(e) As an alternative to (a), (b), (c), and (d) of this Section, residences, apartment complexes, or similar residential units and multicommercial unit complexes may be or may continue to be served with a single utility meter and consumer submeter system, if such measuring of electrical service is deemed to:

- (1) Encourage conservation of energy.
- (2) Contribute to the efficient use of facilities and resources of electric utilities.
- (3) Results in equitable rates to the electrical consumers affected by such meters. Application for utilization of such electric utility meters and consumer submeters referred to in (e) of this Section may be made by a letter jointly submitted by both the affected utility and consumer of electric service to the PUD Director, requesting administrative approval by the Commission. In the event the PUD Director shall deny such a joint letter application or in the event such a joint letter application is not presented, either the affected utility or the consumer shall have the right to file a formal application with notice for hearing before the Commission seeking such approval. The applicable rate for such service shall be the applicable utility commercial rate without block billing or similar type billing.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 15. METER REQUIREMENTS

PART 1. INSTALLATION, READING, AND RECORDS

165:35-15-1. Meters

(a) Except as provided in OAC 165:35-13-5, each utility shall provide and install at its own expense and shall continue to own, maintain, and operate proper and sufficient equipment for the accurate measurement of electricity delivered to each consumer.

(b) Where additional meters are furnished by the utility for the convenience of the consumer, a charge for such meters may be made in accordance with a tariff filed with and approved by the Commission.

(c) No meter shall be installed which is known to be defective, or to have incorrect constants or which has not been tested and adjusted, if necessary, in accordance with this Chapter. The meter shall be consistent with the electric requirements of the consumer.

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-15-2. Meter reading, meter reading records, cards, and charts

(a) **Meter reading records.** The meter reading records shall show:

- (1) Consumer's name, address, and rate schedule symbol.
- (2) Identifying number or description of the meter.
- (3) Meter readings and dates thereof.
- (4) If the reading has been estimated.
- (5) Any applicable multiplier or constant.

(b) **Meter charts.** All charts taken from recording meters shall be marked with the date of record, the meter number, consumer's name and location, and the chart multiplier.

(c) **Meter constants or multipliers.** Each service meter shall clearly indicate the reading from which the charge is made to the consumer. In any case where the dial reading of a meter must be multiplied by a constant to obtain the units consumed, the proper constant to be applied shall be clearly marked on the face or dial of the meter.

(d) **Meter reading information.** Each service meter shall be read by the utility, or a utility may by its rules prescribe a procedure for reading of meters by consumers.

(1) **Meters read by the utility.** For each utility that regularly reads its own meters, each service meter shall be read at monthly intervals at least ten (10) times a year, weather permitting, on approximately the same day of each meter reading period. The utility may, if specified and approved in its tariffs, delegate the reading of the meter to the consumer; however, the reading must be verified by the utility every six (6) months. Whenever it is not possible, with reasonable diligence, to read a meter for a billing period, the utility may submit an estimated bill based upon previous usage and other available information, the amount of such estimated bill to be adjusted as necessary when the next actual meter reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility reading the meter. If it is necessary for the utility to estimate more than two (2) bills per year due to the actions of the consumer regarding meter accessibility, and where the inaccessibility is beyond the control of the utility, it will be permissible for the utility to submit an estimated bill based on consumer reading or past service records. The amount of such estimated bill will be adjusted as necessary when the next actual reading is obtained.

(2) **Meters read by the consumer.** For each utility whose normal procedure is to have its consumers regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at approximately monthly intervals or annually, if an annual rate applies. The utility shall verify such readings not less than once every six (6) months. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous usage and other available information, the amount of such estimated bill to be adjusted, as necessary, when the next actual reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility

reading the meter. When by reason of a consumer's failure to furnish meter reading, the utility reads the meter, it may charge the service fee for reading the meter prescribed in its approved tariffs.

(3) **Access to meters and other property.** The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on a consumer's premises. Refusal on the part of the consumer to provide reasonable access for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility, after at least ten (10) calendar days written notice. In the event the consumer is a tenant, the utility should attempt to notify the property owner of the access violation and pending disconnection of service. Service will be reconnected after a method of permanent access on the meter reading date is agreed upon by the customer consumer and utility. If the consumer and/or property owner does not correct unsafe conditions or obstructions, including aggressive animals, the utility may relocate the meter to a safe and accessible location at the expense of the consumer and/or property owner. The utility shall provide its employees with a means of identification to claim the right of access.

(4) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

(e) **Consumer submeter record information.** Consumer submeter records shall contain the information set forth in (a) and (c) of this Section and such meters shall be read within three (3) business days of the applicable utility meter being read by the utility.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

PART 3. METER LOCATION, TESTING, AND OPERATION

165:35-15-10. Location of meters

(a) Outdoor meters.

(1) Where a meter is installed outdoors, it shall be placed on the exterior of a building or on a support or pole in a location readily accessible to authorized utility representatives for meter reading, testing and maintenance; and shall not be subject to severe vibration, dust, vapors or corrosive liquids. The meter shall be the temperature compensating type.

(2) A meter shall not be placed in a location where it may be accidentally damaged or at a location on a building where it will cause inconvenience, either to the consumer or the utility's representative.

(3) An outdoor meter, except for unusual circumstances, shall not be more than five and one-half feet (5 ½') or less than two and one-half (2½') feet above ground level, measured from the center of the meter cover.

(b) Indoor meters.

(1) No residential meter shall be installed inside a residence after the effective date of this Chapter unless agreed upon by the utility and the consumer.

(2) Where a meter is installed indoors, it shall be located where it will be readily accessible to authorized utility representatives for meter reading, testing, and maintenance and shall not be subject to severe vibration or excessive dampness.

(3) A meter shall not be located in a hazardous location nor in a location where accessibility is difficult. A meter shall not be placed in any location where the visits of the meter reader will cause inconvenience either to the consumer or the utility.

(4) An indoor meter shall not be more than five and one-half feet (5½') or less than two and one-half (2½') feet above floor level, measured from the center of the meter cover.

(c) **Relocation of meters.** A utility may, at its option and at its expense, relocate any meter, except that in case of a relocation which is made necessary due to inaccessibility or hazardous location caused by the consumer, dangerous conditions, including aggressive animals, or to prevent a recurrence of discovered tampering or unauthorized diversion of service, the utility may, at the consumer's expense, relocate the meter loop and service entrance facilities to a location agreeable to the utility and consumer; and if no location can be agreed upon, the Commission will designate the location upon request by either party.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-15-11. Meter testing facilities and equipment

(a) **General.** Each utility furnishing metered electric service shall own or arrange for equipment and facilities and follow test procedures necessary for testing its meters to limits of accuracy specified in this Chapter. The equipment facilities and procedures shall be available for inspection by PUD or its authorized representative. A utility may contract for testing of its meters by another utility or by a non-utility concern performing meter testing service.

(b) **Test standards.**

(1) Each utility furnishing metered electric service shall provide for and have available portable indicating electrical testing instruments or watt-hour meters of suitable range and type for testing service watt-hour meters, demand meters, switchboard instruments, recording voltmeters, and other electrical instruments.

(2) For testing the accuracy of portable watt-hour meters, commonly called "rotating standards", and other portable instruments used for testing service meters, each utility shall provide for and have available as reference or check standards suitable indicating electrical instruments, watt-hour meters, watt meters, or any or all of them, hereinafter called reference standards. Service type of watt-hour meters may be used as a check standard, but if so, such watt-hour meters shall be permanently mounted in a meter testing facility and shall be used for no purpose other than for checking working rotating standards.

(c) **Reference standards.** Reference standards shall be submitted at least once each year to the National Bureau of Standards or to a laboratory approved by the Commission for the purpose of test, adjustment, and certification. Utilities maintaining standardizing laboratories will be permitted to make their own test and certifications of reference standards, provided the instruments and methods in use are acceptable to the Commission.

(d) **Portable test standards.** All working rotating standards (portable watt-hour meters) shall be compared with the reference standards at least once every three (3)

months, and solid-state watt-hour standards every six (6) months, during the time such working standards are being regularly used. Each rotating standard (portable watt-hour meter) shall at all times be accompanied by a calibrating card, giving the date when it was last calibrated and adjusted. Records of calibration shall be kept on file in the office of the utility, for the life of the instrument.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-15-12. Accuracy requirements for service watt-hour meters

(a) **General.** No meter shall be placed in service, or allowed to remain in service, which has an incorrect register multiplier, watt-hour constant, gear ratio, or dial train; or which is mechanically or electrically defective, incorrectly connected, installed, or applied; or which registers outside the limits specified in (c) of this Section. All tolerances in this Chapter are to be interpreted as maximum permissible variations from conditions of zero error. No meter or associated device shall be adjusted to be in error, even within the tolerances permitted by this Chapter.

(b) **Test loads.** For self-contained meters, the heavy load test current shall be approximately one hundred percent (100%) of the meter test amperes (TA), and the light load test current shall be approximately ten percent (10%) of the meter test amperes (TA). For meters used with current transformers, the current at heavy load shall be approximately one hundred percent (100%) of either the meter test amperes (TA) or the secondary rating of the current transformer, and at light load approximately ten percent (10%) of that rating.

(c) **Accuracy limits.**

(1) **Acceptable performance.** The performance of a watt-hour meter is considered to be acceptable when the average percentage registration is not more than one hundred and two percent (102%), nor less than ninety-eight percent (98%), calculated in accordance with one of the methods described in (d) of this Section.

(2) **Adjustment limits.** When the test of a watt-hour meter indicates that the error in registration exceeds one percent (1%) at either light load or heavy load at unity power factor, or exceeds two percent (2%) at heavy load at approximately 0.5 power factor lag, the percentage registration of the meter shall be adjusted to within these limits of error, as closely as practicable to the condition of zero error. Where instrument transformers are used in conjunction with the meter, these limits apply to the meter equipment as a whole. All meters which are tested shall be left without creep.

(3) **Creeping.** No watt-hour meter which creeps shall be placed in service or allowed to remain in service. A meter creeps if, with load wires removed and with test voltage applied to the voltage circuits, the rotor moves continuously. For the practical recognition of creep in a meter in service, it is considered to creep when, with all load wires disconnected, the rotor makes one (1) revolution in ten (10) minutes or less.

(d) **Percentage registration.**

(1) **Method 1.** Weighted average percentage registration is the weighted average of the percentage registration at light load (LL) and at heavy load (HL) registration a weight of four (4). By this method: Weighted Average Percentage Registration = $(LL + 4HL) \div 5$.

(2) **Method 2.** Average percentage registration is the average of the percentage registration at light load (LL) and at heavy load (HL). By this

method: Average Percentage Registration = $(LL + HL) \div 2$.

(e) **Compliance with ANSI.** The consumer who utilizes a consumer submeter or consumer submeters shall not place in service such meters unless said consumer submeters comply with the current version of ANSIC12 Standard, or equivalent ANSI standard as later amended.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99]

165:35-15-13. Accuracy requirements for demand meters

(a) **Acceptable performance.** The performance of a demand meter or register shall be acceptable when the error in registration does not exceed four percent (4%) in terms of full scale value when tested at any point between twenty-five percent (25%) and one hundred percent (100%) of full scale value.

(b) **Adjustment limits.**

(1) When a demand meter or register indicates that the error in registration exceeds \pm four percent (4%) in terms of full scale value, the demand meter or register shall be adjusted to within \pm two percent (2%) full scale value.

(2) The timing element when used to keep a record of time of day at which the demand occurs, shall be adjusted to a condition of as near zero error as practicable when it is found to be in error by more than \pm 0.25 percent.

165:35-15-14. Place and methods for testing metering equipment

(a) **Testing in place.** Tests on watt-hour and demand meters in service may be made either on the consumer's premises or in an approved meter testing facility.

(b) **Instrument transformers.**

(1) **Preinstallation tests.** Prior to installation, all new instrument transformers shall be tested for voltage withstand, ratio correction factor, and phase angle in an approved laboratory, meter shop, or by the manufacturer.

(2) **Transformers removed from service.** All instrument transformers removed from service, unless damaged, shall be tested for ratio correction factor and phase angle prior to reinstallation.

(3) **In-service tests.** When metering installations are tested on periodic schedules, the instrument transformers associated with the installation shall be inspected for correctness of connections and evidence of any damage. Current transformers shall be tested with a suitable variable burden device to determine if the windings of the secondary circuit have developed an open circuit, short circuit or unwanted grounds. When the primary voltage is known, potential transformers may be tested by measuring the secondary voltage to reveal defects in the transformers or secondary circuit which affects its accuracy.

165:35-15-15. Installation tests

(a) **New meters.** New meters shall be inspected and tested in a meter testing facility, or by the manufacturer, either on a one hundred percent (100%) basis or on a statistical sampling basis acceptable to the Commission, and appropriate action shall be taken by the utility to assure that the meters conform to the accuracy requirements outlined in this Chapter.

(b) **Meters installed with instrument transformers.** Meters installed with instrument transformers shall be tested on a one hundred percent (100%) basis and adjusted to conform to the accuracy requirement outlined in this Chapter prior to installation. In addition, a complete inspection shall be made of the wiring after

installation to assure proper connections for metering.

(c) **Separate test of meters and transformers.** The watt-hour meters may be tested independently of instrument transformers, provided the transformer ratios and phase angles have been determined and are taken into account in the calibration of the meters. The transformer errors may be neglected in the calibration of the meters if instrument transformers are used that conform to the 0.3 accuracy class limits of the ANSI requirements with the actual secondary burden.

165:35-15-16. Schedule for testing watt-hour meters

(a) **Selective testing of alternating current watt-hour meters.** Meters shall be tested in accordance with the provisions of this Section, except that any utility may, upon written request to the Commission, be authorized by the Commission to utilize a selective testing program for alternating current watt-hour meters.

(b) **Periodic schedule for testing alternating current watt-hour meters with surge-proof magnets and without demand registers or pulse initiators (in lieu of selective testing program).** The word "year" in the periodic test schedule stated below means calendar year. The periods stated are required test intervals.

(1) Meters used with instrument transformers:

(A) Polyphase meters-at least once in 16 years.

(B) Single phase meters-at least once in 16 years.

(2) Self-contained single phase meters - at least once in 16 years.

(3) Self-contained single phase meters and three-wire network meters - at least once in 16 years.

(c) **Varhour meters.** Varhour meters shall be tested in accordance with the schedule for the associated watt-hour meters.

(d) **Other meters.** Meters without surge-proof magnets and without demand registers or pulse initiators - at least once in 8 years.

(e) **Adoption of utility testing schedule.** In lieu of the schedule prescribed by this Section, the utility may adopt its own testing schedule when approved by order of the Commission.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93]

165:35-15-17. Schedule for testing demand meters

The following schedule is required for testing demand meters:

(1) Block interval demand-registers-equipped watt-hour meters.

(A) Meters with surge-proof magnets - 12 years.

(B) Meters without surge-proof magnets - 8 years.

(2) Block interval graphic watt-hour demand meters - 2 years.

(3) Lagged demand meters - 8 years.

(4) Pulse recorders and pulse-operated demand meters in combination with pulse-initiator-equipped watt-hour meters - 2 years. If a comparison is made between the meter registration and the recorder registration each billing period, and the recorder registration agrees within one percent (1%) of that registered by the associated meter, the schedule for pulse recorders and pulse-operated demand meters should be as indicated in (A) and (B) of this paragraph. If recorder meter registration checks do not agree within one percent (1%), the demand metering equipment should be tested.

(A) Meters with surge-proof magnets - 16 years.

(B) Meters without surge-proof magnets - 8 years.

[Source: Amended at 10 eff 6-25-93]

165:35-15-18. Prepayment meters

No utility shall use prepayment meters geared or set as to produce a rate or amount higher than would be paid if a standard type meter was used, except pursuant to a special rate schedule for the particular class of service which has been filed with and approved by the Commission.

165:35-15-19. Meter records and reports

(a) **General.** Current records shall be kept, systematically arranged, of the identification number of each watt-hour meter and the location of the meter.

(b) **Selective test date.** Any utility authorized to utilize a selective testing program for alternating current watt-hour meters may retain the test date of the groups of lots of the meter selected for test, in lieu of the records required in (c) of this Section.

(c) **Test records.** Each utility shall keep the most recent test record of any installed meter for the period installed and for six (6) months after the meter is removed from service. Each record shall contain:

- (1) Sufficient information to identify the meter.
- (2) The date of the test.
- (3) Reading of the meter.
- (4) Results of the test.

165:35-15-20. Meter testing on request of consumer

(a) Upon receipt at an office of a utility of a written request of a consumer, the utility shall, within twenty (20) calendar days, test the accuracy of the meter through which the consumer is being served.

(b) No charge shall be made for a meter test requested by the consumer, unless the meter is found to test within limits of accuracy prescribed by this Chapter, in which case the utility may make the charge prescribed in its approved tariffs.

(c) A consumer may make written request to be present when the utility conducts the test on his/her meter and have an expert or other representative present at the time; in which case, the utility shall conduct the test in the presence of the consumer or the consumer's representative, but during regular working hours of the utility.

(d) A written report stating the name of the consumer requesting the test, the date of the request, the location of the premise where the meter has been installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the result of the test shall be supplied to such consumer within ten (10) business days after the completion of the test.

(e) Each party affected by a consumer submeter may make demand of the consumer to test the consumer submeter, and the testing requirements and the time for such testing shall be as set forth in (a) through (d) of this Section.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-15-21. Referee meter tests by Commission [REVOKED]

[Source: Revoked at 22 Ok Reg 1799, eff 7-1-05]

165:35-15-22. Adjustment of bills

(a) **Fast meters.** Whenever any meter tested by PUD or the utility is found to have an average error of more than two percent (2%) fast (or in favor of the utility), the

utility shall refund to the consumer the overcharge based upon the last test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, or the error was due to meter tampering or theft, in which case the overcharge shall be computed from that date.

(b) **Slow meters.** Whenever a meter tested by PUD or the utility is found to have an average error of more than two percent (2%) slow (or in favor of the consumer), the utility shall charge for the electricity consumed, but not included, in bills previously rendered, based upon the corrected meter reading, for a period equal to one-half (1/2) of the time elapsed since the last previous test, but not to exceed six (6) months, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the corrected amount, in installment payments, over the same period of time in which the incorrect billing took place, but not to exceed six (6) months, unless otherwise agreed to by the utility and consumer.

(c) **Nonregistering meters.** If a meter is found not to register or to register intermittently for any period, the utility may charge for an estimated amount of electricity used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years, or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto. The estimated billing shall not exceed six (6) months, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the estimated billing amount, in installment payments, over six (6) months, unless otherwise agreed to by the utility and consumer.

(d) **Incorrect register, connection of the meter, or multiplier on meters.** If a meter is found to have an incorrect register, connection, multiplier, or constant, the error shall be corrected. Where the error is adverse to the consumer, the utility shall refund the excess charged for the amount of electricity incorrectly metered for the period of time the meter was used in billing the consumer. Where the error is adverse to the utility, the utility shall charge the consumer the undercharge for the amount of electricity incorrectly metered for the period of time, not to exceed six (6) months, the meter was used in billing the consumer, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay any unbilled amount over the same period of time in which the undercharge took place, but not to exceed six (6) months, unless otherwise agreed to by the utility and consumer.

(e) **Compliance.** This Section shall not apply to routine testing and replacement of meters.

(f) **Conformity.** Consumer submeters shall conform to the adjustments set forth in subsections (a) through (e) of this Section.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 17. FREQUENCY, VOLTAGE, AND EQUIPMENT SERVICING REQUIREMENTS

165:35-17-1. Standard frequency

The standard frequency for alternating current distribution systems shall be 60 hertz.

165:35-17-2. Voltage limits

(a) **Secondary voltages.** The voltage at the utility's point of delivery, as installed for each consumer, shall be maintained within the limits specified in (1) through (4) of this subsection. If a utility adopts any standard voltage not included in the table in (4) of this subsection, it shall advise the Commission that the Commission may establish appropriate voltage limits. Where three-phase service is provided, the utility shall exercise reasonable care to assure that the phase voltages are balanced. The preferred and tolerable voltage ranges conform to the current version of ANSI Standard C84.1, or equivalent ANSI standard as later amended.

(1) **Preferred secondary voltages.** The secondary voltage described above shall normally be maintained within the preferred range specified in the table in (4) of this subsection.

(2) **Tolerable secondary voltage.** The secondary voltage described above will be permitted in the tolerable range specified in the table in (4) of this subsection under abnormal conditions if it is limited in frequency of occurrence and duration, providing that measures are initiated within a reasonable period of time to bring the voltage within the preferred range.

(3) **Emergency secondary voltages.** Voltages outside the limits specified in (4) of this subsection may infrequently occur due to:

- (A) Addition of significant loads without proper notice to the utility.
- (B) Adverse action of the elements.
- (C) Failure of principal supply line or equipment necessitating use of alternate routes.
- (D) Temporary separation of part of the system from the main system.
- (E) Causes beyond the control of the utility.

(4) **Table.**

NORMAL VOLTAGE	PREFERRED VOLTAGE RANGE		TOLERABLE VOLTAGE RANGE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
120	114	126	110	
208Y/120	197Y/114	218Y/126	191Y/110	220Y/127
240/120	228/114	252/126	220/110	254/127
208	197	218	191	220
416Y/240	395Y/228	436Y/252	381Y/220	440Y/254
480/240	456/228	504/252	440/220	508/254
460Y/265	437Y/252	483Y/279	422Y/244	487Y/281
480Y/277	456Y/263	504/Y291	440Y/254	508Y/293
440	418	462	403	466
480	456	504	440	508
832Y/480	790Y/456	873Y/504	762Y/440	880Y/508
600	570	630	550	655

(b) **Primary voltages.** The following limits shall apply where the utility supplies service at primary voltage.

(1) **Industrial consumers.** For services rendered principally for industrial or power purposes, the voltage shall not exceed ten percent (10%) above or ten percent (10%) below the nominal voltage of the low side of the transformer.

(2) **Special contract extension.** The limitations in (1) of this subsection do not apply to special contracts in which the consumer specifically agrees to accept service with a different voltage regulation.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-17-3. Servicing utilization control equipment

Each utility shall service and maintain any equipment it installs, owns, and uses on consumer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches, or other devices which control the consumer's service.

SUBCHAPTER 19. CONSUMER DATA, DEPOSITS, AND BILLING

PART 1. CONSUMER RECORDS, INFORMATION, AND INTERRUPTIONS OF SERVICE

165:35-19-1. Consumer records

(a) The utility shall maintain such records of each consumer as may be necessary to reflect compliance with the Commission's rules, which shall be retained for the period prescribed in OAC 165:35-1-3.

(b) Records referred to in subsection (a) of this Section, where applicable, shall show, but not be limited to:

- (1) KWH meter readings per billing period.
- (2) KWH consumption per billing period.
- (3) KW meter readings per billing period.
- (4) KW measured demand per billing period.
- (5) KW billing demand per billing period.
- (6) Total amount of bill per billing period.
- (7) Dates and amounts of payments by consumers.
- (8) Adjustments of bills.
- (9) In service performance meter and/or equipment test.
- (10) Complaints by name and account number in accordance with OAC 165:35-23-2(a) that such records be maintained in a matrix format with the type (or category) of complaint listed across the top and the consumer's name or account number listed down the left hand side. However, if the account number only is utilized, a cross reference with the consumer's name must also be readily available.

(c) Consumers that utilize consumer submeters shall keep the following records pertaining to the parties affected by submetering:

- (1) KWH meter readings per billing period.
- (2) KWH consumption per billing period.
- (3) Total amount of bill per billing period.
- (4) Dates and amount of payments by parties.
- (5) On request of a party affected by the submetering, consumer shall furnish a clear and concise statement of the actual consumption of electric energy for said party for each billing period during the prior year.

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-19-1.1. Consumer electric usage data

The standards for consumer electric usage data shall be governed by the Electric Usage Data Protection Act codified at 17 O.S. § 710.1 *et seq.*, and future amendments or supplements thereto.

[Source: Added at 31 Ok Reg 1030, eff 9-12-14]

165:35-19-2. Consumer information

(a) Each utility shall:

(1) Maintain maps, plans, or records of its transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective consumers and others entitled to the information as to the facilities available for serving in any locality.

(2) Transmit to each of its consumers no less frequently than once each year:

(A) A clear and concise summary of the existing rate schedules applicable to each of the major classes of its consumers for which there is a separate rate.

(B) An identification of any classes whose rates are not summarized.

(3) Upon request of a consumer, but not more frequently than once each calendar year, provide a clear and concise statement of such consumer's actual consumption of electric energy for each billing period during the prior year.

(4) Assist the consumer or prospective consumer in selecting the most economical rate schedule.

(5) Provide information to each new consumer at the time of application or by enclosure with the first month's bill or by separate mailing, or by electronic notification to customers who make an affirmative election to receive electronic notification of such information, prior to the first month's bill as to the correct method of reading watt hour meters.

(b) Where economically feasible, each electric utility shall provide an office, agent, or authorized pay site in or convenient to each municipality serviced by it where the consumer may pay bills, which office, agency, or authorized pay site, shall be open for business during reasonable business hours at least five days per week, holidays excepted. Whenever service prescribed in this subsection is not furnished for economic reasons, the Commission may, upon application and after notice and hearing, prescribe the service to be furnished and conditions thereof.

(c) The utility shall provide, in each telephone directory covering any area it serves, a telephone listing of the number by which the utility can be notified at any time during a twenty-four (24) hour day of any utility service deficiency or emergency, or the information may be published in a regular newsletter or publication furnished to its subscribers. In addition, the telephone number shall be published on the homepage of a utility sponsored website, if applicable.

(d) The utility shall advise its residential consumers through its consumer mailing or by electronic notification to customers who make an affirmative election to receive electronic notification of such information, no less than once a year, of the Commission rules regarding the following:

(1) Disconnection information which states the rights listed in the "Disconnect Notice," as outlined in OAC 165:35-21-20 *et seq.*

- (2) Commission-approved deferred payment plans;
 - (3) Twenty (20) day government and/or private financial aid assistance deferral;
 - (4) Life Threatening Certificate and consumer responsibilities;
 - (5) Elderly or Consumers with disabilities can request their account to be flagged by the utility so that CSD can intervene on their behalf, when requested by the consumer, in the event of a disconnection of service notice and extend the disconnection date by up to five (5) business days;
 - (6) Average Monthly payment plans;
 - (7) The address and telephone number of the Commission's CSD;
 - (8) The limitations for disconnection, including days or periods of time when service shall not be disconnected as outlined in OAC 165:35-21-10(c); and
 - (9) The availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:35-21-3.
- (e) The utility shall provide the location of pay agents upon the consumer's request.
- (f) The utilities are strongly encouraged to have bilingual customer service personnel available to assist non-English speaking consumers regarding disconnection and related matters.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-19-3. Interruptions of service

- (a) Whenever service is interrupted other than under emergency conditions, the interruption shall be made at a time which will cause least reasonable inconvenience to consumers, and where feasible, installations affected (such as hospitals, police, fire, schools, and other public buildings affected with interest of public health and safety) will be notified in advance.
- (b) Each utility shall keep a record of any condition resulting in an interruption of service affecting its entire system or major division thereof, including the time, duration, and cause of any such interruption, and such record shall be available to the Commission or its representative upon request.
- (c) A utility may cause emergency interruption of service without notice when required by failure of equipment, unexpected and prolonged increase in load, fire, storm, strike, or other cause beyond its control. Each utility shall establish and train employees in emergency procedures designed to prevent or shorten service interruption where conditions require. The utility may, in good faith, select the areas or consumers whose service is interrupted as emergency conditions require.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 19 Ok Reg 1968, eff 7-1-02]

165:35-19-4. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each electric utility shall have a written restoration of service policy/plan, which shall include a telecommunication plan to be followed during unplanned or emergency interruptions, with a current copy on file with the CSD Director. No later than September 30 of each year, this policy shall be reviewed by the utility at least annually, and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and

included at the front of the policy on file. Each electric utility shall provide and keep current, the phone number of any 24-hour emergency operations center or a list with a minimum of two individuals having 24-hour contact numbers, by September 30 of each year, to the CSD Director. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of consumers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.
- (3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time, and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.
- (4) Once electricity to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.
- (5) Attempted notification of high-priority consumers or major electric consuming facilities that are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of consumers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.
- (6) Commission notification through the CSD Director and the Commission's Emergency Liaison to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated CSD individual(s) and the Commission's Emergency Liaison may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:
 - (A) An initial contact to notify Staff of outages, which involve a major utility substation or facility; or which may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) consumers or more, whichever is greater, of the utility's meter count.
 - (B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission and CSD Staff.
 - (C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

[Source: Added at 12 Ok Reg 2113, eff 7-1-95; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 23 Ok Reg 1674, eff 7-1-06; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

PART 3. DEPOSITS

165:35-19-10. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (e), and (1).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application of new service. The utility plan may establish other relevant criteria which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit of more than one-sixth (1/6) the estimated annual bill. The utility may allow smaller deposits to be made, in conformance with relevant, objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) A utility may require an advance deposit as a condition of service for consumers other than those addressed in (b) and non-residential consumers.

(e) A residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months pursuant to OAC 165:35-21-2 or has presented a check subsequently dishonored.

(f) A non-residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twenty-four (24) billing periods or if the consumer has had service disconnected during the last twenty-four (24) months pursuant to OAC 165:35-11-11 or has presented a check subsequently dishonored.

(g) Interest on cash deposits shall be paid by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established on January 1 of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established on January 1 of each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of the one (1) year Treasury Security, as referenced in (g) (1) of this Section, for the first year the deposit is held.

(3) Provided, however that after the interest rates are initially established pursuant to this subsection, the interest rate shall not change unless the application of the formula in (g)(1) and/or (2) results in a change in interest

rate(s) that is/are greater than fifty (50) basis points.

(4) The PUD Director shall calculate the interest rate(s) as pursuant to (g) (1) and (2) of this Section, and shall post notice on the Commission's website by December 15 of each year, pursuant to subsection (g), otherwise the current interest rate(s) will remain in effect.

(h) If refund of deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(i) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(j) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument, or by credit against current billing, or by issuance of a bank card.

(k) Each consumer posting deposit shall receive a nonassignable receipt in writing at the time of making the deposit, or within ten (10) days thereafter, or such deposit shall appear as a notation on the consumer's next bill. When a consumer pays a deposit as a portion of an electric service bill, payment of the bill shall serve as a receipt of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of his/her deposit or balance.

(l) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored.

(m) The utility shall automatically refund non-residential service deposits of less than \$20,000, with accrued interest, after twenty-four (24) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twenty-four (24) month period. Non-residential consumers, who meet the above-referenced eligibility criteria, must have a minimum of five (5) years continuous service at the service location with the utility before a deposit will be refunded.

(n) The utility plan shall provide for the review of all deposits for residential service at least annually and deposits for non-residential service at least once every twenty-four (24) months and shall provide whether refunds will be paid by negotiable instrument, upon request of the consumer, provided the consumer's bill is not delinquent, or by credit against current billing.

(o) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(p) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument, or by credit against current billing, or by issuance of a bank card.

(q) The utility may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.

(r) The utility shall keep records to show:

- (1) The name, account number, and address of each depositor.
- (2) The amount of the deposit and date received.
- (3) Each transaction concerning the deposit.

(s) Such records shall be retained for two (2) years after the deposit and/or interest is refunded or applied.

(t) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file, with the application of transfer, a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(u) Deposits shall not include membership fees in cooperatives.

(v) The deposit made by the consumer with the utility at the time of application for electricity shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

[Source: Amended at 10 Ok Reg 2639, eff 6-25-93; Amended at 11 Ok Reg 3745, eff 7-11-94; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-19-11. Interest on deposits required by cooperative

A utility having provision in its bylaws for assignment of margins to members or consumers shall be required to pay interest on security deposits deposited after the effective date of this Chapter in compliance with OAC 165:35-19-10. [Order No. 326194, issued May 23, 1988]

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14]

PART 5. BILLING

165:35-19-30. Information on bills

The utility shall bill each consumer as promptly as possible following the reading of his/her meter. The bill shall show:

- (1) The reading of the meter at the end of the period for which the bill is rendered.
- (2) The date on which the meter was read, or the end of the billing period.
- (3) The number and kind of units used for billing.
- (4) The total amount due for electricity used.
- (5) Items of tax separately billed, pursuant to OAC 165:35-27-2.
- (6) The date by which the consumer must pay the bill to avoid addition of a penalty.
- (7) The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.
- (8) A distinct marking to identify an estimated bill.
- (9) If there is a conversion from meter reading units to billing units, or any calculation to determine billing units from recording or other devices, or

any other factors used in determining the bill, full information shall be furnished on request.

(10) In the case of a special form of billing, such as a level payment plan, any of the above information which is inappropriate may be omitted.

(11) The fuel adjustment or purchased power adjustment factor associated with the respective clauses on the consumer's bill.

(12) The electric bill submitted by the utility furnishing electric service to the consumer shall be allocated to the party(ies) affected by such consumer submeters in a manner approved by and on file with the PUD Director.

(13) Utilities that serve 150,000 Oklahoma customers or more shall provide historical usage information, e.g., a chart, table or graph, which shall be displayed prominently on each bill, and depict the actual usage of the residential consumer, at the place of service for which the bill is issued. Such historical usage shall be tracked and displayed over the previous twelve (12) month period.

(14) Utilities that serve less than 150,000 Oklahoma Customers consumers shall provide, in a conspicuous manner, notice on each residential consumer bill that historical usage information is available at no charge, upon the consumer's request.

(15) The name and toll-free telephone number of the Commission's CSD, to which the end-user may direct complaints and questions regarding utility services.

[Source: Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-19-31. Average monthly payment plan [AMPP]

(a) Each utility shall offer to its residential consumers the option of being billed on an "average monthly payment plan" (AMPP). Each utility's plan shall be submitted to the Commission for approval and shall then become a part of that utility's approved tariffs.

(b) At least once a year, and consistent with OAC 165:35-19-2(d) above, the utility shall give written notice to its residential consumers of the availability of an Average Monthly Payment Plan.

[Source: Amended at 19 Ok Reg 1968, eff 7-1-02]

165:35-19-32. Penalty or charge for late payment of bills and dishonored negotiable instruments

(a) **Meters read by the utility.** A utility may make a penalty charge in an amount not to exceed one and one-half percent (1.1/2%) for delay in receipt of payment by the utility past the due date of the bill. The due date shall be stated on the face of the bill and shall not be earlier than ten (10) days after the bill is mailed or provided by electronic notification to customers who make an affirmative election to receive electronic notification of such information, except that for residential consumers it shall not be earlier than twenty (20) days after the bill is mailed or provided electronically to consenting consumers.

(b) **Late payment penalty.** A utility shall clearly state upon the face of its bills the amount of any late payment penalty, and the date on or before which payment must be received in order to avoid paying the late payment penalty. In its billing, the utility shall not use the term "prompt payment discount" or other words of similar import which suggest that the consumer will receive a discount or reduction of charges for electric service for payment prior to a certain date. The late payment

penalty may be applied to any unpaid balance due at each monthly billing period.

(c) **Meters read by the consumer.** A utility which allows its consumers to read their own meters may make a late payment charge on past due bills, not to exceed one and one-half percent (1.1/2%) of the amount due per billing period and, in such event, the due date stated on the bill shall not be earlier than twenty (20) days after the bill is mailed or provided by electronic notification to customers who make an affirmative election to receive electronic notification of such information.

(d) **Payment acceptance.** The utility shall not refuse to accept payment by check from any consumer unless the utility has, within the preceding twelve (12) months, received as tendered payment of the consumer's account two (2) or more negotiable instruments which were dishonored by the financial institution on which they were drawn. The utility may make a charge outlined in its tariffs for negotiable instruments which are dishonored.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14]

PART 7. APPLICATION FOR SERVICE AND TAMPERING OF EQUIPMENT

165:35-19-40. Failure to make application for electric service

(a) A utility may elect not to disconnect electric service to a premises when an application or contract for service is terminated, provided the meter is read and the reading recorded when service is terminated and the meter is read and the reading recorded when initiating service to subsequent consumer. Such election does not constitute consent of the utility for a new occupant of such premises to use the service without making proper application or contract for service.

(b) Any person who uses electric service of the utility, but fails to make application or contract for such service of the utility, shall be liable to the utility for payment therefore under the applicable rate schedule. Proper notice as set forth in OAC 165:35-21-20(a) must be given prior to the utility making a disconnection. The utility may prorate the charge to this consumer, based on the date of occupancy.

[Source: Amended at 23 Ok Reg 1674, eff 7-1-06; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-19-41. Tampering with measuring equipment or other property

(a) No regulating or measuring equipment, or other property or equipment owned by a utility, wherever situated, whether upon consumer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise, except by representatives of the utility owning it; and official responsibility under authority of a municipal government shall not constitute an exception to this Section.

(b) If the consumer tampers with the utility's equipment or receives the benefit of the tampered service, the utility may;

- (1) Disconnect service.
- (2) Charge a tampering fee in accordance with the utility's tariff.
- (3) Charge a reconnect fee in accordance with the utility's tariff.
- (4) Charge a deposit in accordance with the OAC 165:35-19-10 to be paid prior to restoration of service.

[Source: Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14]

SUBCHAPTER 21. DISCONNECTION OF SERVICE

PART 1. DISCONNECTION OF SERVICE

165:35-21-1. Disconnection of service by a consumer

A consumer may be required to give up to five (5) days notice, excluding legal holidays, Saturdays and Sundays, of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariffs.

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-21-2. Disconnection of service by a utility

(a) **Sufficient reasons for disconnection of service.** A utility may disconnect service to a consumer for any of the following reasons:

- (1) Nonpayment of all or any portion of undisputed utility bills or a utility bill which is no longer disputed or for which the Commission's dispute process has been completed.
- (2) Nonpayment of an account for service of a similar character previously supplied to such applicant or consumer by the utility.
- (3) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or with a Commission order.
- (4) Failure to post a deposit as prescribed in OAC 165:35-19-10.
- (5) Failure to make application for service.
- (6) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.
- (7) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.
- (8) Unauthorized use of electricity accomplished through bypassing of the utility's measuring equipment or tampering with wires, pipes, meters, or other utility equipment.
- (9) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.
- (10) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.
- (11) Potential adverse effect of the service required by the consumer on the service of other consumers of the utility, provided the consumer has been notified and given a reasonable opportunity to correct the adverse effect.
- (12) Abandonment of the premises served.
- (13) Upon request of the consumer pursuant to OAC 165:35-21-1.
- (14) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in

activities authorized by law or in retaliation for such activities.

(15) Violation of the utility's rules regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the rules.

(16) Violation of federal, state, or local laws or regulations through use of the service.

(17) Causing damage to utility property.

(18) A condition exists which poses a health or safety hazard.

(b) Insufficient reasons for disconnection of service. A utility shall not disconnect service to a consumer for any of the following reasons:

(1) Failure to pay for a different kind or classification of service from that requested.

(2) Failure to pay a bill correcting a previous underbilling, due to misapplication of rates, unless the utility offers the consumer a deferred payment agreement as provided elsewhere in this Chapter.

(3) Failure of a previous owner or occupant at the premises or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.

(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter, or if the consumer regularly reads the consumer's own meter and fails to supply a current meter reading.

(5) If a current consumer in good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.

(6) If a consumer or potential consumer for a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.

(7) Pending verification, service cannot be withheld or disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.

(8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.

(9) Failure to pay a past due amount to another utility.

(c) Effective period of notice. A utility may disconnect service on the date specified in the notice or within thirty (30) calendar days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

(d) Documentation of reason(s). The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-21-3. Utilities encouraged to keep current lists of energy assistance programs

(a) **Compilation.** The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal energy assistance programs. The list should also include public/private charitable organizations offering or known to offer energy payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall provide a copy of this list to any consumer who asks for requests such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, for the utility to better assist its consumers. Failure of the consumer to gain funding in full or in part, from any of the proffered resources under this Section shall not result in any liability to the utility.

[Source: Added at 19 Ok Reg 1968, eff 7-1-02; Amended at 31 Ok Reg 1030, eff 9-12-14]

PART 3. SPECIAL PROVISIONS REGARDING RESIDENTIAL DISCONNECTION

165:35-21-10. Delays to disconnection of residential service

(a) **Limitations on disconnections.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the NWS issues a local forecast predicting the temperature will drop below 32 degrees Fahrenheit for any time period during the following twenty-four (24) hours, the utility shall suspend its disconnection of service if the electric service is used for heating purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(2) If the NWS issues a local forecast predicting the heat index will be 101 degrees Fahrenheit or higher on the day of disconnection, or if the actual heat index is 101 degrees Fahrenheit or higher, the utility shall suspend its disconnection of service activity if the electric service is used for cooling purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with wires, pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) calendar days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

- (1) The reason for disconnection is for nonpayment of the utility bill.
- (2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.
- (3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.
- (4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.
- (5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility shall mail, or by electronic notification to customers who make an affirmative election to receive electronic notification of such, a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

- (A) Consideration of the consumer's gross income.
- (B) Size of the delinquent account.
- (C) Consumer's ability to pay.
- (D) Consumer's payment history with the utility.
- (E) Length of time and reasons why the debt has not been paid.
- (F) Other extraordinary expenses of the consumer.
- (G) Loss of income through unemployment or illness.
- (H) Any other relevant factors concerning the circumstances of the consumer.

- (2) The payments under such an agreement need not be equal in amount.
- (3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness or any other relevant factors concerning the circumstances of the consumer, change during the payment period.
- (4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours' notice of disconnection to the consumer.
- (5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) Life-threatening situation.

- (1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on electricity, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitor, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. If the life-sustaining equipment without a battery backup is prescribed by a licensed medical doctor, then it shall be considered life-sustaining equipment. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, range/stove, nebulizers that are battery-driven or hand-driven or self-contained, battery-driven sleep apnea monitors, battery-driven cardiac monitors.
- (2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend discontinuance of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should electric service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection.
- (3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening situation. The form shall be provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum, the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for electric service.
- (4) Completion of (2) and (3) of this subsection will suspend disconnection of electrical service to the specified residence for a period of thirty (30)

calendar days from the initial notification. This 30-day period allows the consumer, if eligible, to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) calendar days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the consumer beyond a total of sixty (60) calendar days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer or other permanent resident in the household by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not complete the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming life threatening situation once full payment of the account balance from a previous life-threatening claim is made and a Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility. The utility may disconnect service upon the utility providing notice to the customer in accordance with OAC 165:35-21-20(a).

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility that they wish to be included in the following notification procedure:

(1) For those who have registered with the utility as elderly and/or consumer with disabilities, the utility shall delay disconnection of service for five (5) additional business days upon request of the Commission's CSD.

(2) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-21-12. Financial assistance delays [REVOKED]

[Source: Revoked at 12 Ok Reg 2115, eff 7-1-95]

165:35-21-13. Deferred payment plan (DPP) [REVOKED]

[Source: Revoked at 12 Ok Reg 2115, eff 7-1-95]

165:35-21-14. Service limiters and other restrictions on utility service

(a) If a utility has met all of the conditions delineated in this Subchapter and the consumer is now subject to disconnection of service, the utility may, with the consumer's permission, place a service limiter on the consumer's meter to restrict usage in lieu of disconnecting the consumer's service.

(b) If the consumer has consented and a limiter is placed on the consumer's meter, the utility will leave proper notification that a limiter has been placed on the electric meter and information on how to reset the limiter if an overload should occur.

(c) Any costs incurred by the utility in placing or removing this limiter shall not be passed on directly to that consumer, unless specifically outlined in the utility's terms and conditions of service. [Per Order No. 326294, issued May 23, 1988].

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 19 Ok Reg 1968, eff 7-1-02]

165:35-21-15. Life-threatening situations [REVOKED]

[Source: Revoked at 12 Ok Reg 2115, eff 7-1-95]

PART 5. NOTICE REQUIREMENTS

165:35-21-20. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as provided in subsections (b), (c) and (f) of this Section and OAC 165:35-21-30, service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing, in bolded lettering, and state the reason for the disconnection, the amount due, if applicable, and the utility company's name, telephone number, and contact information. After the utility company's contact information, the notice shall include the telephone number of CSD in a printed size smaller than the print size used for the utility company's contact information, not bolded, and shall include the following statement: "For clarification of statutes and rules governing services, or escalations of disputes, you may contact the Oklahoma Corporation Commission's Consumer Services Division." The utility shall submit a copy of the notice to PUD for approval prior to usage.

(b) **First residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a required security deposit, the utility shall give at least ten (10) days written notice from the date of mailing to the consumer (when the deposit is required as a condition of service, the ten (10) day notice is not required. Refer to OAC 165:35-21-30(4) Disconnection of service without notice). Said written notice shall be sent by first-class mail, address correction requested, by the utility to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice shall be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility, which shall not extend the ten (10) days written notice from the date of mailing to the consumer requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" or "CUT OFF NOTICE" in bold print no smaller than one-half inch (1/2") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility regarding the disconnection, prior to contacting CSD, and should contact CSD if they cannot reach a resolution with the utility.

(H) The address and telephone number of CSD, in print size which is smaller than the print size used for the utility's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/consumer with disabilities notification.

(K) A statement that advises the consumer of the life-threatening certificate.

(L) A statement that advises the consumer of the availability of the twenty (20) day financial aid assistance delay.

(M) A statement that advises the consumer of the availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:35-21-3.

(3) The utility shall provide to consumers, upon request, the name and address of the authorized payment agencies, other than the utility's offices, where consumers may make payments.

(c) **Second residential notice.** During the time period of November 15 through April 15, the utility shall give a minimum of forty-eight (48) hours notice (at least two (2) business days) prior to disconnection of residential service that service will be disconnected unless the consumer enters into a deferred payment agreement as prescribed in OAC 165:35-21-10(e) or unless disconnection of service would create a life-threatening situation for the consumer or other permanent resident of the premises where the utility service is rendered. If the utility elects to give oral notice, it shall only be after it has complied with (b) of this Section. The second notice may be in writing, in person or by telephone.

(1) If the second residential notice is in writing, it shall be entitled "CUT OFF NOTICE" in bold letters of not less than one-half inch (1/2") in height and shall contain, in nontechnical language, the following information:

(A) The reason for service disconnection and the amount of the unpaid bills, if any.

(B) The date on or after which service will be disconnected unless the consumer takes appropriate action.

(C) The telephone number of the utility office, in bold print, where a consumer may call for assistance, make inquiries, enter into a deferred payment agreement, obtain information on utility assistance programs, pay the bill or notify the utility of a life-threatening situation.

(D) The telephone number of CSD in print size which is smaller than the print size used for the utility's telephone number.

(2) The utility shall keep a written log of all oral communication with at least the following information when contact has been made:

(A) The date and time of call or personal visit and identity of utility representative.

(B) The name of the individual and relationship to the account. If the contact is with a designated representative for the consumer, a statement of authority to represent the account should be included.

(C) The nature of the call and telephone number called.

(D) A narrative of the communication between the utility and the consumer.

(E) A statement that the consumer must notify the utility on the day of payment, as to the place and method of such payment, when the bill is paid at a place other than the office of the utility.

(F) A statement that the consumer was advised of the telephone number of CSD.

(3) The oral communications log shall be maintained and retained in accordance with the record keeping requirements contained in this Chapter.

(4) A copy of the oral communications log shall be provided to CSD or to the consumer and/or their designated representative upon oral or written request.

(5) Oral communications with the consumer shall not begin before 8:00 a.m. or continue beyond 9:00 p.m. during normal business days.

- (6) Oral communications shall be deemed as not to have occurred, including but not limited to the following circumstances:
- (A) When there is no answer, the telephone line is busy or no one is home.
 - (B) When a message is left on an answering device or made on a recording device.
 - (C) When the message or attempted message is left with an individual having a physical and/or mental impairment that impedes communication or mutual understanding.
 - (D) When the communication is with a minor under the age of eighteen (18), unless the minor is the consumer or the spouse of the consumer.
 - (E) When the communication is with an individual who is not either the consumer or the designated representative of the consumer.
 - (F) When the communication is with a consumer or consumer's designated representative whose primary language is other than English and the consumer or consumer's designated representative has a language barrier, unless the communication is made in the primary language of the consumer or the consumer's designated representative.

(7) Unless otherwise directed by CSD, the utility company shall not contact the consumer regarding the consumer's account after CSD has notified the utility company of a complaint or inquiry from the consumer. CSD shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(8) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the two (2) days written notice from the date of mailing to the consumer requirement above.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Nonresidential service shall be disconnected for nonpayment of all or any portion of an undisputed utility bill only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-21-21. Manner of disconnection of service

When service is disconnected at the premises of the consumer:

(1) The utility employee may receive payment of past due bills or accept a copy of the consumer's payment assistance application, or accept a copy of the cancelled check or a utility company receipt showing payment; and upon the receipt thereof, cancel the disconnection order. If payment is

offered in a form other than cash or negotiable instrument, the utility employee may verify the payment with the appropriate entity involved. If payment is offered by negotiable instrument, the utility employee may contact the financial institution involved for verification of sufficient funds in the account to cover the negotiable instrument. If the account does not contain sufficient funds for payment, then the utility employee may reject the offered negotiable instrument for payment for past due bills.

(2) Receipt of a subsequently dishonored negotiable instrument in response to a notice of disconnection shall not constitute payment of the consumer's account, and after the consumer is notified of such, the utility shall allow one (1) business day for the consumer to make payment at the utility company or its authorized agent(s) in cash, cashiers check, money order, or a check from a social service agency.

(3) The utility employee shall leave a written statement at the premises that service has been disconnected, the reason for the disconnection, and the telephone number and address where the consumer may arrange to have the service reconnected.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 12 Ok Reg 2115, eff 7-1-93; Amended at 19 Ok Reg 1968, eff 7-1-02]

PART 7. EXCEPTIONS AND RECONNECTION PROCEDURES

165:35-21-30. Disconnection of service without notice

Notwithstanding any other Section regarding disconnection of service, a utility may at any time disconnect service without notice and without delaying disconnection of service as prescribed in other Sections of this Part, if:

(1) It reasonably believes that such action is necessary to correct a condition that poses a health or safety hazard to the consumer, the general public, or the equipment of the utility. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification, personal contact, or notice left at the premises.

(2) For the purpose of essential repair, maintenance, or testing of utility equipment, the utility shall make such efforts as are reasonable under the circumstances to minimize the adverse effects of disconnection of service and to inform affected consumers prior to disconnection of service.

(3) The utility may disconnect for unauthorized use of electricity accomplished through bypassing of the utility's measuring equipment or tampering with wires, pipes, meters, or any other utility equipment or obtaining service without a contract. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification, personal contact, or notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay the following applicable charges before service is restored:

(A) The applicable charges for reconnecting service prescribed in the utility's approved tariffs.

(B) The amount due for unmetered or unpaid usage, if such usage can be determined exactly. If the exact usage cannot be determined, the utility may compute and charge for the previous six (6) months an estimated usage based on historical usage from the previous two

- (2) years billing period or billing information; and/or
- (C) The cost associated with the testing, repair, or replacement of any damaged equipment.

(4) The utility may disconnect for failure by consumer to post deposit, when the deposit has been required as a condition of service. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, by personal contact, or by notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay applicable charges before service is restored.

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-21-31. Reconnection of service

(a) A utility shall reconnect service upon the consumer's request as soon as the reason for disconnection of service has been eliminated. The utility shall give precedence to reconnection of service when disconnection was the fault of the utility; the utility shall reconnect service in the normal course of its reconnection workload, as soon as possible but no later than twenty-four (24) hours after the consumer eliminates the reason for disconnection and requests reconnection, when disconnection of service was the fault of the consumer. If the reason for disconnection is unauthorized use of electricity accomplished through bypassing the utility's measuring equipment or tampering with the wires, pipes, meters, or other utility equipment, the utility may, prior to reconnecting service, require a reasonable payment for estimated service rendered or may refuse to reconnect service until ordered by the Commission. A utility may require payment of a reconnection charge when disconnection of service was the fault of the consumer, if such a charge is provided in the utility's tariffs.

(b) When the disconnection of service was for nonpayment of service and disconnection took place on a Friday morning, service shall be restored as soon as possible, but no later than twenty-four (24) hours from when the consumer eliminates the reason for disconnection and requests reconnection, subject to an intervening Act of God.

(c) When a disconnection for nonpayment of service has occurred immediately preceding periods of severe weather as described in OAC 165:35-21-10(c), the utility shall reconnect service as soon as possible but no later than twenty-four (24) hours, subject to an intervening Act of God, upon receipt of one of the following:

- (1) Payment of the past due bill for which service was disconnected.
- (2) Submission of a life-threatening certificate from the consumer pursuant to OAC 165:35-21-10.
- (3) Guarantee by a federal, state, or local social service agency that payment will be made directly to the utility.

(d) Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 19 Ok Reg 1968, eff 7-1-02]

PART 9. MEDIATION AND COMMISSION REVIEW

165:35-21-40. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either party to CSD:

- (1) The existence of or seriousness of a life-threatening situation.
 - (2) The existence of elderly or handicapped status.
 - (3) The question of financial assistance or guarantee of payment by a federal, state, or local social service agency.
 - (4) The provisions of a deferred payment agreement.
 - (5) The terms and conditions of payment of any part of a bill as rendered.
 - (6) The proper interpretation of this Section.
 - (7) Other issues addressed in this Chapter.
- (b) CSD shall review the matter and issue an informal review decision in writing, setting forth the terms and conditions for continued service, disconnection of service, or deferred payment agreement (DPA). If it is the desire of the consumer, they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.
- (c) If CSD is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a Complaint with the Commission for final determination.
- (d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to CSD. Upon complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

[Source: Amended at 12 Ok Reg 2115, eff 7-1-95; Amended at 22 Ok Reg 1799, eff 7-1-05; Amended at 23 Ok Reg 1674, eff 7-1-06; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-21-41. Commission review

The utility's disconnect notice, service violation disconnection notice, life-threatening certificate, and any notice or form used by the utility to comply with the requirements of this Subchapter shall be submitted to the Commission for approval. Upon approval, the forms or notice shall become a part of the utility's approved tariff.

SUBCHAPTER 23. SERVICE REQUIREMENTS

165:35-23-1. Denial of service to a consumer

- (a) A utility may refuse to provide service to an applicant or consumer from whom there remains owing an unpaid account for service of a similar character previously supplied to such applicant or consumer at any location in Oklahoma by an electric utility governed by this Chapter. The utility shall not be required to provide service to an applicant or consumer who uses an alias, trade name, business name, the name of a relative or other person as a device to escape payment of an unpaid obligation for utility service provided to such applicant or consumer; however, subject only to the above, the utility may not require a payment of unpaid utility bills of any other person, except where the previous consumer remains an occupant or user, as a condition to furnishing utility service.
- (b) A utility shall not deny service to a consumer for failure to pay any obligation to the utility except the amount due for utility service actually furnished.

(c) The utility may refuse to provide service to an applicant when the applicant has not provided an acceptable valid and non-expired proof of identity. Acceptable valid and non-expired proof of identity may include the following:

- (1) Driver's license or state identification card;
- (2) Department of Defense identification;
- (3) Employment identification;
- (4) Social Security card;
- (5) Student identification card;
- (6) Passport;
- (7) Birth certificate; or
- (8) Any other verifiable proof which would establish identity.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-23-2. Records of complaints as to service

(a) Each utility shall make a full and prompt investigation of every complaint made to it by its consumers, and or members of the public, either directly or through the Commission. It shall keep a record of each complaint received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof, which record shall be retained for two (2) years. Records shall be kept of all complaints as defined by this Chapter.

(b) In the event of a dispute between the consumer and the utility as to the accuracy of a metering device, the utility shall make such investigation as shall be required by the particular case and report the result thereof to the consumer. In the event that the complaint is not reconciled, the utility or the consumer may make application to the Commission for review of the complaint.

(c) When a utility has been notified that a complaint regarding meter accuracy has been referred to the Commission, the questioned metering equipment shall not be changed in any manner without prior authorization of the Commission. Violation of this provision will be considered as a substantiation of the complainant's contentions.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-23-3. Replacement of meters

(a) A request from a consumer for replacement of the service meter on his/her premises because of alleged inaccuracy of the meter shall be deemed a request for the test of the meter, pursuant to OAC 165:35-15-20.

(b) The utility shall make no charge for initial connection of electric service for a consumer except the charges specified in the approved tariffs and rules of service of the utility; provided that for each disconnection and reconnection of service requested for the same consumer at the same location within twelve (12) months after the most recent connection of service, the utility may make a charge prescribed in its approved tariffs.

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-23-4. Service to consumer's appliances or electrical installations

(a) Upon the effective date of this Chapter, each electric utility shall file with the Commission a detailed statement of all free service of any nature furnished or offered to any consumer or class of consumers. The utility shall offer the same free service to all consumers of the same class. The utility shall not discontinue, change,

or amend its policy or offer any new free service or type of free service to any consumer or class of consumers except upon order of the Commission, made upon application, notice, and hearing.

(b) A utility shall not, without approval of the Commission, service or repair appliances or electrical installations of its consumers beyond the point of delivery as defined in 165:35-9-1. The Commission, upon application of the utility and after notice and hearing, may grant the utility authority to service and repair all types of appliances or specified types of electrical installations or specified types of appliances of consumers in a specified town, city, or locality for the sole reason that service and repair facilities for the type of appliances or electrical installations are otherwise not available. The Commission may revoke the authority as to any city, town, or locality on application of any person, and after notice and hearing, upon a showing that facilities for such service and repair are available.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99]

165:35-23-5. Service to mobile home parks

(a) No utility shall be required to furnish electrical service to a mobile home park until the utility has been furnished, at no cost to the utility, any necessary easements which may terminate when the property ceases to be used as a mobile home park.

(b) After the effective date of this Chapter, mobile home spaces shall be served by the utility through individual meters and billed under the residential rate.

165:35-23-6. Standby service

A utility shall not supply standby or breakdown service to consumers whose premises are regularly serviced with light, electrical heat or power from a source or supply other than the utility, except pursuant to a tariff or special contract filed with and approved by the Commission.

165:35-23-7. Temporary service

(a) A consumer requiring temporary service shall pay the regular rates applicable to the class or classes of service rendered for all energy used and in addition shall pay the installation and removal cost, less salvage value, of facilities installed by the utility to furnish temporary service to the consumer.

(b) Temporary service is defined as service for purposes which by their very nature indicate short duration, and shall not exceed ninety (90) calendar days without notification and justification being provided to CSD prior to the expiration of the ninety (90) calendar day period.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-23-8. Request for service

Every electric utility shall initiate service to each qualified applicant for service within its service area in accordance with this Section.

(1) Applications for new electric service under 500 kVA of connected demand not requiring line extensions or construction of new facilities shall be filled by the end of the fifth (5th) business day after the applicant has met the credit requirements and complied with all applicable state and municipal regulations. This requirement must be met at least ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(2) Applications for new or upgraded electric service under 500 kVA of connected demand requiring construction of new facilities shall be filled by the end of the ninetieth (90th) business day, or within a time period agreed to by the customer and the electric utility, after the applicant has met the credit requirements, has made satisfactory payment arrangements for construction charges, and has complied with all applicable state and municipal regulations. This requirement must be met at least ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(3) Applications for new or upgraded industrial electrical service over 500 kVA of connected demand requiring construction shall be completed within 180 calendar days, or within a time period agreed to by the customer and the electric utility, if the applicant has met the credit requirements, has made satisfactory payment arrangements for construction charges, and has complied with all applicable state and municipal regulations. This requirement must be met ninety-five percent (95%) of the time, weather permitting, and after the customer's location is ready for service.

(4) For customers with less than 500 kVA of connected demand, if facilities must be constructed, then the electric utility shall contact the customer within ten (10) business days of receipt of the application. The electric utility shall provide a cost estimate and estimated completion date within sixty (60) calendar days of receipt of the application and all necessary information being provided by the customer.

(5) For customers with over 500 kVA of connected demand, if facilities must be constructed, then the electric utility shall contact and meet with the customer within ten (10) business days of receipt of the application. The utility shall include customer representatives in the planning for the construction and assessment of the work during the actual construction, unless the customer affirmatively indicates no desire to be so involved. The electric utility shall provide a cost estimate and estimated completion date within ninety (90) calendar days of receipt of the application and all necessary information being provided by the customer.

(6) Unless the delay is beyond the reasonable control of the electric utility, where no construction is required for requests from customers with under 500 kVA of connected demand, a delay of more than ten (10) business days and where construction is required for requests from customers under and over 500 kVA of connected demand a delay of more than 180 calendar days, shall constitute failure to serve unless the customer and electric utility have otherwise agreed in writing, to a longer term.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-23-9. Utility acknowledgement of customer complaint inquiries

If PUD contacts a utility concerning a customer complaint, the utility shall respond to PUD within the following time periods:

(1) Inquiries regarding disconnection, suspension, or termination of service shall be acknowledged by the utility within one (1) business day of receipt of inquiry from PUD.

(2) Inquiries other than for disconnection, suspension, or termination of service shall be acknowledged by the utility within three (3) business days of receipt of inquiry from PUD.

[Source: Added at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 25. OPERATIONS REQUIREMENTS FOR UTILITIES

PART 1. OPERATION MAINTENANCE AND RECORDS

165:35-25-1. Clearance for house and equipment moving

Where a house, structure, or equipment is to be moved upon, across or over roadways, or along a way over which electric wires are strung, advance notice in writing must be made to the utility of the dimensions of the object, the time to be moved, and the precise route over which to be moved. Payment shall be made in advance to the utility of the cost of providing clearance of wires. In no case shall anyone other than authorized employees of the utility remove, cut, rise, or handle any wires in connection with the moving and providing of clearance.

165:35-25-2. Extension of distribution systems

(a) **Free extension.** The utility shall extend its overhead distribution lines a distance of three hundred feet (300') to provide service to each bona fide application for residential service, without cost to the consumer. The utility may prescribe terms and conditions of extending service to applicants for other types of service, and for extensions for low load service such as wells, security lights, and fence charges, and for extension policy required by law or by the terms of a financing agreement; which provisions, when filed with and approved by the Commission, shall be deemed to constitute compliance with this Section.

(b) **Tariff requirements of extension.** A utility shall include in its filed tariffs, terms and conditions of furnishing underground service which shall provide for determining and recovery by the utility for the additional cost of providing underground service, and the responsibility for trenching and backfilling, and the method of calculating costs of construction.

(c) **Extension above free limit.** If the extension of the distribution system necessary to furnish service to an applicant or group of applicants is greater than specified in (b) of this Section, the utility shall require payment of the cost of the extension over the free limit before extending the distribution system.

(d) **Extension may be made above free limit when economically justified.** In lieu of making an extension pursuant to (a) and (b) of this Section, the utility may make an extension above the free limit upon receipt of a lesser payment or no payment, when the gross anticipated annual revenue from the extension will provide the utility with adequate return upon its investment, pursuant to a formula approved by the Commission or contained in its approved terms and conditions of service.

(e) **Determination of the length and cost of an extension.** For purposes of measuring extensions under this Section, the distance shall be measured along lines of proper construction from the nearest point of connection to the point of delivery on the property to be served. A required advance for construction shall be calculated from the total construction cost of the extension from which there shall be deducted:

(1) Any cost incident to excess capacity above that required to serve the applicant or group of applicants.

(2) Any cost incident to future expansions or to continue a construction plan of the utility.

(3) The cost of the free extension to which the applicant would be entitled.

(f) **Extensions applicable to prospective real estate subdivisions.**

(1) In lieu of extensions pursuant to other provisions of this Section, the utility may require a developer desiring an extension to a prospective real estate subdivision to make an advance for construction equal to the estimated total cost of the project before construction or the extension is started, which advance for construction shall not draw interest. The term "project" includes the entire distribution construction necessary to serve the subdivision and all line extensions to serve the individual parcels of said subdivision. In no case shall the total amount refunded exceed the amount advanced for construction with the utility. Consumers locating on an extension made pursuant to this paragraph shall not be required to make an extension advance for construction.

(2) The utility may require the developer desiring service to a prospective real estate subdivision to make an advance for construction equal to the estimated cost of the distribution system without line extensions. In such cases no refund to the developer will be made upon connection of individual line extension within the subdivision.

(3) A utility may enter into a contract with a developer which shall be deemed a special contract governed by OAC 165:35-5-1(c).

(g) **Appeals to the Commission.** If the extension above the free limits is of such length and the future anticipated revenues therefrom so small that it is doubtful that the extension would ever make a fair return on the investment, the utility or any interested person may apply to the Commission for an appropriate order.

(h) **Property of extension.** Every extension shall at all times be the property of the utility, regardless of whether an advance for construction is made in aid of its construction. At the end of five (5) years, any unrebated portion of a contribution or advance for construction made subject to refund shall become the property of the utility.

(i) **Adoption of policy by utility.** The utility may adopt a policy for extension to be made for the purpose of serving irrigation wells and/or oil field water flooding projects and for advances for construction for payment of all or part of the cost thereof by such consumer, which policy shall be prescribed in its approved tariffs.

[Source: Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-25-3. Maintenance of plant, equipment, and facilities

(a) **Safety of plant and system.** Each utility shall install, operate, and maintain its entire plant and system in such condition as will enable it to furnish safe and adequate service, subject only to emergency conditions beyond its control. Utilities shall also perform routine inspections of overhead electric supply lines and accessible facilities for hazards to the public.

(b) **Accepted good practice.** The generating, transmission, and distribution system, including but not limited to generating plants and equipment, transmission lines, substations, overhead systems, underground systems, street lighting systems, service wires and support equipment attachments, transformers, meters and measuring equipment, and remote meter reading equipment shall be constructed, installed, maintained, and operated in accordance with accepted good practice up to and including the point of delivery to the consumer. "Accepted good practice" shall be defined by the applicable rules governing installation, operations, maintenance, and safety contained in the NEC.

(c) **Compliance with the NEC.** The installation and maintenance of electric utility systems shall comply with the NEC minimum standard requirements.

(1) Only the specific minimum clearances required by the NEC shall be required by this Chapter. Construction and facilities which meet the specific minimum clearances shall be deemed to meet the purpose of the NEC of the "practical safeguarding of persons." Any additional clearances provided will be at the discretion of the electric utility, or as directed by the Commission, and shall not be required or necessary to provide additional public safety.

(2) On all underground construction completed after the effective date of this Chapter, the utility shall place warning labels (of a Commission-approved design) at all locations where aboveground equipment and facilities are readily accessible to the public.

(3) The utility shall perform detailed inspections of its overhead facilities to identify any potential safety issues that could impact service or public safety. Utilities shall submit their inspection programs to PUD.

(d) Duties of pole owners and pole occupants.

(1) A pole owner must establish, maintain, and make available to pole occupants its joint use construction standards for attachments to its poles, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the pole owner.

(2) A pole owner must establish and maintain mutually agreeable protocols for communications between the pole owner, pole occupants, and PUD. Such protocols shall include, but not be limited to including, standards for notification of pole abandonment, replacements, or moves. Such protocols shall be available upon request to PUD.

(3) Primary responsibility to rectify safety problems shall lie with the pole occupant whose facilities are in violation. In the event facilities are abandoned, the pole owner shall work with PUD to rectify the safety concern, and shall correct any unsafe condition to alleviate a safety risk, or a potential risk, to the general public and/or property.

(4) Nothing in this section shall be interpreted as requiring pole owners to allow pole occupants access to their poles. Further, nothing in this section indicates that the Commission shall have any right to regulate the rates charged by pole owners for access to poles.

(5) After a major event, a utility shall be given a ninety (90) day grace period to complete service restoration to the affected area and to conduct any post-inspection analyses. Utilities may request an extension of the grace period from the PUD Director by submitting the request in writing.

(e) Reliability of supply. The generating capacity of a utility's plant, supplemented by the electric power regularly available from other sources or firm contracts for electric power by a utility which operates no generating plants, must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies.

(f) Quality of service.

(1) In the event that any consumer operates or connects any electrical device to his/her electric system which causes an interference, noise, distortion of the 60 Hz sine wave, or other disturbance on the system of the utility which results in a disruption, disturbance, or interference to the utility, its consumers, or a communication company or its consumers, the utility shall:

(A) Require the consumer causing the problem to take corrective measures by installing suitable or special equipment necessary to

eliminate or reasonably limit such adverse effect, or
(B) Install, at the consumer's expense, equipment specifically designed to reasonably limit such adverse effect.

(2) The consumer causing the problem shall bear all expenses necessary to eliminate the adverse conditions or be subject to a discontinuance of service after written notice so that other consumers are not deprived of the quality of service provided prior to the existence of the problem. Where the utility believes the condition creates a hazard to the public, the utility, or the property, the disconnection may be made without prior notice. However, the utility shall notify the consumer as soon as practical after the disconnection.

(g) **Harmonics.** In 60 Hertz electric power systems, a harmonic is a sinusoidal component of the 60 Hertz fundamental wave having a frequency that is an integral multiple of the fundamental frequency. "Excessive harmonics," in this subsection, shall mean levels of current or voltage distortion at the point of common coupling (metering point) between the utility and the consumer outside the levels recommended in the IEEE standard referenced in subsection (g)(1). Each utility shall assist every consumer or communications provider affected with problems caused by excessive harmonics and consumers or communications providers affected in exceptional cases as described in subsection (f)(5).

(1) **Applicable standards.** In addressing harmonics problems, the utility and the consumer shall implement, to the extent reasonably practicable and in conformance with prudent operation, the practices outlined in IEEE Standard 519-1992, *IEEE Recommended Practices and Requirements for Harmonic Control in Electric Power Systems*, or any successor IEEE standard, to the extent not inconsistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations.

(2) **Investigation.** After notice by a consumer or communications provider that it is experiencing problems caused by harmonics, or if a utility otherwise becomes aware of harmonics conditions adversely affecting a consumer or communications provider, the utility shall determine whether the condition constitutes excessive harmonics. If so, the utility shall investigate and determine the cause of the excessive harmonics.

(3) **Excessive harmonics created by consumer.** If a utility determines that a consumer has created excessive harmonics that cause or are reasonably likely to cause another consumer or communications provider to receive unsafe, unreliable or inadequate electric service, the utility shall provide written notice to the consumer creating excessive harmonics. The notice shall state that the utility has determined that the consumer has created an excessive harmonics condition and that the utility has explained the source and consequences of the harmonics problem. The notice shall give the consumer two options to cure the problem.

(A) The utility may cure the problem by working on the consumer's electric facilities at a mutually agreeable time and assess the investigation and repair costs to the consumer.

(B) The consumer may elect to cure the problem at its option and its cost, but the remedy shall occur within a reasonable time, which will be specified in the notice.

(4) **Failure of the consumer to remedy the problem.** Failure of the consumer to remedy the problem may require the utility to disconnect the consumer's service. The utility shall then remedy the excessive harmonics

condition, or the utility may determine that the consumer has remedied the condition within the time specified. In the event the consumer refuses to allow the utility to remedy the problem and does not stop creating excessive harmonics within the time specified, the utility may disconnect the consumer's service. Before disconnecting pursuant to this subsection, the utility shall provide written notice of its intent to disconnect at least five (5) business days before doing so, unless the consumer grants the utility access to its electric facilities or ceases creating excessive harmonics. The utility may disconnect the consumer five (5) business days after providing the notice, unless the consumer grants the utility access to its electric facilities or ceases creating excessive harmonics.

(5) **Excessive harmonics created by a utility or third party.** If a utility determines that its operation or facilities, or the operations or facilities of a third party other than a consumer, created excessive harmonics that causes, or is reasonably likely to cause, a consumer or communications provider to receive unsafe, unreliable or inadequate electric service, the utility shall remedy the excessive harmonics condition at the earliest practical date.

(6) **Excessive total harmonic distortion created by two or more harmonic sources within IEEE 519 limits.** If, in its investigation of a harmonics problem, an electric utility determines that two or more consumer's harmonic loads are individually within IEEE 519 limits but the sum of the loads are in excess of the IEEE 519 limits, the utility may require each consumer to reduce its harmonic levels below the limits specified in IEEE 519.

(7) **Cost responsibility.** Each utility or third party that created an excessive harmonics condition, or that investigated or remedied an excessive harmonics condition created by a third party other than a consumer, must bear the costs incurred in investigating and remedying the condition, and shall not assess any fees to the affected consumer.

(h) **Power quality monitoring.** In addressing power quality monitoring, each utility shall implement, to the extent reasonably practicable and in conformance with prudent operation, the practices outlined in IEEE Standard 1159-1995, *IEEE Recommended Practice for Monitoring Electric Power Quality*, or any successor IEEE standard, to the extent not inconsistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations.

(i) If PUD informs the utility of any safety issues concerning the utility's plant, equipment, or facilities by identifying the relevant NEC, Commission rule, or other applicable Federal or State laws implicated by the safety issue, the utility shall electronically provide photographic evidence to PUD showing completion of work and that the issue has been resolved.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 14 Ok Reg 2560, eff 7-1-97; Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 19 Ok Reg 1968, eff 7-1-02; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-25-4. Daily record of generating plants

Each utility shall keep a daily record of the operation of each of its generating plants showing the energy generated, station use, net output of plant, length of time each unit is in operation, and cause and reason for any unexpected plant shutdown. A utility having only generating plants of 5,000 KW or less is exempt from this Section.

[Source: Amended at 21 Ok Reg 2091, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-25-5. Load reduction

No utility shall execute plans or procedures, without proper authorization of the Commission, which will reduce the utility's load in Oklahoma, for the purpose of diverting power for use outside of Oklahoma, except to provide power and energy to its own system outside Oklahoma.

165:35-25-6. Record of accidents

Each utility shall maintain adequate records of accidents occurring in connection with its operations resulting in injury to persons or damage to property. Accident reports shall be available for inspection by the Commission or its representative.

PART 3. RELIABILITY OF SERVICE AND RELIABILITY PROGRAM

165:35-25-12. Adoption of Standards

For the purposes of this Subchapter, the Commission adopts the most current edition of the IEEE's Std. 1366, *IEEE Guide for Electric Power Distribution Reliability Indices*.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-13. Definitions

In addition to the definitions set forth in IEEE's Std. 1366, *IEEE Guide for Electric Power Distribution Reliability Indices*, the following words and terms, when used in this Part, shall have the following meaning:

"Major event" means a catastrophic event that exceeds the design limits of the electric power system, such as an extreme storm, tornado or earthquake. These events shall include situations where there is a loss of service to 10% or more of the customers in a region, and where full restoration of all affected customers requires more than 24 hours from the beginning of the event.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-14. Reliability program

(a) Each utility, to the maximum extent practicable, shall design and maintain a program to limit the frequency and duration of electric service interruptions and to maintain acceptable electric service reliability levels and to sustain that reliability over time. This program must address all the factors that impact the reliability of the distribution system, including, but not limited to:

- (1) The age, distribution, and location of equipment on each circuit;
- (2) The number, density, and location of customers on each circuit;
- (3) The location and density of trees on the system;
- (4) Annual vegetation management plan; and
- (5) The impacts on distribution system reliability of animals, wind, storms, ice, and automobile accidents.

(b) The program shall include inspection, maintenance, repair and replacement standards that ensure timely and efficient service restoration as well as preventive and emergency maintenance. In establishing such standards it is imperative that the utility locate sufficient personnel, equipment, repair materials, and supplies strategically throughout its service territory to fully and adequately meet the reliability standards established herein.

(c) The program shall give special emphasis to the improvement of the worst-performing circuits in each region of the utility's service territory.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-25-15. Vegetation management plan

(a) Vegetation management means all activities associated with the trimming, removal, or control of plant material in the proximity of energized electric utility conductors and equipment.

(b) As part of its Reliability program, each utility shall prepare an annual vegetation management plan and submit this plan to the Commission for review prior to implementation. This plan shall be an integrated part of the utility's Reliability program and shall include, but not be limited to:

- (1) Definitions of activities;
- (2) Calendar of activities;
- (3) Implementation plan;
- (4) Criteria to assess results of the vegetation management plan; and
- (5) The name and contact information of a company representative who is knowledgeable about the plan, its implementation and potential results.

(c) Each utility shall, at a minimum, perform vegetation management on a 4-year cycle, unless needed otherwise or unless otherwise ordered by the Commission. The utility may request an exemption from this requirement by submitting an alternative(s) to the 4-year cycle to the Commission in its annual vegetation management plan for review and hearing.

(d) Each utility shall track and record all vegetation management costs for easy identification upon Commission review.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-16. Notification for vegetation management activities

When trimming trees and trimming or removing other vegetation in electric line right-of-way maintenance in urban areas, the utility shall make a reasonable attempt to contact the landowner, customer, or tenant at a minimum of twenty-four (24) hours prior to beginning work on the property. In rural areas the utility shall make a reasonable attempt to contact the landowner, customer or tenant, if known, a reasonable time prior to beginning work on the property. This contact may take the form of a written notice delivered to the landowner's, customer's, or tenant's residence; a telephone call to the landowner, customer, or tenant; or an in-person contact. Reasonable effort shall be made by the utility to accommodate a landowner's, customer's, or tenant's desire to be present when work is done on his or her property. Vegetation management related to emergency repairs is exempt from this notification requirement.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-17. [RESERVED]

[Source: Reserved at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-18. Performance levels

(a) **Utility's responsibility and indices used.** It shall be the utility's responsibility to maintain and compile the data necessary to compute System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) (and to the maximum extent practicable, Momentary Average

Interruption Frequency Index (MAIFI)). These indices shall be computed by the utility for each reporting year, or any sub-period thereof, as requested by PUD. The data maintained and compiled for the computation of the indices shall conform strictly to their respective definitions as set forth in this Part. The indices shall be computed for the utility's entire service territory, for each region, and for each distribution circuit. Computation of the indices shall not include interruptions that have resulted from operating conditions that are beyond the utility's control (such as a major event, as that term is defined and used under this subchapter). Each utility shall maintain the raw interruption and duration data as well as the computation of the indices for each reporting year, for a period of not less than three years after the annual report filing deadline. The utility shall maintain all data necessary to compute SAIDI and SAIFI (and to the maximum extent practicable, MAIFI), for all major events but is not required to make such computations except as requested by PUD.

(b) **Minimum performance level.** Upon receipt of the utility's annual report, PUD will compare the indices computed for the utility's service territory to the minimum performance level. The minimum performance level shall represent the lower threshold of adequate service below which further review, analysis, and corrective action may be required. The minimum performance levels shall be reached when the SAIDI and SAIFI values of each utility's service are equal to or better than the minimum performance levels for these indices. The base performance level for SAIDI and SAIFI for the period January 2005 through December 2009 shall be established through engineering and economic studies of historical performance and system operations prepared by each utility, in consultation with PUD Staff, and submitted as part of each utility's reliability report submitted March 1, 2005. This base performance level shall be recomputed by each utility every fifth (5th) year and submitted to PUD in the next year's reliability report. After notice and hearing, the Commission may modify the minimum performance level of any utility. The minimum performance level for a utility with less than 100,000 customers shall be adjusted to account for variances in the rural nature or other special characteristics of their distribution system. The adjusted minimum performance level for a utility with less than 100,000 customers shall be determined by multiplying the annual minimum performance level by the ratio of miles of line per customer plus 1 for the reporting year. It will be the responsibility of the utility to determine the adjusted minimum performance level using this formula for each reporting year. The utility's average number of customers for the prior reporting year shall determine the standards to be applied to the current reporting year.

(c) **Objective performance level.** The objective performance level shall represent a fully adequate level of service that each utility should strive to achieve and maintain. It shall be reached when the SAIDI and SAIFI values of each utility's service territory are for the year is within the bandwidth established based on the data gathered pursuant to the process described in OAC 165:35-25-18(b).

(d) **Commission Review.** In its review of a utility's cost of service and rate of return, the Commission may consider, in general rates cases, the utility's reliability reporting and levels for SAIDI, SAIFI, Customer Average Interruption Duration Index (CAIDI), and MAIFI.

(e) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-25-19. Individual circuit reliability

Each utility shall maintain a program for identifying and analyzing its worst performing circuits during the course of each reporting year. The program shall include, but should not be limited to, an analysis of the top 5% worst performing circuits for the entire utility and for each of the utility's operating regions, if the utility is divided into regions, and the actions taken to improve their performance. The worst performing circuits shall be identified and ranked using the SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for each circuit, and in any other manner chosen by the utility. The details and results of the ranking and program to improve the performance of these circuits shall be submitted as part of the annual reliability report described in 165:35-25-20.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04]

165:35-25-20. Annual reliability report

(a) Each utility shall submit an annual reliability report to PUD by March 1 of each year, beginning March 1, 2005.

(b) The annual reliability report shall include the following:

(1) A description of all vegetation management it performed for the previous calendar year and the vegetation management it plans to perform for the current year.

(2) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for the entire service territory and displayed in tabular form. SAIDI and SAIFI events should be calculated using a sustained time of five (5) minutes or more for Root Mean Square (RMS) zero voltages; MAIFI events should be calculated using any time less than five (5) minutes for RMS zero voltages. Multiple interruptions within five (5) minutes are considered one momentary interruption event.

(3) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for each of the utility's regions and displayed in tabular form. SAIDI and SAIFI events should be calculated using a sustained time of five (5) minutes or more for RMS zero voltages; MAIFI events should be calculated using any time less than five (5) minutes for RMS zero voltages. Multiple interruptions within five (5) minutes are considered one momentary interruption event.

(4) A detailed report for each major event that is not included in the calculation of the reliability indices. The major event report shall include the interruption cause or causes, date, regional location, percentages of consumers without service in that region as a result of the event, the time or time frame in which service was lost to 10% or more of that region, the time the last consumer's service was restored in that region, and any other details that the utility or PUD believes will further justify the exclusion of the event from the calculations.

(5) A description of the program the utility has in place for analyzing and improving worst performing circuits and a summary of the results of the program for the reporting year.

(6) A description and map identifying the utility's service regions or operations divisions. Documentation and illustration of any changes in region boundaries as defined by the utility, and justification for such

changes.

(7) For each utility with less than 100,000 consumers, show the data used to calculate as well as the calculation of the rural adjusted minimum performance level.

(c) PUD reserves the right to request additional data and/or documents if necessary.

(d) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

PART 5. UTILITY SCORECARD

165:35-25-24. Utility performance scorecard

(a) Using the data submitted pursuant to OAC 165:35-25-20, PUD shall annually prepare a scorecard for each utility covering the following areas:

- (1) SAIFI;
- (2) SAIDI;
- (3) MAIFI (to the extent that this measure is utilized);
- (4) Vegetation management; and
- (5) Worst performing circuits.

(b) The scorecard shall be prepared such that the performance of utilities of differing sizes and number of consumers can be directly compared.

(c) PUD's utility performance scorecards will be published annually not later than May 1.

[Source: Added at 21 Ok Reg 2091, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 27. COST REPORTING AND ACCOUNTING

165:35-27-1. Cost of services, materials, or facilities for other types of business or subsidiaries

(a) When a utility is engaged in any type of nonutility business or operations, through subsidiaries or otherwise, or in any business not considered in ratemaking process by the Commission, and personnel, material, equipment, or any facility of the utility is supplied for the operation of such other type of business or subsidiary, the utility shall keep an accurate account of allocation of all of the cost of personnel, services, material, equipment, or any facility between utility and nonutility operations. There shall be a written accounting thereof for utility and nonutility operations on a monthly basis. This accounting will clearly delineate company's utility and non-utility expenses and revenues for the purposes of accurate ratemaking.

(b) The cost of keeping the records and any other expense caused by furnishing such services, materials, or facilities shall be charged to the recipient thereof. The term "all of the cost" in this Section shall mean actual cost plus any direct or indirect charges related to the cost of services, materials, or facilities calculated on the same basis used in allocating direct or indirect charges to the utility operations.

(c) Records of and reports on services, materials, or facilities of other types of business or subsidiaries referred to in this Section shall be available to PUD or its representative.

[Source: Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-27-2. Municipal fees, taxes, and other exactions

The aggregate amount of all franchise payments, or contributions or payments in lieu thereof, or other exactions imposed upon utilities or electric cooperatives by any municipality of this state for engaging in business within the municipality or for the use and occupancy of its streets and public ways is a matter between the municipality and the utility or electric cooperative. The amount of the exactions charged to and collected from the consumers by the utility shall be in accordance with the respective municipal ordinance or statute. The amount of such exactions shall be charged to consumers within said municipality pro rata in accordance with actual revenue associated with the provided service. The amount of such charges shall be separately stated as a line item on the regular billings to consumers as a dollar amount.

[Source: Amended at 13 Ok Reg 2435, eff 7-1-96; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-27-3. Method for compensating fuel or power cost changes; reporting for rate adjustment and billing purposes [REVOKED]

[Source: Revoked at 12 Ok Reg 2125, eff 7-1-95]

165:35-27-3.1. Reporting of purchased fuel and power for adjustment purposes

A utility having a purchased power adjustment clause or a fuel adjustment clause in its approved tariffs shall file periodic and detailed reports of its fuel and power purchases in such form as the Commission may require and as set forth in OAC165:50.

[Source: Added at 12 Ok Reg 2125, eff 7-1-95]

165:35-27-4. Accounting

- (a) The Uniform System of Accounts of FERC prescribed for Public Utilities and Licensees (Class A, B, C, and D) or prescribed by the RUS or other uniform system acceptable to the Commission may be adopted by a utility.
- (b) Electric utilities operating within Oklahoma shall be classed by revenue as follows:

CLASS ANNUAL GROSS OPERATING REVENUE

A	\$2,500,000 or more
B	\$1,000,000 to \$2,500,000
C	\$150,000 to \$1,000,000
D	\$25,000 to \$150,000

(c) No change in or departure from the system used by the utility will be permitted except upon order of the Commission, made after notice and hearing.

(d) The Annual Report FERC Form 1 - Class A and B Electric Companies and FERC Form 1A - Class C and D Electric Utility Companies promulgated by the FERC and RUS Report Form 7A promulgated by the RUS are hereby adopted for purposes of the annual report to this Commission by all Class A, B, C, and D

Electric Utilities filing such reports with the FERC and the RUS. Each utility having multistate utility operations, in addition to submitting with the Commission a copy of its annual report to the FERC if any, shall submit an annual report on a form furnished or approved by the Commission, of its utility service and operations in the State of Oklahoma. Any allocation of costs or revenues necessary in developing results of utility operations for the State of Oklahoma shall be accomplished on a basis acceptable to the Commission.

(e) The results of operations reported by each electric utility in its annual report to the Commission shall be reconciled with the results of operations shown on its books, records and in its other reports to the Commission.

(f) Each utility shall report to the Commission at the end for the utility's fiscal year on forms furnished or approved by the Commission, the book value of its utility plant. These reports and annual reports required by (d) of this Section shall be delivered to the Commission within five (5) business days of the date such reports are filed with either the FERC or RUS; provided that the Commission may grant an extension for time for good cause shown. In the event that the utility has requested an extension of time from FERC or RUS, it will advise the PUD Director, in writing, of such filing delay.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 29. ELECTRICITY PURCHASES FOR PRODUCERS AND PARALLEL OPERATION

165:35-29-1. Purchase of electricity from cogenerators or small power producers

(a) Purchases under this Section shall be from cogenerators and small power producers (producers) as defined and qualified under Section 201 of the Public Utility Regulatory Policies Act (PURPA) of 1978. Producers shall not be utilities as defined elsewhere in the Chapter.

(b) Unless otherwise provided for by this Section and in an approved experimental purchase tariff, the utility's Terms and Conditions of Service shall apply to joint consumer producers.

(c) Each utility will maintain a list available to the Commission for all potential cogenerators and small power producers who have been in written contact with the utility and record the disposition of each such line of inquiry.

(d) Each utility will maintain an experimental purchase tariff on file applicable to purchases from certain facilities of 300 KW or less. This tariff will consist of a Purchase Agreement form prepared by the utility and approved by the Commission; Purchase Rate Schedules for wind, photo-voltaic and stored water hydro power, which reflect the utility's avoided costs, as approved by the Commission; and the experimental standard Terms and Conditions of Purchase of the Commission.

(e) Each utility will maintain on file for all other potential cogenerators and small power producers information sufficient to guide such parties in regard to avoided costs and procedures. Such information shall include, but not be limited to:

- (1) The utility's response to avoided cost interrogatories as requested by the Commission.
- (2) A copy of this Chapter.
- (3) A copy of the experimental tariff.
- (4) Such reports and analyses as shall be prescribed by the Commission.
- (5) For investor owned utilities, the information required by Section 210 of the Public Utility Regulatory Policies Act (PURPA) of 1978.

- (f) A cogenerator or small power producer has the right:
- (1) To generate in parallel with the utility.
 - (2) To sell, at his/her option, his/her total generation or his/her generation net of electrical requirements.
 - (3) To receive for his/her generation a fair rate based on the costs avoided by the utility because of his/her delivery, reliability, dispatchability and other factors, as determined by the Commission.
 - (4) To other substantive rights granted by PURPA.
 - (5) To good faith negotiation by the utility.
 - (6) To bring complaint or dispute to the Commission for mediation, hearing or other resolution.
- (g) Nothing in this Section will prevent a qualified producer from executing a special purchase contract with a utility, provided that the contract must be approved by the Commission prior to its effective date.

[Source: Amended at 10 Ok Reg 2633, eff 6-25-93; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-29-2. Parallel operation of generation facilities

- (a) This Section applies to any party (interconnected party) who wishes to operate or who is operating generation facilities in parallel with a utility except the following:
- (1) Other utilities subject to the rules of this Commission or FERC or its successor organization, if any.
 - (2) Parties qualifying under OAC 165:35-29-1, and who have not agreed with the utility to operate under this Section.
 - (3) Parties operating in parallel according to an agreement signed prior to March 20, 1981, who have not agreed with the utility to operate under OAC 165:35-29-1.
- (b) As a condition of service, no interconnecting party may interconnect or operate generation facilities in parallel with a utility without prior written approval by the utility of such parallel operation and for the interconnection facilities.
- (c) Interconnection requirements shall be reasonable and all costs (over normal policies under the terms of service) shall be borne by the interconnecting party.
- (d) Any party meeting the requirements in (a) through (d) of this Section shall have the right to operate in parallel with the utility using a detented service meter so that no credits are obtained for amounts returned to the utility system. The utility may establish buy back rates or enter into special contracts that are otherwise consistent with this Chapter.
- (e) All agreements and contracts for such interconnection and parallel operation shall be submitted to the Commission for approval prior to interconnection, except as otherwise ordered by the Commission. In no event shall the terms of such agreement or contract be less favorable to the utility than those provided under OAC 165:35-29-1.
- (f) Upon interconnection, the PUD Director shall be notified by the utility of the date, name, and legal address of the interconnecting party, and the location and description of the facilities.

[Source: Amended at 16 Ok Reg 2237, eff 7-1-99; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 31. AFFILIATE TRANSACTIONS AND FINANCIAL TRANSACTIONS OF UTILITIES AND AFFILIATES

165:35-31-1. Purpose, scope and application of Subchapter

(a) The affiliate transactions and financial transactions (such as stock, bond, derivatives, and any financing instrument issuance) rules are promulgated to establish enforcement, reporting and monitoring provisions of utilities as to these transactions.

(b) The intention of this Subchapter includes [but is not limited to]:

- (1) The establishment of standards for transactions between utilities and their affiliates for purposes of determining fair, just and reasonable rates and charges;
- (2) The prevention of subsidization of an affiliate by a utility;
- (3) The support of fair and clear cost allocations; and
- (4) The protection of the customers of a utility from being subjected to any unreasonable financial obligation or costs of an affiliate.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-2. Determination of confidential information

(a) If a utility that seeks to provide electric utility services is required by this Subchapter to submit information to the Commission that is alleged to be confidential, a motion for a protective order concerning said confidential information may be filed requesting a determination be made by the Commission to protect said information pursuant to 51 O.S. § 24A.22.

(b) After a determination regarding approval of any protective order by the Commission, PUD, and the Attorney General's Office may, at its option, review the information claimed to be confidential at a mutually agreed upon location.

(c) In the absence of a protective order, all information considered by the Commission in establishing utility tariffs and in determining compliance with the rules of this Subchapter shall not be maintained in confidence by the Commission.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-31-3. Exemption for corporate and shared services

Corporate and support services are exempt from asymmetrical pricing, to the extent that the affiliate information requirements in Chapter 70 and OAC 165:35-31-4 are satisfied.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-31-4. Request for Information

Required Information. Upon request by the Commission, affiliate information shall be provided pursuant to this Subchapter and shall contain records and work papers which provide, at a minimum, the following information and such other information that the Commission shall request:

- (1) Consolidated Companies and Subsidiaries Balance Sheet.
- (2) Income Statements.
- (3) Cost Allocation Basis, if applicable.
- (4) Affiliate/Subsidiary General Data: Narrative(s) providing:
 - (A) The date of establishment of each affiliate and/or subsidiary;
 - (B) A statement of each affiliate and/or subsidiary's core businesses;
 - (C) The utility company resources used in establishment of each affiliate and/or subsidiary; and

(D) The utility company resources currently being used by each affiliate and/or subsidiary, either directly or indirectly.

(5) Affiliate/Subsidiary Contracts: Copies of any and all contracts with affiliates and/or subsidiaries.

(6) Assets Sold/Transferred to Affiliates/Subsidiaries: A listing, by asset category and net book value, of assets sold or transferred to any affiliate and/or subsidiary since the utility's last rate case.

(7) Services/Products from Affiliates/Subsidiaries: A listing and description of the services and/or products (and related costs) provided by each affiliated and/or subsidiary company to the utility for the required period.

(8) Services/Products to Affiliates/Subsidiaries: A listing of any significant utility company facilities and/or resources, whether plant, other assets or personnel that were used during the required period, by each affiliate and/or subsidiary. The cost of the resources shall be indicated.

(9) Cost of Debt or Financing: A listing of debt instruments bearing any cost of financing transactions, in part or in full, or any debt, equity, trading activity, or derivative which has a direct or indirect financial or cost impact upon the utility.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-5. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-6. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-7. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-8. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-9. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-10. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-11. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-12. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-13. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-14. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-15. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-16. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-17. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-18. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-19. Standards for transactions between utilities and affiliate(s)

Electric utilities must conduct their business to conform to the following standards:

- (1) Electric utilities must apply any tariff provision in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.
- (2) Electric utilities must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- (3) Except as necessary for physical operational reasons, electric utilities may not, through a tariff provision or otherwise, give their affiliates or knowingly give customers of their affiliates preference over other utility customers in matters relating to any service offered including, but not limited to: generation, transmission, distribution and ancillary services, scheduling, balancing, or curtailment policy.
- (4) Unless such disclosure is made public simultaneously or as near to the event as possible, electric utilities shall not disclose to their affiliates any information which they receive from, a non-affiliated customer, a potential customer, any agent of such customer, or potential customer, or other entity seeking to supply electricity to a customer or potential customer.
- (5) An electric utility's operating employees and the operating employees of its affiliate must function independently of each other and shall be employed by separate corporate entities.
- (6) Electric utilities and their affiliates shall keep separate books of accounts and records.
- (7) Electric utilities shall establish a complaint procedure. In the event the electric utility and the complainant are unable to resolve a complaint, the complainant may address the complaint to the Commission.
- (8) With respect to any transaction or agreement relating in any way to electric generation, transmission, distribution and ancillary services, an electric utility shall conduct all such transactions with any of its affiliates on an arm's length basis.
- (9) The Commission shall resolve affiliate transaction disputes or abuses on a case-by-case basis. Any aggrieved party may file a complaint with the Commission alleging the particulars giving rise to the alleged dispute or abuse. The Commission shall consider at a minimum, the following issues when hearing a complaint:

(A) Whether or not the information or data furnished to the affiliate was generally available to other market participants.

(B) Whether or not the electric utility conducted business in such a manner that actual or expected expenses were shifted from the non-regulated subsidiary to the regulated entity.

(C) Whether or not the electric utility conducted business in such a manner that actual or expected revenues were shifted from the regulated entity to the non-regulated entity.

(D) Whether or not the regulated entity offered terms, condition or rates for the provision of electric services to the affiliate that it refused to provide to other customers or whether such resulted in the affiliate having an unfair advantage.

(10) Electric utilities must process all similar requests for electric services in the same manner and within the same period of time.

(11) Electric utilities shall not provide leads to their affiliates and shall refrain from giving any appearance that the electric utility speaks on behalf of its affiliate(s). Nor shall the affiliate trade upon, promote or advertise its affiliation or suggest that it receives preferential treatment as a result of its affiliation. The use of a common corporate or parent holding company name shall not be a violation of this provision so long as the regulated utility and the affiliate entities can be distinguished.

(12) Electric utilities, except for billing and collection services and customer service, or by order of the Commission, shall not share their customer list or related customer information with affiliates unless the information is simultaneously shared with non-affiliate entities.

(13) The electric utility shall not communicate with any third party that any advantage in the provision of electric services may accrue to such third party as a result of that third party's dealings with the electric utility's affiliate.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-20. Sales of services, products, or assets between regulated and unregulated affiliates

(a) **Transactions between a utility and its affiliates.** A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. A utility cannot recover more than its reasonable fair share of the fully allocated costs for any transaction or shared services.

(b) **Contemporaneous record requirement.** A utility shall maintain a contemporaneous written record of all individual transactions with a value equal to or over one million dollars with its affiliates, excluding those involving shared services or corporate support services and those transactions governed by tariffs or special contracts. Such records, which shall include at a minimum, the date of the transaction, name of affiliate(s) involved, name of a utility employee knowledgeable about the transaction, and a detailed description of the transaction with appropriate support documentation for review purposes, shall be maintained by the utility for three years.

(c) **Transfers of assets.** Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract, or as otherwise ordered by the Commission; cost recovery for property transferred from a utility to its affiliate shall be priced at the "higher of cost or fair market value." Except as otherwise required by federal statute or

regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; asset valuation and transfers of property transferred from an affiliate to its utility shall be priced at the "lower of cost or fair market value." No matter the origin of the transaction, all transfers between a utility and an affiliate will be individually scrutinized by the Commission on a case-by-case basis.

(d) **Sale of products or services.** Except as otherwise required by federal or state statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of products and services provided from the affiliate to the utility shall be priced at the "lower of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of jurisdictional products and services provided from the utility to the affiliate shall be priced at the "higher of cost or fair market value."

(e) **Joint purchases.** A utility may make a joint purchase with its affiliates of goods and services involving goods and/or services necessary for utility operations. The utility must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility's and the affiliate's allocations of such purchases.

(f) **Tying arrangements prohibited.** Unless otherwise allowed by the Commission through a rule, order or tariff, a utility shall not condition the provision of any product, service, pricing benefit, waivers or alternative terms or conditions upon the purchase of any other good or service from the utility's affiliate.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-31-21. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-22. Financial transactions by utilities or their affiliate(s)

(a) **Financial transactions.** Financial transactions include, but are not limited to, stock, bond, derivatives, and any financing instrument issuance as well any debt, equity, derivative or related transaction.

(b) **Separate books and records.** A utility shall keep separate books of accounts and records from its affiliates. The Commission may review records relating to any transaction between a utility and an affiliate to ensure compliance with this Subchapter including the records of both the utility and the affiliate relating to any transaction.

(1) In accordance with generally accepted accounting principles, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(2) A utility shall prepare non-GAAP financial statements that are not consolidated with those of its affiliates.

(3) A utility shall have a cost allocation manual or upon Commission request, be able to provide its cost allocation methodology in written form with supporting documentation. Such records shall reflect the transaction and the allocated costs, with supporting documentation, to justify the valuation.

(c) **Limited credit, investment or financing support by a utility.** A utility may share credit, investment, or financing arrangements with its affiliates if it complies with paragraphs (1) and (2) of this Subsection.

(1) The utility shall implement adequate safeguards precluding employees of an affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for subsidization of affiliates.

(2) Where an affiliate obtains credit under any arrangement that would include a pledge of any assets in the rate base of the utility or a pledge of cash necessary for utility operations the transactions shall be reviewed by the Commission on a case-by-case basis.

(d) **Cost of financing transactions of any affiliate.** The cost of any financial transactions, in part or in full, or any debt, equity, trading activity, or derivative, of any parent company, holding company or any affiliate, which has a direct or indirect financial or cost impact upon the utility shall be reviewed by the Commission on a case-by-case basis.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-23. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-24. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-25. Remedies and enforcement for violation of the standards of conduct

(a) A complaint may be brought to the Commission at any time. The Commission encourages informal resolutions. Whenever a controversy does exist in connection with the interpretation of this Subchapter, the applicability of the requirements set forth herein, or any right or duty imposed thereby; the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

(b) Each violation of this Subchapter shall be considered to be a separate occurrence.

(c) If the Commission determines, after investigation and an evidentiary hearing, that the electric utility has violated these affiliate rules, the Commission may assess a fine against the utility for contempt as set forth in 17 O.S. § 1 *et seq.* and may order such further action as may be fair, just and reasonable under the circumstances of the proceeding.

(d) The Commission may act upon any violation of these standards including but not limited to the following:

(1) Prospective limitation or restriction of the amount, percentage or value of cost recovery for transactions entered into between a utility and an affiliate;

(2) Denial of recovery of costs, all or in part, for business transactions between the utility and the affiliate; or

(3) Application of any other remedy available to the Commission, including financial penalties.

(e) **No immunity from state law.** Nothing in this subchapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma.

[Source: Added at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-26. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

165:35-31-27. [RESERVED]

[Source: Reserved at 21 Ok Reg 2085, eff 7-1-04]

SUBCHAPTER 33. HOMELAND SECURITY AND CRITICAL INFRASTRUCTURE

165:35-33-1. Purpose and scope

- (a) The purpose of this Subchapter is to require utilities to take all reasonable measures necessary to protect their critical infrastructures from extended interruption of service from all extraordinary events, natural and man-made.
- (b) The Commission requires electric utilities to develop, implement, and maintain Homeland Security and Critical Infrastructure Plans according to the industry standards enumerated in sub-section (d) below.
- (c) To the extent that a utility seeks to recover costs for security measures outside of a general rate review for the implementation of Homeland Security and/or Critical Infrastructure protections, the utility shall comply with all provisions of this Subchapter.
- (d) Each electric utility serving Oklahoma jurisdictional ratepayers is required to follow the most current applicable North American Electric Reliability Corporation's (NERC's) Security Guidelines and Standards or equivalent cybersecurity framework, as may be amended from time to time, for use as guidelines for protecting the utility's Critical Infrastructure from extended service interruption.
- (e) Each electric utility seeking to recover costs for security measures from Oklahoma jurisdictional ratepayers outside of a general rate review shall develop, implement, and maintain a Critical Infrastructure and Security Plan as further set forth within this Subchapter.
- (f) If the utility has implemented a Security Plan or process in accordance with the applicable industry guidelines but is not seeking or receiving cost recovery for security-related costs, the utility shall submit the Certification Letter required by OAC 165:35-33-7(f) and the Plan shall be subject to review pursuant to the Authorized Participation and Confidentiality provisions of OAC 165:35-33-10 and OAC 165:35-33-11. The utility is not otherwise required to comply with the provisions of this Subchapter.
- (g) The Commission retains its jurisdictional and supervisory authority to address the reasonableness and/or prudence of any proposed security cost recovery.
- (h) Nothing in this subchapter shall relieve any utility from any duty otherwise prescribed by the laws of the State of Oklahoma or this Commission's rules.
- (i) Nothing in this Subchapter is intended to divest the utility of its right to object to any discovery requests from intervenors seeking access to "Highly Sensitive Confidential" materials.
- (j) If any provision of this Subchapter is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are declared to be severable.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-33-2. [RESERVED]

[Source: Reserved at 22 Ok Reg 704, eff 7-1-05]

165:35-33-3. Definitions

The following words and terms, when used in this Subchapter 33, shall have the following meaning, unless the context clearly indicates otherwise:

"Annual Report" means the Annual Report submitted by Commission Staff to the Commission beginning December 30, 2005 and by July 1 of each year thereafter, summarizing the results of Staff's review of each utility's Security Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

"Authorized Participant" means those persons authorized by the utility or as may otherwise be authorized by law and/or ordered by the Commission, to view highly sensitive confidential information. Such authorization shall be granted on a case-by-case basis and may extend to the utility, state government officials, persons having been granted intervenor status by the Commission and Commission authorized designees of the parties.

"Certification Letter" means the written certification to the Director of the Public Utility Division made by August 1, 2005 and on March 1 of each subsequent year thereafter, indicating that as of the date of the Certification Letter, the utility has a Plan or that it has updated the Plan and/or previous Plan Update Reports, has a Plan but is not seeking cost recovery or has no Plan in place.

"Critical Infrastructure" means the property of a utility located in the State of Oklahoma, comprised of either physical assets or computer software which, if severely damaged or destroyed, would have a significant impact on the ability of the utility to serve large numbers of customers for an extended period of time, would have a detrimental impact on the reliability or operability of the energy grid, or would cause significant risk to public health and safety.

"Highly Sensitive Confidential" means that the information is of such a sensitive nature that its public disclosure could be harmful to the security of a utility's critical infrastructure and as such it may only be viewed by those persons authorized by the utility or as may otherwise be ordered by the Commission.

"NERC" means the North American Electric Reliability Corporation.

"Plan" means a Homeland Security and Critical Infrastructure Plan including any subsequent Plan Update Reports that have been prepared with reference to the NERC GUIDELINES.

"Plan Update Report" means the written redlined changes made by the utility updating the Plan and/or previous Plan Update Reports. At the utility's option, changes will either be redlined or a history of changes may be maintained.

"Security Cost Rider" means the per billing unit rate mechanism whereby a utility may, upon approval and Order of this Commission, recover the costs of providing security for its Critical Infrastructure as defined under this Subchapter 33.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-33-4. [RESERVED]

[Source: Reserved at 22 Ok Reg 704, eff 7-1-05]

165:35-33-5. Utility Security Plan

(a) Each electric utility is required to prepare and make available for inspection, a "Homeland Security and Critical Infrastructure Plan" ("Plan") that has been prepared with reference to the applicable NERC Security Guidelines and Standards or equivalent cybersecurity framework and standard as guidance with a defined cybersecurity strategy.

(b) The Plan shall be marked as "Highly Sensitive Confidential" and designate those facilities that the utility considers to be Critical Infrastructure (physical assets and computer software as defined in OAC 165:35-33-3 above), and shall set forth the utility's measures to secure such facilities from extended service interruption. The Plan shall also include an estimate of the costs necessary to achieve such measures.

(c) The Plan shall remain on site at the utility's business office in accordance with OAC 165:35-33-7(g) below and shall have the most current version of the redlined Plan Update Report attached to the clean version of the utility's latest Plan. At the utility's option, changes will either be redlined or a history of changes may be maintained.

(d) The Plan shall list all locations deemed by the utility to be critical, as well as identification of any subsequently increased security measures. All locations and security measures shall be identified by code known only to the utility and designated state government officials and their designees.

(e) Any subsequent security measures identified in the Plan shall contain an estimate of the cost necessary to implement such measures, a description of the measures necessary to adequately secure each specific location and an estimated schedule for completion of each measure.

(f) All locations identified by the Plan that require additional security measures shall be prioritized by the utility.

(g) Beginning December 30, 2005 and on July 1 of each year thereafter, Commission Staff shall submit an Annual Report marked as "Highly Sensitive Confidential" to the Commission, summarizing the results of Staff's review of a utility's Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

(h) Beginning December 30, 2005, where the Attorney General elects to submit recommendations to the Commission regarding a utility's Plan, such recommendations shall be marked as "Highly Sensitive Confidential" and shall also be due by July 1 of each subsequent year thereafter.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-33-6. [RESERVED]

[Source: Reserved at 22 Ok Reg 704, eff 7-1-05]

165:35-33-7. Reporting requirements

(a) Subsequent to the preparation of the initial Plan prepared under OAC 165:35-33-5(a), each utility shall prepare a Plan Update Report by March 1 of each succeeding year, following the same format as the initial Plan with redlines of all new changes, marked "Highly Sensitive Confidential" and kept on site at the utility's business office.

(b) Each subsequent Plan Update Report shall update the previous year's report by indicating for each specific coded location, all costs and completion dates (actual

and projected) for all current and prior additional security measures claimed under this Subchapter.

(c) The utility is required to report cybersecurity or infrastructure security events that affect customers immediately to the PUD Director or designee.

(d) For those security measures previously reported that have not yet been completed, revised estimated costs and estimated completion dates shall be provided.

(e) The Plan Update Report shall also include (by specific coded location) a description of each proposed security measure that has not been previously reported, the estimated costs for each, as well as the estimated completion date for each measure.

(f) Costs reflected in the initial Plan and in subsequent Plan Update Reports, whether estimated or actual, shall be identified as either capital or expense costs.

(g) Beginning August 1, 2005 and by March 1 of every year thereafter, and/or when a change is made, each utility shall submit a Certification Letter to the PUD Director, marked as "Highly Sensitive Confidential" and certifying that as of the date of the Certification Letter:

(1) The utility does not have a Homeland Security and Critical Infrastructure Plan as contemplated and defined by this Subchapter;

(2) The utility does not have a Homeland Security and Critical Infrastructure Plan as contemplated or defined by this Subchapter but has otherwise taken steps to secure Critical Infrastructure and is not seeking cost recovery under this Subchapter;

(3) The utility does have a Plan but is not seeking cost recovery; or

(4) The utility has a Plan and/or has prepared its Plan Update Report updating the Plan and/or previous year's Plan Update Report;

(A) The redlines contained within the current Plan Update Report encompass in the entirety, all of the changes made to the utility's Plan since the Plan's inception or the previous year's certification; and

(B) The Plan is available for Commission and/or Attorney General review at the utility's local place of business.

(h) A utility shall not be required to file its initial Plan or any of its subsequent Plan Update Reports with the Commission. Each utility shall instead, secure and maintain on site, at the utility's local place of business, its initial Plan and all subsequent Plan Update Reports.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-33-8. [RESERVED]

[Source: Reserved at 22 Ok Reg 704, eff 7-1-05]

165:35-33-9. Cost recovery

(a) Each utility seeking cost recovery of expenditures outside of a general rate review related to securing its Critical Infrastructure shall prepare and make available for inspection, its Plan and any subsequent Plan Update Reports in accordance with this Subchapter.

(b) A utility shall file an application with the Commission for cost recovery as provided for within this Subchapter. Such cost recovery shall only occur to the extent the utility has incurred all or a portion of its actual security-related costs.

(c) Unless otherwise ordered by the Commission, the utility shall have the burden of proving compliance with all of the provisions of this Subchapter prior to

obtaining any cost recovery for security related measures.

(d) Upon approval and Order of the Commission, a utility shall be allowed to recover a return based on its weighted cost of long-term debt and equity on all capital expenditures made for security measures. The utility shall also be allowed to recover related depreciation expense and ad valorem taxes. Such recoveries shall be based upon similar ratemaking treatment for corresponding cost elements from the utility's most recent general rate case.

(e) Upon approval and Order of the Commission, a utility shall be allowed to recover expenses typically classified as operations and maintenance expenses for ratemaking purposes. The utility may request inclusion of any such similar costs incurred as long as these costs are directly associated with the security measures taken.

(f) The total costs incurred under this Subchapter shall be combined for recovery purposes, for consideration by the Commission.

(g) All costs approved by the Commission for recovery, shall be recovered from the utility's customers through a "Security Cost Rider" based on the projected annual billing units for the utility and shall be subject to annual true-up.

(h) Unless otherwise ordered by the Commission, a utility shall immediately discontinue recovery of the "Security Cost Rider" when the earlier of the following occurs: natural expiration due to the full recovery provided for in a Rider granted under this Subchapter or forced expiration required pursuant to OAC 165:35-33-9(i) and/or OAC 165:35-33-9(j). Under no circumstances, shall the utility be permitted to double recover Homeland Security and Critical Infrastructure related costs.

(i) Unless otherwise ordered by the Commission, any utility with a "Security Cost Rider" currently in effect, that files for a general rate change, shall include in the rate case, all security-related costs and those costs shall be accorded standard ratemaking treatment. A utility shall discontinue its "Security Cost Rider" when the change in rates becomes effective upon Final Order in the rate case.

(j) Unless otherwise ordered by the Commission, all "Security Cost Riders" approved by the Commission, shall expire five years from the initial date of the "Security Cost Rider's" implementation.

(k) Upon the filing of a cost recovery request by a utility, Commission Staff, the state Attorney General's office (based upon that entity's statutory authority) and all other Authorized Participants shall review the cost recovery proposal submitted by the utility and file testimony in accordance with:

- (1) Any applicable protective orders issued by the Commission in the security-related cost recovery cause;
- (2) OAC 165:35-33-11 (below);
- (3) The Commission's Rules of Practice (OAC 165:5); and
- (4) Any other protective measures or requirements prescribed by law or the Commission.

(l) Testimony of Commission Staff, the state Attorney General and all other Authorized Participants, shall detail each of the parties' respective recommendations and any objections to the utility's Plan and the utility's request for cost recovery related to the Plan. Also in accordance with the Commission's Rules of Practice, Commission Staff, the state Attorney General and all other Authorized Participants shall provide copies of their respective individual testimonies to one another, with redacted versions of each individual testimony filed with the Commission's Court Clerk.

(m) Upon notice and hearing, the Commission shall issue an Order regarding any requests for security-related cost recovery.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-33-10. PUD authorized participation

(a) **PUD Staff.** Only PUD and PUD's designees authorized by PUD to participate in a cause before the Commission regarding a utility's Plan and then, shall do so only after meeting all applicable requirements for PUD authorization, which shall be determined on a case-by-case basis. All PUD and PUD's designees authorized to participate in a security cause shall comply with the requirements for protecting information obtained under the "Highly Sensitive Confidential" designation.

(b) **Attorney General.** Only those Attorney General personnel who have formally entered an appearance pursuant to Oklahoma Statute and the Commission's Rules of Practice and that entity's Commission authorized designees shall be granted review of a utility's Plan and/or Plan Update Reports. All Attorney General personnel and their designees authorized to participate in a security cause shall meet all applicable requirements for Commission authorization, to be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(c) **Intervenors.**

(1) For the purposes of this Subchapter, all intervenors, including but not limited to counsel and experts for intervenors, shall be deemed "Authorized Participants" in accordance with OAC 165:35-33-3 above. All Authorized Participants wishing to participate in a security-related cause before the Commission shall meet all applicable requirements for Commission authorization, which shall be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(2) In addition to acquiring "Authorized Participant" status from the Commission, each intervenor and its designees desiring to participate in a cause before the Commission regarding a utility's Plan shall post a bond or other security acceptable to the Commission, in an amount to be determined by the Commission, to protect the utility from harm in the event the Authorized Participant breaches the confidentiality terms established under this Subchapter or as may otherwise be established by the Commission. A copy of such bond or other security shall be filed with the Commission's Court Clerk. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma Corporation Commission Commissioners and Staff.

(3) Any Authorized Participant found in violation of a Commission issued Protective Order and Proprietary Agreement, shall be liable for contempt penalties pursuant to the penalty provisions found in Article IX, § 19 of the Oklahoma Constitution, Title 17 of the Oklahoma Statutes and the Commission's Rules of Practice at OAC 165:5. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma Corporation Commission Commissioners and Staff.

(4) In addition to the above protections, all Authorized Participants may be required by the Commission to enter into a separate non-disclosure agreement as a pre-requisite to being granted intervention and "Authorized Participant" status.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-33-11. Confidentiality

(a) Pursuant to the Commission's jurisdiction granted under Article IX, Section 18 of the Oklahoma Constitution, 51 O.S. (2001) §24A.22 of the Oklahoma Statutes and OAC 165:5, the Commission's Rules of Practice; all un-redacted documents related to a utility's Homeland Security and Critical Infrastructure Plan shall be considered "Highly Sensitive and Confidential" and shall only be admitted into evidence in en camera proceedings.

(b) "Highly Sensitive Confidential" designation and protection shall extend but not be limited to the following: initial Plans (including underlying documents), Plan Update Reports, Certification Letters, Annual Reports made by Commission Staff, recommendations submitted by the Attorney General of the State of Oklahoma and un-redacted documents used in cost recovery proceedings. For all other documents, the "Highly Sensitive Confidential" designation may be granted upon hearing and Final Order of the Commission.

(c) Each utility's Plan and/or Plan Update Report prepared in accordance with this Subchapter, shall be marked "Highly Sensitive Confidential" and shall be kept and maintained on site at the utility's business office in accordance with OAC 165:35-33-7(g), above. Only those individuals on the Staff of the Commission and in the State Attorney General's office and their respective experts who have been authorized by the Commission, shall have access to the Plan and Plan Update Reports prepared by each utility and any related or supporting documentation thereto. All other parties granted authorized intervenor status to a security cause pursuant to OAC 165:35-33-10(c) may also have access to the Plan, Plan Update Reports and supporting documentation after notice and hearing.

[Source: Added at 22 Ok Reg 704, eff 7-1-05; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 34. COMPETITIVE PROCUREMENT

165:35-34-1. Purpose of this Subchapter

(a) This Subchapter establishes a fair, just, and reasonable process that best serves the public interest of all electricity consumers and that will complement and improve the state's economic growth by, among other things, making the most efficient use of Oklahoma's coal, natural gas, and power generation and transmission assets and furthers the policy of the Commission that a competitive procurement process is among the most effective means to achieve these objectives. To obtain a presumption of prudence, a utility shall employ the competitive bidding procedures set forth in this subchapter, when purchasing or self-building of new longterm electric generation, long term purchase power agreements, or long-term fuel supply for self-generation of electricity as set forth in this subchapter. A utility may exercise managerial discretion and enter into contracts, fixed-priced or index-based, without seeking a presumption of prudence. However, if a utility does not employ the competitive bidding process set forth in this subchapter, there shall be no presumption of prudence and the determination of prudence will be decided during a subsequent Commission review. The competitive bidding process shall be open to Commission scrutiny, as are other regulated utility practices.

(b) It is the intent of the Commission to create an open, transparent, fair and nondiscriminatory competitive bidding process for the utility to meet its needs. It should not be construed that this Subchapter absolves or relieves any utility or competitive bidder from any duty prescribed by the laws of the State of Oklahoma or the United States including, but not limited to, the federal Public Utility

Regulatory Policies Act (Public Law 95-617, as amended) and any other state or federal law regarding contractual rights and obligations, antitrust enforcement or liability, or laws against improper restraint of trade or "takings" of property.

(c) This Subchapter also establishes reasonable standards of conduct for transactions between utilities and their affiliates and standards for transactions between utilities and competitive bidders conducting business within the State of Oklahoma.

(d) This Subchapter shall not be applicable to a utility with no generation plant within the boundaries of Oklahoma and less than ten percent of its customers within the state.

(e) Wherever Independent Evaluator is referred to in this subchapter, it is understood that particular reference is only applicable if an Independent Evaluator has been retained by the Commission.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 25 Ok Reg 1566, eff 7-1-08; Amended at 29 Ok Reg 1541, eff 7-12-12; Amended at 31 Ok Reg 1030, eff 9-12-14]

165:35-34-2. Confidential Information

(a) A person or entity may file a motion with the Commission for an order to protect confidential information pursuant to 51 O.S., Section 24A.22.

(b) Bids submitted in a competitive bidding process and the resulting contracts shall be considered confidential information. Such bidding documents and contracts shall be available for review subject to a protective order issued by the Commission except that such protective order may limit access to appropriate non-competitive representatives such as lawyers and consultants, of bidders participating in the RFP, so that such persons may review the details of all the bids, the bid process and the bid evaluation-related materials. The Commission may determine, on a case-by-case basis, that certain information about the winning bid and resulting contract shall be publicly disclosed so long as such disclosure does not reveal confidential information.

(c) Pending a determination by the Commission regarding any protective order, the person or entity seeking the protective order, the Commission, the Attorney General and the Independent Evaluator may, at their option, review the information claimed to be confidential at a mutually agreed upon location.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Revoked at 25 Ok Reg 1566, eff 7-1-08]

165:35-34-3. RFP Competitive Bidding Procurement Process for Long Term Fuel Transportation, Long Term Fuel Storage, Long Term Electric Generation and Long Term Purchase Power Agreements

(a) Competitive Bidding Structure and Process Guidelines for Long Term Fuel Transportation, Long Term Fuel Storage, Long Term Electric Generation and Long Term Purchase Power Agreements.

(1) The soliciting utility shall notify the Commission of its intent to engage in a competitive bidding process at least thirty (30) calendar days before issuing a request for proposal ("RFP"), as required by subsection (4) below.

(2) The soliciting utility shall prepare the initial draft of the RFP documents, including but not limited to RFP procedures, and a pro forma power purchase agreement that, to the maximum extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule (collectively, the "RFP Document").

(3) In addition to the information required by (1) of this Section, the RFP and RFP Document, at a minimum, shall identify clearly:

- (A) Term;
- (B) Amount of megawatts, if applicable, and types of products being solicited;
- (C) All price and non-price evaluation factors to be considered;
- (D) Respective weight for each price and non-price evaluation factor; and
- (E) Utility's preliminary analysis of transmission availability and the utility's plan for evaluation of transmission availability for each proposal received, including, but not limited to:
 - (i) Description of the role of transmission analysis to be conducted by the utility in the bid evaluation process. This analysis should use publicly available tools provided by the controlling entity, such as the Southwest Power Pool Scenario Analyzer; and
 - (ii) Any role of the transmission analysis to be conducted by the controlling entity, currently the Southwest Power Pool, in the bid evaluation process.

(4) The draft of the RFP Document, supporting documentation, and bid evaluation procedures shall be provided to the Commission, Attorney General, non-competitive representatives and Independent Evaluator and posted on the utility's website at least fifteen (15) calendar days prior to the technical conference referenced below. After the draft RFP is issued, a technical conference shall be scheduled by the utility to discuss the draft RFP and the bidding process. After receiving input from interested persons, and holding the technical conference the soliciting utility shall post the draft RFP Document and any comments received, on the soliciting utility's website or electronic bulletin board, or by some other publicly accessible method. After due consideration of all comments, the soliciting utility will submit the final RFP Document to the Commission and post the final RFP Document on its website or electronic bulletin board, or by other publicly accessible method. RFPs shall include the Southwest Power Pool's time requirements to conduct transmission analyses, i.e. the aggregate study.

(b) Independent Evaluator.

(1) The Commission may, at its discretion, retain and arrange compensation for an Independent Evaluator to monitor the RFP and competitive bidding process. Notwithstanding the foregoing, the Commission shall retain an Independent Evaluator to monitor the RFP and competitive bidding process in the following instances: (i) when an affiliate of the utility is anticipated to participate in the competitive bidding process; (ii) when the RFP and bid resulting there from is expected to have a material impact on the utility's cost of providing electricity to its customers, or (iii) when it is anticipated that the utility may participate as a bidder in the competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric utility or affiliate thereof, complaining entity, and any potential bidder.

(2) The Independent Evaluator will report to the Commission and the Attorney General.

(3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting utility about the winning bidder(s), the Independent Evaluator and utility may attempt to resolve such differences. In the event the Independent Evaluator and utility cannot resolve their differences, the soliciting utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.

(4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting utility in conjunction with the competitive bidding process.

(c) Affiliate Bidders' Requirements.

(1) Each soliciting utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting utility and bidding affiliate shall execute an acknowledgement that the utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) Evaluation of Responses to the RFP.

(1) The evaluation of the responses to the RFP will proceed as follows:
(A) The soliciting utility will evaluate all timely submitted bids to determine the lowest reasonable cost for long-term reliable power or reliable long-term fuel sought that minimizes ratepayer cost, including but not limited to charges for or costs relating to long-term fuel supply, long-term fuel transport, long-term fuel storage, long-term fuel processing, or increased cost of capital, consistent with the principles and procedures contained in this Subchapter and in the utility's resource plan and associated procurement plans.

(B) The Commission, Attorney General, non-competitive representatives and Independent Evaluator will be included in the evaluation of all bids submitted to the soliciting utility. The soliciting utility shall include within the RFP the time and place for the opening of the bids so that the Commission, Attorney General, non-competitive representatives and the Independent Evaluator may attend and monitor the opening of bids. Bids shall be opened by the soliciting utility at the time and place so indicated in the RFP whether or not any or all of those parties are in attendance.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. No bidder shall be permitted to unilaterally submit a refreshed bid unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting utility, Commission, Attorney General, non-competitive representatives or Independent Evaluator may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting utility, Commission, Attorney General, non-competitive representatives or Independent Evaluator and bidder should be conducted through an open process in which the utility, Independent Evaluator, Commission, non-competitive representatives and Attorney General are given adequate notice and an opportunity to attend.

(4) The Commission, Attorney General, non-competitive representatives and Independent Evaluator, as well as the soliciting utility, may rely on the Southwest Power Pool to conduct all necessary transmission analyses concerning bids received. Southwest Power Pool analyses provided to the Commission, Attorney General, non-competitive representatives or Independent Evaluator shall be equivalent in quality and content to that provided to the soliciting utility. No bidder, including any bidder that is an affiliate (including the Bid Team) of the soliciting utility, shall communicate with the Southwest Power Pool Transmission group during the course of the competitive bidding process regarding any aspect of the RFP or process.

(5) In conducting the evaluation of the responses, the soliciting utility shall not:

(A) Waive or otherwise modify any evaluation factor or evaluation weight for any bidder;

(B) Add any adjustments on the basis of expected effects on the utility's cost of capital if not already contained in the RFP;

(C) Impose any penalty on the price of purchased power; or

(D) Include any discount for utility self-generation on the basis of reliability as part of the utility's resource mix.

(e) Prior to a utility taking long-term procurement action other than the competitive procurement process set forth in this Subchapter, such utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission.

(f) The utility shall promptly submit its decision concerning the successful bid with the Commission and mail copies of such submission to all bidders, non-competitive representatives, the Independent Evaluator, and the Attorney General. Included within that mailing, the utility shall provide the non-winning bidders the rationale and analysis used for the selection of the winning bid.

(1) Any unsuccessful bidder, non-competitive representatives, the Independent Evaluator, or the Attorney General shall have fifteen (15) calendar days following submission of the successful bid decision with the Commission to file with the Commission a complaint challenging the decision as not meeting the criteria for decision specified in this subchapter or waiver previously obtained pursuant to 165:35-34-3(e) and the RFP document and bid evaluation procedures developed pursuant to 165:35-34-3(a).

(2) In the event of the filing of such a complaint, after notice to all bidders and hearing, the Commission shall determine whether the utility's decision reveals either a clear departure from the criteria stated in these rules or previously obtained waiver, the RFP Document and bid evaluation procedures for decision or is erroneous, in which event the utility shall be required immediately to rebid, in accordance with this Subchapter, the items which were the subject of such determination.

(g) Upon determination of the successful bidder, the utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(1) The contract shall contain appropriate guarantees, as set by the Commission, regarding the reliability of services.

(2) At the request of either party and upon notice and hearing, the Commission shall have authority to determine any disputes between the parties as to terms incidental to the bid. All matters to be determined by the Commission under this provision shall be heard on an expedited basis and a decision rendered thereon within thirty (30) calendar days from filing.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 24 Ok Reg 1827, eff 7-1-07; Revoked at 25 Ok Reg 1566, eff 7-1-08; Amended at 27 Ok Reg 2129, eff 7-11-10; Amended at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-34-4. Commodity fuel supply competitive bidding procurement process for a term greater than five years

(a) **Pre-approval filing.** When a Utility contracts for commodity fuel supply for self-generation of electricity for a term greater than five years, and seeks a pre-determination of prudence, the Utility shall file an application and receive the Commission's approval of the Utility's proposed Request for Proposal (RFP) Competitive Bidding Procurement Process prior to the Utility issuing the RFP. The evaluation and approval of the RFP shall contain, but not be limited to, the proposed bidding process, the evaluation process, consistency with the Integrated Resource Plan (IRP), and a determination of need for the proposed fuel supply. The evaluation and approval of the RFP may contain a consideration of opt-out provisions. The process shall focus on and result in the lowest reasonable cost for ratepayers. The request shall be processed as follows:

(1) An Independent Evaluator may be utilized pursuant to 165:35-34-4(b);

(2) The soliciting Utility shall file a cause for pre-approval of the RFP and will provide notice to the Commission and Attorney General to engage in the RFP approval process at least thirty (30) calendar days before issuing a request for pre-approval of the proposed RFP;

- (3) The soliciting Utility shall prepare the initial draft of the RFP documents that, to the extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule;
- (4) In addition to the information required by (3) of this Section, the RFP, at a minimum, shall identify clearly:
- (A) Term and Renewals;
 - (B) Types and quantity of fuel being solicited;
 - (C) All price and non-price evaluation factors to be considered;
 - (D) Respective weight for each price and non-price evaluation factor;
 - (E) The Utility's preliminary analysis of desired delivery points or options as appropriate; and
 - (F) The extent to which a consideration of hedging and price volatility mitigation has been included in the RFP; and
- (5) A Commission order approving or disapproving the RFP shall be issued in no more than 180 calendar days following the filing of the Utility's application.

(b) Independent evaluator.

- (1) The Commission Staff or Office of the Attorney General may, at their discretion, file a request with the Commission for the assessment of specific costs, which shall be deemed recoverable costs associated with conducting the prudence review analysis, related to the retention of an Independent Evaluator to monitor the RFP and competitive bidding process. Notwithstanding the foregoing, the Commission, or the Attorney General shall retain an Independent Evaluator to monitor the RFP and competitive bidding process in the following instances: (i) when an affiliate of the Utility is anticipated to participate in the competitive bidding process; (ii) when the RFP and bid resulting there from is expected to have a material impact on the Utility's cost of providing electricity to its customers, or (iii) when it is anticipated that the Utility may participate as a bidder in the competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric Utility or affiliate thereof, complaining entity, and any potential bidder.
- (2) The Independent Evaluator will report to the Commission or the Office of the Attorney General.
- (3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting Utility about the winning bidder(s), the Independent Evaluator and Utility may attempt to resolve such differences. In the event the Independent Evaluator and Utility cannot resolve their differences, the soliciting Utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.
- (4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting Utility in conjunction with the competitive bidding process.

(c) Affiliate bidders' requirements.

(1) Each soliciting Utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting Utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting Utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting Utility and bidding affiliate shall execute an acknowledgement that the Utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) Evaluation of responses to the RFP.

(1) The evaluation of the responses to the RFP will proceed as follows:

- (A) The soliciting Utility will evaluate all timely submitted bids to determine the lowest reasonable cost for fuel supply that results in the lowest reasonable cost with consideration given to all other bid terms outlined in the RFP; and
- (B) The Commission, Attorney General, Independent Evaluator, and non-competitive representatives will be included in the evaluation of all bids submitted to the soliciting Utility pursuant to the provisions of the Protective Order. The soliciting Utility shall include within the RFP the time and place for the opening of the bids so that the Commission, Attorney General, the Independent Evaluator and non-competitive representatives may attend and monitor the opening of bids. Bids shall be opened by the soliciting Utility at the time and place so indicated in the RFP whether or not any or all of those parties are in attendance.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. Bids will be evaluated on all relevant economic and non-economic factors. No bidder shall be permitted to unilaterally submit a refreshed bid prior to award unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting Utility, Commission, Attorney General, Independent Evaluator and non-competitive representatives may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting Utility, Commission, Attorney General, Independent Evaluator and non-competitive representatives and bidder should be conducted through an open process in which the Utility, Independent Evaluator, Commission, Attorney General and noncompetitive representatives are given adequate notice and an opportunity to attend.

(4) In conducting the evaluation of the responses, the soliciting Utility shall not: waive or otherwise modify any evaluation factor or evaluation weight for any bidder.

(e) Bid award.

(1) The Utility shall submit its decision, rationale and analysis concerning the successful bid with the Commission, non-competitive representatives, the Independent Evaluator, and the Attorney General within 24 hours of the selection. The utility shall provide the non-winning bidders notice that they were not selected as the winning bid.

(2) The PUD Director, any unsuccessful bidder, the Independent Evaluator, Intervenors, or the Attorney General shall have two (2) business days following submission of the successful bid decision to file with the Commission a complaint challenging the Utility's adherence to the approved RFP and the resulting bid award.

(3) In the event of the filing of such a complaint, after notice to all parties and hearing, the Commission shall determine whether the Utility's decision reveals a clear departure from the criteria stated in the previously obtained waiver or the RFP Document in which event the bid award may not be pre-approved by the Commission.

(4) The Commission shall endeavor to hear the complaint in camera within three (3) business days of the filing of the complaint.

(5) The Commission shall endeavor to enter a final order within fifteen (15) calendar days of the initial bid award letter. If the Commission has not entered a final order within fifteen (15) calendar days, the winning bidder may be allowed to refresh their bid pursuant to the provisions of the RFP.

(6) The Commission shall endeavor to enter a final order no later than thirty (30) calendar days after the initial bid award.

(7) Upon determination of the successful bidder, the Utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(8) The final order, if awarding a pre-determination of prudence, will provide as follows:

(A) Purchases made according to the terms of the contract shall be deemed prudent;

(B) Variances from the terms of the contract shall be subject to additional prudence review and determination.

(f) Waiver. Prior to a utility taking competitive procurement action other than the competitive procurement processes set forth in this Subchapter, such Utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission if the Utility will seek pre-approval.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 35. PRUDENCE REVIEWS

165:35-35-1. Prudence Reviews

(a) The Commission shall conduct prudence reviews on all generation, purchased power and fuel procurement processes and costs. The first prudence review will be selected by March 31, 2006. Utilities serving four hundred thousand (400,000) consumers or more shall be reviewed at least once every two (2) years. The utility shall bear the burden of proof as to prudence. Utilities serving fewer than four hundred thousand (400,000) consumers shall be reviewed at least once every three (3) years.

(b) All fuel and generation expenses, including purchased-power-related expenses, shall be reviewed by the Commission in adjudicatory proceedings to determine that such expenses were prudently incurred. Additional prudence reviews shall be conducted when the Commission determines that circumstances warrant such review.

(c) The Commission may impose any corrective action or penalty allowed explicitly or implicitly by law, including refund, as the result of a prudence review.

(d) Nothing in this Subchapter shall diminish the authority of the Commission to review for prudence or other reasons any utility contract, decision or other action for the provision of electric power capacity or energy.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 37. INTEGRATED RESOURCE PLANNING

165:35-37-1. Purpose of this Subchapter

(a) The purpose of this Subchapter is to establish fair, just, and reasonable rules and procedures for Commission review of the resource plans of utilities. The utility resource plans establish additional bases for substantial investment and expenses incurred by utilities to provide electric supply to retail consumers. The practices and policies embodied in a utility's resource plan have direct, substantial effects on the costs and reliability of the electric supply to be provided to retail consumers in Oklahoma. Resource planning is a complex process affecting decisions that account for a substantial portion of the total cost of electricity over the long term, including investments in generation and transmission facilities, purchases of power and fuel supply, price volatility mitigation, and investments in energy efficiency.

Recognizing the significance of the costs incurred based on resource plans, the Commission believes it is in the best interest of retail ratepayers and the utilities providing regulated retail electric supply to establish regular review of the utilities resource plans to ensure that the utilities' resource planning and resulting investment are reasonably and prudently conducted and that the overall cost of power supply to retail ratepayers is fair, just, and reasonable.

(b) This Subchapter establishes fair, just, and reasonable procedures for:

- (1) Setting standards for prudent resource planning;
- (2) Conducting periodic reviews of utility resource plans;
- (3) Participation of stakeholders, particularly those representing ratepayer interests, to review and have input into the utility's resource plans and the Commission's resource planning policies;

- (4) Establishing the need for additional resources serving as the basis for long-term competitive procurement of resources, including, but not limited to, utility construction of new electric generation facilities, the utility purchase of existing electric generation facilities, and the purchase of long-term power supplies;
- (5) Establishing objectives and action plans consistent with Commission resource planning policies;
- (6) Establishing a clear standard of prudent financial management including but not limited to a utility's demonstration of consideration of physical and financial hedging, cost effectiveness, and other tools of prudent financial management;
- (7) Establishing appropriate plans for capital expenditures for equipment or facilities at utility generation facilities necessary to comply with the Federal Clean Air Act, as amended, and other federal, state, local, or tribal environmental requirements;
- (8) Establishing a clear, before-the-fact foundation for the recovery of prudently incurred investment and expenses in subsequent rate and fuel and purchased-power cost recovery proceedings; and
- (9) Establishing the appropriate portfolio of products to be obtained through competitive procurement.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 29 Ok Reg 1541, eff 7-12-12]

165:35-37-2. Confidential Information

- (a) If a utility is required by this Subchapter to submit information to the Commission that is alleged by the utility to be confidential, a motion for a protective order concerning such information may be filed requesting a determination to be made by the Commission to protect the information pursuant to 51 O.S., Section 24A.22.
- (b) Pending a determination regarding approval of any protective order by the Commission, the Commission and Attorney General, at their option, may review the information claimed to be confidential at a mutually agreed upon location, provided that for purposes of 51 O.S., Section 24A.22, the information shall be deemed confidential pending such determination by the Commission.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06]

165:35-37-3. Public Meeting

- (a) A utility shall notify the Commission that it has prepared a proposed initial integrated resource plan at least thirty (30) calendar days prior to submission pursuant to 165:35-37-4. After giving notice, the Commission shall conduct a public meeting on the record concerning the utility's proposed initial integrated resource plan, allowing comment from interested persons as to the strengths and weaknesses of the proposed plan.
- (b) The utility shall take into account the comments made at the public meeting and make such changes to the plan as seem reasonable.
- (c) The utility shall make the proposed plan available prior to the public meeting to any person who requests it, except any portions subject to a Commission protective order.
- (d) The Commission may conduct similar public meetings at its discretion concerning updates to the integrated resource plan as provided by 165:35-37-4.

165:35-37-4. Integrated Resource Plan Reviews

(a) Each utility shall submit to the Commission a proposed integrated resource plan. The utility's first integrated resource plan was due on October 1, 2006, and subsequent plans shall be due every three (3) years thereafter, unless the utility requests an extension from the PUD Director or the utility requests a waiver from the Commission. The extension granted by the PUD Director shall not exceed six (6) months. Subsequent plans shall be developed and submitted as provided by the procedure set forth in OAC 165:35-37-5. The proposed resource plan shall include, among other things, a fuel procurement plan, purchased-power procurement plans, a risk management plan, an environmental compliance plan, and other elements as described further in this Subchapter. This plan will be made available upon request by any person or entity to the soliciting utility, except any portions subject to a Commission protective order.

(b) Each utility shall have an ongoing obligation to monitor markets and inputs and to notify the Commission when material changes in planning assumptions occur. As the integrated resource plan changes from year to year, the utility shall submit updates to the Commission. The Commission may require the utility to submit an interim, updated integrated resource plan to reflect material change(s) in planning assumptions.

(c) The integrated resource plan shall include, at a minimum, a tabular summary of each of the following Sections:

- (1) Schedule A: An electric demand and energy forecast;
- (2) Schedule B: A forecast of capacity and energy contributions from existing and committed supply- and demand-side resources;
- (3) Schedule C: A description of transmission capabilities and needs covering the forecast period;
- (4) Schedule D: An assessment of need for additional resources;
- (5) Schedule E: A description of the supply, demand-side and transmission options available to the utility to address the identified needs;
- (6) Schedule F: A fuel procurement plan, purchased-power procurement plan, and risk management plan;
- (7) Schedule G: An action plan identifying the near-term (i.e., across the first five [5] years) actions that the utility proposes to take to implement its proposed resource plan;
- (8) Schedule H: Any proposed RFP(s), supporting documentation, and bid evaluation procedures by which the utility intends to solicit and evaluate new resources; and
- (9) Schedule I: A technical appendix for the data, assumptions and descriptions of models needed to understand the derivation of the resource plan.
- (10) Schedule J: A description and analysis of the adequacy of its existing transmission system to determine its capability to serve load over the next ten (10) years, including any planned proposed changes to existing transmission facilities.
- (11) Schedule K: An assessment of the need for additional resources to meet reliability, cost and price, environmental or other criteria established by the Commission, the State of Oklahoma, the Southwest Power Pool, North American Electric Reliability Council, or the Federal Energy

Regulatory Commission. This assessment should address both base line forecast condition and important uncertainties, including but not limited to load growth, fuel prices, and availability of planned supplies.

(12) Schedule L: An analysis of the utility's proposed resource plan and any alternative scenarios necessary to demonstrate how the preferred plan best meets the planning criteria. Technical appendices should be included to document the planning analysis and assumptions used in preparing this analysis.

(13) Schedule M: A description and analysis of the Utility's consideration of physical and financial hedging to determine the Utility's ability to mitigate price volatility for the term covered by the IRP.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 24 Ok Reg 1827, eff 7-1-07; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 29 Ok Reg 1541, eff 7-12-12; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-37-5. Procedure for subsequent integrated resource plans

(a) A utility shall notify the Commission that it has prepared a proposed update of its integrated resource plan at least sixty (60) calendar days prior to submission pursuant to 165:35-37-4.

(b) To allow all stakeholders the opportunity to review and provide input regarding utility objectives, assumptions, planning scenarios, and other information contained in the proposed updated integrated resource plan, after giving notice and prior to submitting the final integrated resource plan, the utility shall conduct at least one technical conference for all stakeholders. Stakeholders then may submit comments to the utility as to the strengths and weaknesses of the proposed plan.

(c) The utility shall make the proposed plan available prior to the technical conference to any person who requests it, except any portions subject to a Commission protective order or confidentiality agreement.

(d) The utility shall take into account any comments received prior to or at the technical conference and make such changes to the plan as seem reasonable.

(e) The utility shall provide a facilitator to coordinate and assist the stakeholders in their discussions at the technical conference. The facilitator provided by the utility shall prepare meeting minutes from the technical conference and prepare a summary of stakeholder input for inclusion as an exhibit in the final integrated resource plan.

(f) The Commission and/or the Attorney General may, at its discretion, retain third party consultants and/or expert witnesses to review the proposed plan and participate in the technical conference on its behalf. The utility shall be responsible for, and be allowed recovery of, the cost of such third party consultants and/or expert witnesses.

(g) The Commission may conduct similar technical conferences at its discretion concerning updates to the integrated resource plan as provided by OAC 165:35-37-4.

(h) After the above procedure has occurred, the utility shall present its final integrated resource plan at a public meeting held at the Commission.

[Source: Added at 27 Ok Reg 2098, eff 7-11-10; Amended at 31 Ok Reg 1030, eff 9-12-14; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 38. RECOVERABLE COSTS

165:35-38-1. Purpose of Subchapter

The purpose of this Subchapter is to provide for utility recovery of (1) costs directly associated with transmission upgrades approved by a regional transmission organization of which such utility is a member and which upgrades are the result of an order by a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates; (2) capital expenditures for equipment or facilities necessary to comply with the Federal Clean Air Act (Public Law 84-159), as amended, and, as the Commission may deem appropriate, federal, state, local or tribal environmental requirements that apply to generation facilities; and (3) costs associated with the purchase or construction of a generation facility needed to provide reliable service using the competitive bidding RFP Process.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06]

165:35-38-2. Application and Scope of Subchapter

(a) This Subchapter is applicable to all electric utilities operating within the State of Oklahoma under the jurisdiction of the Commission.

(b) These cost recovery rules are promulgated to establish processes, procedures, enforcement, reporting, and monitoring provisions that apply to electric utilities regarding the expenditures referenced in 165:35-38-1.

(c) The intention of this Subchapter includes, but is not limited to:

(1) The provision of rules for the recovery of costs associated with transmission upgrades, environmental facilities installed at generation facilities, generation assets constructed by the utility, and generation assets acquired by the utility; and

(2) The protection of customers of a utility from imprudent financial obligations or costs.

(d) All amounts subject to recovery are subject to Commission audit and review. The Commission will resolve any disputes regarding this Subchapter.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06]

165:35-38-3. Transmission Upgrades

(a) Costs incurred by a utility that are directly related to transmission upgrades as set forth in 165:35-38-1 are presumed recoverable by such utility. However, the presumption may be rebutted by evidence presented by a complainant or through the audit and review process that the costs so incurred by the utility for such transmission upgrades exceed the scope of the project authorized by the regional transmission organization or federal regulatory authority order.

(b) Before costs set forth in 17 O.S. Section 286(A), as amended, are allowed to go into effect, a cause will be opened by the utility before the Commission. After notice and hearing and upon proper evidence, the Commission may authorize an electric utility to recover all or a portion of the costs incurred by the utility for such transmission upgrades.

(c) A utility seeking cost recovery for transmission upgrades as they pertain to this subsection may file an application to recover such costs and shall provide, at a minimum:

(1) A detailed summary of the costs for which recovery is sought;

(2) Evidence of the approval received by the utility from the regional transmission organization or order received from the federal regulatory authority giving rise to the transmission upgrade; and

(3) A proposed recovery mechanism to recover such costs, which shall be in accordance with Commission's traditional rate making procedures.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:35-38-4. Capital Expenditures to Meet Environmental Requirements

- (a) A utility may file an application pursuant to 17 O.S. Section 286(B), as amended, and this subchapter seeking Commission authorization of the utility's plan to make capital expenditures for equipment or facilities necessary to comply with the environmental requirements applicable to generation facilities as set forth in 17 O.S. Section 286(B).
- (b) If approved by the Commission after notice and hearing, the equipment or facilities specified in the approved utility plan shall be conclusively presumed used and useful.
- (c) The utility may elect periodically to adjust its rates to recover the costs of such expenditures provided that the utility shall file a request for a review of its rates pursuant to Section 152 of Title 17 of the Oklahoma Statutes.
- (d) Periodic rate adjustments as contemplated above shall not prevent a utility from seeking cost recovery of capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 27 Ok Reg 2098, eff 7-11-10]

165:35-38-5. Self-build or Purchase Options

- (a) An electric utility may elect to file an application pursuant to 17 O.S. Section 286(C), as amended, and this subchapter seeking approval by the Commission to construct a new electric generating facility, to purchase an existing electric generation facility or to enter into a long-term contract for purchased power and/or energy.
- (b) Upon application by an electric utility pursuant to this Subchapter, the Commission shall review the requested cost recovery.
- (c) If the soliciting utility wishes to consider an option for full or partial ownership of a self-build option, the utility must submit its construction proposal ("Self-build Proposal") to provide all or part of the capacity requested in the RFP stated in 165:35-34 at the same time the bids are requested.
- (d) Once submitted, the Self-build Proposal may not be modified by the soliciting utility. If a Self-build Proposal is selected and approved by the Commission, the amount the soliciting utility shall recover through the rate base or other cost-recovery methods without additional Commission approval is limited to the total project cost identified in the Self-build Proposal.
- (e) A Cause shall be opened by the utility for cost recovery if the competitive bidding RFP process established in 165:35-34 is not utilized and the utility wishes to gain approval of cost before construction starts.
- (f) Bid responses will be opened with the Independent Evaluator, Commission and the Attorney General present.
- (g) Bid award terms and conditions shall be posted on the utility's web site or electronic bulletin board within sixty (60) calendar days after receipt, with a notice to the Commission.
- (h) The Commission decision approving or denying the plan shall address the contents of the utility's resource plan, including its fuel procurement plan, purchased-power procurement plan, and risk management plan. If the record contains sufficient evidence, the Commission shall specifically approve or reject:

- (1) The utility's proposed plans for resources in the planning period,
 - (2) The utility's proposed plans for acquiring additional resources through the competitive acquisition process, and
 - (3) The utility's proposed RFP(s).
- (i) Upon the filing of an application pursuant to this Subchapter, the Commission will establish a procedural schedule, which shall provide for a Commission order within two hundred forty (240) calendar days of the date of such filing.

[Source: Added at 23 Ok Reg 699, eff 2-17-06 (emergency); Added at 23 Ok Reg 1666, eff 7-1-06; Amended at 27 Ok Reg 2098, eff 7-11-10; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 39. MINIMUM FILING REQUIREMENTS

165:35-39-1. Purpose and Scope of this Subchapter

- (a) The purpose of this Subchapter is to establish fair and reasonable rules and procedures for the Minimum Filing Requirements ("MFR") associated with the annual audit of fuel, purchased power cost recovery and purchased power supply acquisitions, of a utility ("Fuel Audit"), including but not limited to Prudence Reviews. These MFRs set forth the information to be filed and the documentation to be made available for examination by PUD Staff, the Attorney General, and to those parties that have intervened in the proceeding, subject to the appropriate confidentiality measures.
- (b) It is the intent of the Commission to establish a set of standards for the filing of MFR Packages that will facilitate the Commission's responsibilities in conducting Fuel Audits and Prudence Reviews and reflect the practices and policies of the Commission.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-2. Definitions and Acronyms

The following terms and acronyms shall have the meanings set forth below for the purpose of this Subchapter 39 to the Commission's Electric Rules (OAC 165:35):

"EIS market" means the Energy Imbalance Service market implemented pursuant to FERC-approved amendments to SPP's OATT on February 1, 2007.

"FERC" means the Federal Energy Regulatory Commission.

"Fuel Audit" means the statutory audit of an electric utility's costs of fuel and purchased power costs as delivered into the utility's system pursuant to 17 O.S. §§251 *et seq.*

"Fuel Supply Portfolio and Risk Management Plan" means the documentation required to be submitted to the Commission by each utility by Commission Order.

"Material Change," "Material Deviation," or "Material Impact" means any change deviation from planned operations, or cost impact to the utility's customers equal to or greater than three percent (3%) for any single line item or event reflected in the utility's total cost of fuel burned and purchased power during the Review Period.

"Minimum Filing Requirements" or "MFR" means the minimum filing requirements established by this Subchapter 39 of the Electric Rules to be filed or made available by a utility to the Commission, PUD Staff, the Attorney General, and interested parties, subject to appropriate confidentiality protection, upon the filing by PUD Staff of an application initiating a Fuel Audit or a Prudence Review.

"MFR Package" means all of the documentation to be provided or made available by the utility as identified in this Subchapter.

"Monthly Fuel Adjustment Clause ("FAC") filings" means the information electric utilities are required to file pursuant to 17 O.S. §253.B prior to implementing fuel and fuel related costs pursuant to a Commission approved fuel and purchased power adjustment tariff.

"OATT" means an Open Access Transmission Tariff as approved by the FERC.

"Production Tax Credits" or "PTCs" means an income tax credit available to owners or operators of electric generation facilities that produce electricity from "qualified energy resources". These include wind, geothermal, solar and hydropower. (26 USC 45 Electricity produced from certain renewable resources, etc.; Title 68 O.S. Section 2357.32A Credit for Electricity Generated by Zero-Emission Facilities).

"Prudence Review" means the biennial review of the fuel, generation, and purchased power related expenses incurred by a utility pursuant to OAC 165:35-35-1.

"Renewable Energy Certificates," "Green Tags," "Renewable Energy Credits," "Renewable Electricity Certificates," "Tradable Renewable Certificates," or "RECs" means tradable, non-tangible energy commodities in the United States that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource (renewable electricity). Solar Renewable Energy Certificates are RECs that are specifically generated by solar energy.

"Review Period" means the period of time, in calendar year increments, identified by PUD Staff in an application initiating a Fuel Audit or a Prudence Review.

"SPP", means the Southwest Power Pool, the Regional Transmission Organization recognized by the FERC and encompassing the State of Oklahoma and all or parts of surrounding jurisdictions.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-3. Confidential Information

(a) The Commission recognizes that some information to be disclosed within the MFR Package may be proprietary or business sensitive and such information should be treated as confidential for the protection of the utility and/or its customers. Schedules requiring the disclosure of confidential information shall contain, a statement to that effect in the MFR Package, and disclosure of confidential information shall be withheld until the Commission issues an appropriate protective order pursuant to 17 O.S. §24A.22. Any confidential information shall be specifically identified in each such schedule contained within the MFR Package. The utility shall file a motion for a protective order identifying the confidential information to be protected simultaneously with the filing of the MFR Package, and the Commission shall determine the manner in which confidential information should be protected.

(b) Information deemed to be confidential by the utility may be withheld from disclosure until the Commission issues an appropriate protective order.

(c) All information supplied by the utility in connection with any Fuel Audit or Prudence Review, except that information subject to a requested or existing protective order, shall be considered in the public domain.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07]

165:35-39-4. Initiation of Fuel Audit or Prudence Review

(a) PUD Staff shall initiate a Fuel Audit or Prudence Review by filing an application identifying the utility or utilities subject to the Fuel Audit or Prudence Review and identifying the period of time the Fuel Audit or Prudence Review is intended to cover. PUD Staff shall file its application for a Fuel Audit or Prudence Review no sooner than one hundred fifty (150) calendar days subsequent to the end of the period identified for review.

(b) Each utility being reviewed shall make a filing meeting the MFRs, sixty (60) calendar days after PUD has filed an application commencing a Fuel Audit or Prudence Review. The MFR Package shall contain documentation as described in this Subchapter covering January through December, of the period identified in the application.

(c) All Class A Electric Companies as outlined in OAC 165:70-1-4(a)(1)(A), whether for Fuel Audit or Prudence Review, shall file direct testimony concurrently with the filing of the MFR Package.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-5. Actual Fuel and Purchased Power Expenses

Under this Section, a utility must file documentation of actual fuel expenses, purchased power expenses, and off-system power sales revenues that occurred during the Review Period. This information should be contained in Schedule A of the MFR Package, consisting of the following:

- (1) A thorough and detailed narrative of the fuel and purchased power expenses, procurement practices, and procedures;
- (2) An electronic spreadsheet summary of annual volumes and expenses and revenues for fuel and purchased power, consistent with the format of the utility's monthly Fuel Adjustment Clause (FAC) filings;
- (3) Electronic copies of the utility's monthly FAC filings. The spreadsheet should include a tabular summary of the type, volume and expense/revenues associated with affiliate fuel and purchased power transactions, and the summary should address energy production by separate fuel types;
- (4) A comparison in matrix form of fuel and purchased power expenses and off-system sales revenues for the Review Period identified in PUD's application and for the previous two most recent years;
- (5) A narrative explanation of the key factors and events that had a Material Impact on the utility's actual fuel and purchased power expenses, and their relative magnitudes.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-6. Fuel and Purchased Power Procurement, and REC Management Practices

Schedule B of the MFR Package shall include a thorough and detailed narrative for the fuel and purchased power procurement practices and procedures, both short-term and long-term, of the utility during the Review Period, and REC management practices, with the following information:

- (1) A list of the fuel and purchased power procurement practices, REC management practices, and Risk Management Plans relevant to the Review Period that are filed with the Commission together with copies of all such plans previously submitted but not filed;
- (2) A list of Material Deviations from the fuel and purchased power procurement and Risk Management Plans as the plans were implemented during the Review Period to include a discussion of any resulting price exposure and the causes for the Material Deviations from the plans to include material sales and/or purchases from the Southwest Power Pool Energy Imbalance Service (EIS) Market;
- (3) A description of the safeguards in place concerning affiliate transactions to ensure fair treatment of non-affiliated potential providers of commodities or services;
- (4) A list of fuel and purchased power solicitations and actions during the Review Period, including the type of competitive procurement methods used, the timeline for each solicitation, a narrative description of each solicitation, and copies of major fuel and purchased power transactions resulting from such solicitations of one month or more in duration.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-7. Fuel, Purchased Power, Wind Energy Purchased Power and Fuel-Related Contracts

Schedule C of the MFR Package shall include the following information related to fuel, purchased power, wind energy purchased power and fuel-related contracts in effect during the Review Period:

- (1) A list of all fuel and fuel-related contracts in effect during the Review Period between the utility and any affiliate of the utility that supplied fuel or fuel-related services to the utility;
- (2) A list of all natural gas contracts in effect during the Review Period including natural gas contracts having a term less than one year, which are considered "spot market" contracts. The utility may provide one or more "generic" contracts which represent the terms of individual spot market contracts, in lieu of the natural gas contracts. The following information relating to all gas purchase contracts, including contracts with affiliates, shall be provided in summary form:
 - (A) Contract number/serial number/other designation;
 - (B) Supplier;
 - (C) Negotiation date or date signed; and
 - (D) Term and specific service provided under the contract
- (3) Upon request, each contract identified in this schedule shall be made available, subject to any confidentiality provisions contained therein;
- (4) A list of all applicable fuel supply contracts in effect during the Review Period including coal purchases, oil purchases, and any other fuel commodity contracts;
- (5) A list of all purchase power contracts, including wind energy purchase power agreements, in effect during the Review Period for all purchases of energy, capacity or both having a term of thirty (30) calendar days or longer;
- (6) For those contracts requiring the use of government or other published indices to adjust the price, provide the monthly values for each index

during the Review Period and identify the source of the values for each index;

(7) With respect to each contract, provide monthly minimum, maximum and actual takes by contract for the Review Period;

(8) Documentation for all occurrences when the minimum take or pay volumes under contract were not met during the Review Period;

(9) Documentation of analyses performed to evaluate any fuel or fuel related solicitations having contract terms of thirty (30) calendar days or longer during the Review Period that affected fuel costs during the period. It is not necessary to provide documentation for contracts previously approved by the Commission; and

(10) With respect to wind energy purchase power agreements and limited to those PTCs and RECs owned by the utility pursuant to the terms of any such agreements, the utility shall report the amount of PTCs and RECs generated in the reporting year; the PTC and REC balance carried forward from prior years; PTCs and RECs available to be used; PTCs and RECs expected to be utilized; PTCs and RECs actually used and related credits and sales revenue, PTCs and RECs expiring unused and the PTC and REC balance carried forward.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-39-8. Fuel Transportation Agreements

Schedule -D- of the MFR Package. Provide a list of each transportation agreement that was in place for natural gas and coal, the associated volumes transported, and the annual expense. Identify the agreements utilized during the Review Period.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07]

165:35-39-9. Disclosure of all Fuel Related and Purchased Power Affiliate Transactions

Schedule -E- of the MFR Package. To the extent that a utility has not provided a complete disclosure of all fuel related affiliate transactions during the recovery period in response to the disclosure requirements otherwise set forth in this Subchapter, the utility shall provide a narrative explanation of any such transactions.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07]

165:35-39-10. Material Public Filings and Disclosures

Schedule -F- of the MFR Package. Each utility shall file a list of all material public filings and disclosures made to this Commission, the FERC, or the SEC in which the utility disclosed information related to fuel, purchased power, off-system sales, or fuel procurement relevant to the Review Period.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07]

165:35-39-11. Generator Availability and Dispatch

Schedule G of the MFR Package shall include generator availability and dispatch during the Review Period and a narrative description of the same, including Material Deviations from planned operations including the following:

- (1) A tabular summary of the monthly availability and output of each utility generating unit and any major non-utility generating unit under long-term contract to the extent available;
- (2) A narrative description of each generating unit utilized by the utility during the Review Period, the manner in which it operated (i.e. baseload energy, peaking, load following service, ancillary services, etc.) during the Review Period, and the annual average heat rate achieved by each generating unit during the Review Period including the actual average monthly heat rate by including MMBtu burned per unit per month and the KWH generated each month for each unit;
- (3) A narrative explanation of all significant unusual events with respect to generating unit availability and the extent to which the events affected the utility's fuel and purchased power expenses;
- (4) A list of forced and scheduled outages and deratings whether it was an unplanned outage or forced outage that occurred during the fuel Review Period. Information submitted should contain unit name, date started, date ended, duration of outage or power reduction in hours, reason for outage or information may be reported consistent with North American Electric Reliability Corporation (NERC) Generating Availability Data Survey (GADS) reporting requirements in effect during the Review Period for each utility generating unit, including a description of the reason(s) for each outage and derating;
- (5) Description and explanation of any limitations on the output of utility generating units, including excess supplies or shortages of fuel; and
- (6) A tabular summary of utility owned wind generation which includes:
 - (A) Name of wind facility;
 - (B) Name plate capability for each facility;
 - (C) Monthly capacity factor for each facility;
 - (D) Annual capacity factor for each facility;
 - (E) Actual MWH output;
 - (F) Unit value amount of PTC (credit/MWH);
 - (G) PTCs generated; and
 - (H) REC information, including amount sold, sales revenue, and expiration dates.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Amended at 28 Ok Reg 2252, eff 7-25-11]

165:35-39-12. Eligible Fuel Costs

Schedule -H- of the MFR Package shall contain the following:

- (1) The utility shall provide in this schedule a distribution of eligible fuel expenses for each month of the eligible period, in the following categories for each generating station:
 - (A) Coal and Lignite: Coal and lignite costs as delivered to the utility's plants;
 - (B) Natural Gas:
 - (i) Gas cost;
 - (ii) Gas transportation (if contracted separately);
 - (iii) Gas storage (if contracted separately); and
 - (iv) Other costs (specify);
 - (C) Fuel Oil:
 - (i) Oil cost, and
 - (ii) Other costs (specify).

(D) Other costs: If costs are not readily identifiable and separable in the Company's accounting system, and are included in a cost category listed above, then indicate the type of costs and the cost category in which they are included.

[Source: Added at 24 Ok Reg 1827, eff 7-1-07]

165:35-39-13. Sunset Provisions [REVOKED]

[Source: Added at 24 Ok Reg 1827, eff 7-1-07; Revoked at 28 Ok Reg 2252, eff 7-25-11]

SUBCHAPTER 41. DEMAND PROGRAMS

165:35-41-1. Purpose

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementation of Demand Programs that may receive cost-recovery treatment from the Commission. The rules in this Subchapter shall apply to Demand Portfolios having program years that begin on January 1, 2016 and thereafter.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-2. Goals

- (a) The goals of Demand Programs are to:
- (1) Minimize the long-term cost of utility service,
 - (2) Avoid or delay the need for new generation, transmission, and distribution investment, and
 - (3) Encourage and enable utility customers to make the most efficient use of utility capacity and energy and reduce wasteful use of energy.
- (b) The Commission shall set specific savings goals for each utility to reduce the rate of growth of peak demand, energy usage, and capacity addition without adversely affecting customer comfort or state economic activity, based on market potential studies, integrated resource plans, or other evidence presented as part of the hearing process for approval of a utility's Demand Programs.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-3. Definitions

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

"Administrative Cost" means the expenses incurred in controlling and supporting Demand Programs that are not tied to the marketing and delivery of those programs. These expenses include:

- (A) reviewing and selecting Demand Programs in accordance with this section;
- (B) providing regular and special reports to the Commission, including reports of Demand Program savings;
- (C) a utility's costs for an annual review of Demand Programs or true-up proceeding for cost recovery mechanism;
- (D) Supervisory functions performed by Demand Portfolio Manager that are related to supervision of employees and related human resource administration.

"Average customer bill" means the value derived from the sum of all ratepayer bills in a particular customer sector divided by the number of ratepayers

in that sector; i.e., the arithmetic mean. A utility may provide average customer bills for customer rate classes rather than customer sectors if it chooses to do so and clearly identifies the choice.

"Barrier" means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes electricity user participation in Demand Programs. Barriers may include but are not limited to language, physical or mental disability, access to capital, educational attainment, utility meter type, economic status, property status, or geography.

"Base line" means kilowatt-hour energy use, trend in kilowatt-hour energy use, percentage of capacity use over time, trend in percentage of capacity use, and description of conditions affecting such uses and trends prior to implementation of a Demand Program designed to affect particular uses and trends. When evaluating energy efficiency measures implemented or installed as a result of the Demand Programs, the base lines to be used in savings calculations shall be either the performance standard base line (the minimum efficiency prevailing in the market) or a customized, project specific base line. For Demand Programs that replace existing equipment before the end of its expected useful life, savings calculations must incorporate a two-part baseline. First, for the period of the remaining life of the replaced equipment, the baseline is the difference between the energy usage of new equipment and that of the replaced equipment. Second, for the remainder of the life of the new equipment that extends beyond the remaining life of the old equipment, the baseline is the difference between the new equipment and the standard equipment that otherwise would have been purchased at the end of the useful life of the old equipment.

"California Standard Practice Manual" means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001 edition, produced by the California Energy Commission and the California Public Utility Commission.

"Cost effective" and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers the most benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

"Customized opportunity" means a Demand Program tailored to an individual electricity user's needs, including opportunities for high-volume electricity usage customers to self administer and self fund their own programs.

"Deemed savings" means an estimate of energy or peak demand savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

"Demand portfolio" means a collection of energy efficiency and demand response programs offered or proposed by an electric utility; for example, a residential weatherization program, a program to trade ordinary commercial fluorescent ballasts for equipment with a higher efficiency rating, a general education program for energy efficiency, and a program to provide financial inducement for purchase of properly sized industrial motors is a demand portfolio.

"Demand portfolio administrator" means the utility employee responsible for supervising the utility's energy efficiency and demand response efforts as proposed in compliance with this subchapter.

"Demand program(s)" means the Energy Efficiency and Demand response programs offered or proposed by an electric utility. Collectively, the Demand Programs make up the company's Demand Portfolio.

"Demand response" means any load management program in which a utility offers electricity users payments or other inducement to reduce their demand for electricity for specified periods of time.

"Education" means any formal program, training, or activity designed to raise awareness of, and participation in company specific Demand Programs or increase general knowledge concerning energy savings opportunities and efficiency topics. These programs may include communication efforts designed to reach customers with energy efficiency information through a variety of mediums, including but not limited to, television, radio, print and web-based media.

"Electricity user" means a real property freeholder or leaseholder at a specific location who consumes energy at that location, regardless of whether the consumer receives an energy bill directly from a utility.

"Energy efficiency" means reducing electricity consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

"Evaluation, measurement, and verification or EM&V" means a systematic, objective study conducted periodically to authenticate, assess, and report how well a Demand Program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

"EM&V Costs" means the costs associated with performance of studies and activities intended to determine the actual savings and other effects from Demand Programs.

"Free rider" means a program participant who would have implemented the program measure or practice in the absence of the Demand Program. A free rider can be total, in which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after which the program measure was implemented.

"Fuel switching" means changing from natural gas to electricity or from electricity to natural gas for a particular end-use service or installing electric heating devices in new construction where natural gas service is available or can be economically made available. It does not include installation of any device that relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

"Goal" means a target to be achieved by a utility's demand portfolio. A goal may be expressed in kilowatts, kilowatt-hours, percentage reduction or limitation, years that anticipated construction of utility plant is delayed, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

"Gross savings" means the values reported by an electric utility after the Demand Program activities have been completed, but prior to the time an independent, third-party evaluation of the savings is performed. As with projected savings estimates, these values may utilize results of prior evaluations and/or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Gross savings can be indicated as first year, annual demand or energy savings, and/or lifetime energy or

demand savings values.

"Hard-to-reach customers" means

(A) Residential electricity users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians,

(B) Commercial electricity users who rent their business property from persons other than the users' owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial electricity users who traditionally fail to engage in energy efficiency or demand response programs because of one or more severe barriers beyond those experienced by average residential or commercial customers in a utility's service area.

"High-volume electricity user" means a customer within a utility company's service territory whose annual consumption is 15 million kWh of electricity or greater regardless of the number of meters or service locations.

"Incentive" means a sum of money a utility may be allowed to recover--in addition to program costs and lost net revenues. Incentives shall be based on the utility's verified savings from the Demand Portfolio for the previous program year and shall be calculated as described in 165:35-41-8.

"Inducement" means anything of value offered by a utility to encourage an electricity user or trade ally to engage in Demand Programs approved pursuant to this subchapter. While inducements can include a variety of costs, direct payments to customers or trade allies on behalf of customers shall make up the majority of total inducement costs.

"Lost net revenue" means income from the retail sale of electricity forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales. Lost net revenue shall be calculated using verified net savings, shall exclude customer service charge revenues (non-volumetric revenues), and shall exclude revenues collected from riders with annual true-ups.

"Low-income customer" means a residential electricity user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Planas provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

"Market potential study" means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

"Market transformation" means the strategic process of influencing customer population and trade ally's decision-making that creates lasting change in customer behavior by removing barriers or exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

"Measure" means the equipment, materials, or actions that are installed or used within a Demand Program that results in measurable or verifiable savings; for

example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

"Net benefits" equal the difference between total benefits and total costs as calculated for cost-effectiveness. The economic objective of Demand Resource portfolios is to maximize net benefits. A Demand Portfolio is cost-effective if it yields positive net benefits.

"Net savings" means the total change in load that is directly attributable to a Demand Program or the Demand Portfolio. This change in energy and/or demand use shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net-to-gross" means a factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor may be made up of a variety of factors that create differences between gross and net savings, commonly considering the effects of free riders and spillover.

"Peak demand" means a utility system's maximum annual customer-driven electricity requirement, measured in kilowatts.

"Peak shaving" means reducing demand for electricity during high-use hours.

"Program" means an organized set of activities or measures directed toward the common purpose of energy efficiency or demand response that a utility undertakes or proposes to undertake to reduce peak demand or future growth in energy or capacity demand; for example, a general offer to assist homeowners in weatherizing their homes is a program.

"Program cost" means the expenditures, including expenditures paid to a third -party to deliver a program, incurred by a utility to achieve capacity, energy, and peak demand savings through Demand Programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's demand program costs are all Administrative Costs, Education costs, labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other program delivery expenditures incurred by the utility for operation of the Demand Programs, regardless of whether the costs are expensed or capitalized.

"Program implementer" means the person who puts a Demand Program into practical effect.

"Projected incentives" means the amount of estimated annual incentives calculated at the time the Demand Portfolio is submitted to the Commission for initial approval, or subsequent modification, of the Demand Portfolio.

"Projected savings" means the values reported by an electric utility prior to the implementation of the Demand Programs. These are typically estimates of savings prepared for Program and/or Demand Portfolio design or planning purposes. These values are based on pre-program or Demand Portfolio estimates of factors such as per-unit savings values, operating hours, Net-to-Gross ratios, installation rates, and savings persistence rates. These values can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. These values can also be indicated as Gross savings and/or Net savings. Projected savings are reflected in the goal reduction as set in this subchapter.

"Research and development" means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

"Savings" means a reduction in the rate of growth of energy use, as measured in kilowatt-hours, or capacity addition, as measured in kilowatts, or peak demand, as measured in kilowatts.

"Spillover" means the reductions in energy consumption and/or demand caused by the presence of a Demand Program beyond the Demand Program-related gross savings of the participants and without financial or technical assistance from the program. Spillover can be applied to participants, consumers directly participating in a Demand Program, and/or non-participants.

"Standard offer" means a Demand Program available to a group of customers or customers generally on the same terms and without customization.

"Trade allies" means contractors, retailers, skilled laborers, service providers, and wholesale distributors who support programs Demand Programs through sale or installation of goods and services.

"Verified savings" means values reported by an electric utility after review by an independent third party evaluator. The third party evaluator shall be chosen by the utility and such costs shall be determined to be a Program Cost. These values should reflect all adjustments, including corrections for any known data errors and actual installation rates, and should also be adjusted by revised values for known factors such as per-unit savings values, operating hours, savings persistence rates, and net to gross adjustments.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-4. Demand portfolio submission and implementation

(a) All electric utilities under rate regulation of the Commission having more than 10,000 meters in the state of Oklahoma shall propose, at least once every three years, and be responsible for the administration and implementation of a Demand Portfolio of Demand Programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before July 1 prior to the year the programs will be effective. The application shall describe the Demand Portfolio and contain the following information:

- (1) A description of the intent of the Demand Portfolio as a whole;
- (2) A description of the intent of each Demand Program;
- (3) A description and quantification of the target market of each Demand Program, differentiated by customer sectors;
- (4) A base line describing the state of the market that each Demand Program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;
- (5) A description of the barriers to investment in energy efficiency and demand response in the absence of each Demand Program and the ways each program Demand Program will reduce or eliminate these barriers;
- (6) A description of research and public input that contributed to the development of the content of each Demand Program;
- (7) A report of the cost-effectiveness of each Demand Program and the Demand Portfolio, including program and measure-level supporting data which shall include, but not be limited to, cost-effectiveness screening assumptions of gross and net energy and demand savings, coincident

demand factors, energy allocation factors for seasonal and for peak, off-peak and shoulder periods, non-electric resource benefits, non-resource benefits, participation and/or measure unit numbers, inducement levels, measure cost, and other non-inducement program costs;

(8) A detailed description of the derivation of the energy, generation, and transmission and distribution avoided costs, retail cost projections, reserve margins, discount rates, and average and peak line loss assumptions used in the cost-effectiveness calculations.

(9) A description of how each Demand Program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;

(10) A plan for evaluation, measurement, and verification of performance and results of the demand portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate; provided that costs associated with the EM&V plan shall not exceed five percent (5%) of the total three-year Demand Portfolio budget;

(11) A plan for evaluation of the market effects of each Demand Program or applicable group of programs;

(12) A plan for evaluation of administration and implementation of each Demand Program or applicable group of programs;

(13) A plan for ending a Demand Program, if applicable;

(14) A process for amending a Demand Program;

(15) An annual budget for each Demand Program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;

(16) A report on how the Demand Portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;

(17) A report on how the Demand Portfolio meets savings goals that may be in place at the time of filing;

(18) An estimate of expected savings in peak demand, energy use, and capacity, with location information about the source of savings if savings are not expected to be evenly distributed throughout the utility system;

(19) Detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment and calculation of lost net revenue, and additional incentives the utility proposes it requires to make the programs workable; and

(20) Identification of the Demand Portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number.

(b) Demand Portfolios shall:

- (1) Contain Demand Programs for all customer sectors;
- (2) Strike a balance among procuring peak demand reduction, procuring energy savings, procuring capacity savings, educating the public, and transforming markets for energy efficiency;
- (3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;
- (4) Contain customized opportunities for energy efficiency and demand response among larger customers;
- (5) Not include programs or measures that promote fuel switching. For new construction, an electric utility shall not offer customer or builder

inducements for the use of specific electric equipment or appliances with the exception of programs or measures that promote renewable technologies such as geothermal, solar and other renewable resources;

- (6) Be consistent with the utility's integrated resource plan;
- (7) Have an implementation schedule of no more than three years;
- (8) Address opportunities presented by new construction and renovation;
- (9) Promote comprehensive energy efficiency and demand response in buildings;
- (10) Address programs for low-income customers and hard-to-reach customers to assure proportionate Demand Programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Demand Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other Demand Programs; and
- (11) Allow any High-Volume Electricity User, after the utility has a reasonable opportunity to contact and present customized opportunities to such user, to opt out of some or all Demand Programs by submitting notice of such decision to the director of the Public Utility Division and to the electric utility that submits the Demand Portfolio.

(A) High-Volume Electricity Users may opt out with thirty (30) days notice after the company has received final approval of the Demand Portfolio.

(B) High-Volume Electricity Users who chose to participate in Demand Programs shall remain as a participant for the Demand Portfolio period (three years) and shall pay their calculated contribution to the Demand Programs recovery for the Demand Portfolio period. This requirement does not apply to High-Volume Electricity Users who participate only in the demand response portion of the Demand Programs.

(C) High-Volume Electricity Users who chose to opt out may not opt back in unless they agree to pay their calculated contribution to the Demand Programs recovery for the Demand Portfolio period. This requirement does not apply to High-Volume Electricity Users who participate only in the demand response portion of the Demand Programs.

(D) Once a High Volume Electricity User has opted out of Demand Programs, none of the costs of any Demand Programs shall be charged to such User, including its affiliate or subsidiary listed on such User's opt out notice, unless and until the User chooses to opt back into the Demand Programs.

(c) Demand portfolios may:

- (1) Integrate energy efficiency and demand response;
- (2) Include research and development and pilot programs that would lead to effective Demand Programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for Demand Programs and the Commission finds the cost-effectiveness for the Demand Portfolio remains sufficient;
- (3) Encourage utility cooperation in state, regional and national programs that have the potential to save energy, reduce peak demand, or avoid capacity addition in Oklahoma; and

- (4) Encourage utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance.
- (5) Encourage utility cooperation in state, regional and national efforts to accelerate the development and improve the enforcement of building energy codes and product efficiency standards.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-5. Commission consideration

- (a) In reviewing Demand Portfolios, the Commission will consider:
 - (1) The quality of the programs in all their elements relative to their program objectives;
 - (2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;
 - (3) The cost-effectiveness for each program and for the Demand Portfolio; individual programs or individual measures for a specific program do not have to be cost-effective if their inclusion is expected to provide for greater comprehensiveness, customer or trade ally participation, or address Hard to Reach Customer participation
 - (4) The savings goals;
 - (5) The availability of programs to all customers;
 - (6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation and include stakeholder interests;
 - (7) The effect on rates, average customer bills, and total cost of service;
 - (8) Forecasts of utility plant that would be required absent savings from the energy efficiency and demand response programs;
 - (9) Consistency with the most recently filed integrated resource plan;
 - (10) The effect on the environment, to the extent of Commission authority;
 - and
 - (11) Other evidence the Commission finds relevant.
- (b) The Commission will endeavor to issue an order within ninety days of the filing of the application.
- (c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.
- (d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis, provided that:
 - (1) Administrative costs shall not exceed ten percent (10%) of portfolio costs;
 - (2) All Program Costs should not add more than \$2.50 to the residential sector's monthly average customer bill unless benefits and rationale for exceeding cap can be proven; bill impacts on other classes of customers shall reflect allocated Demand Program cost recovery.

- (3) The cost of time-of-use devices or other equipment required for billing purposes and their installation shall be specifically excluded from program costs (directly or indirectly);
- (4) Tariffs covering rates or riders for Demand Programs shall be updated to be in compliance with this subchapter or in accordance with OAC165:35-1-3 (f).
- (e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:
 - (1) The program is not terminated earlier than specified in the program; and
 - (2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.
- (f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to, set a hearing before the Commission or an administrative law judge.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-6. Evaluation, measurement, and verification

- (a) Utilities are responsible for timely evaluation, measurement, and verification (EM&V) of their energy efficiency and demand response programs. The EM&V should be conducted by an independent third party evaluator chosen by the utility and cost of such EM&V shall be determined to be a Program Cost.
- (b) The intent of the evaluation, measurement, and verification process is:
 - (1) To provide a reliable calculation of the net savings produced by energy efficiency and demand response programs;
 - (2) To assess the effects of programs on the market for energy efficient products and services and products and services that support demand response programs; and
 - (3) To assess the effectiveness of the administration and implementation of energy efficiency and demand response programs.
- (c) Utilities shall prepare and maintain a program-tracking database.
- (d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.
- (e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.
- (f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to energy efficiency and demand response programs will be included in the evaluation, measurement, and verification plan.
- (g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-7. Reporting

- (a) Each utility shall submit an annual report by July 1 of each year on the performance of the Demand Portfolio for the preceding program year and cumulative program performance which shall include the information enumerated in this section.

- (b) The annual report shall be submitted with any true-up mechanism for cost recovery in order for the Public Utility Division to evaluate and review cost recovery, lost revenue and incentive calculations proposed to be recovered from consumers.
- (c) Energy efficiency program results and demand response program results will be reported separately.
- (d) The report shall contain a Demand Portfolio summary reflecting the scale of each Demand Program as a part of the Demand Portfolio and will include the following:
- (1) Name of Demand Program listed by customer category;
 - (2) The date each Demand Program was started or the date each Demand Program was revised;
 - (3) The number of participating customers per Demand Program;
 - (4) By Demand Program, approved projected energy and demand savings;
 - (5) Gross energy and demand savings and performance of each Demand Program;
 - (6) Verified energy and demand savings by Demand Program and methods used to verify these savings;
 - (7) For education programs, measurements of outreach efforts, including pre-program and post program results. Copies of evaluations, surveys, focus group results, and other measurement techniques used to gauge effectiveness of education efforts;
 - (8) Levelized cost per kWh for the Demand Portfolio, Demand Program, and levelized cost per kWh by customer sector including all assumptions used to make the calculation;
 - (9) Demand Portfolio funding as a percent of total annual electricity revenue;
 - (10) Demand Portfolio energy savings as a percent of total annual energy sales;
 - (11) The projected program costs.
 - (A) These costs should be separated into the following categories to allow review of spending:
 - (i) Administrative costs;
 - (ii) Inducements: direct payments and other inducements;
 - (iii) Education and marketing costs;
 - (iv) Program delivery costs;
 - (v) EM&V costs.
 - (B) Workpapers to allow review and reconciliation of accounting information:
 - (i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;
 - (ii) General Ledger: a copy of, or access to, the general ledger and subledgers; and
 - (iii) Comparative Trial Balances: a schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
 - (12) The actual program costs.
 - (A) These costs should be separated into the following categories to allow review of spending:
 - (i) Administrative costs;
 - (ii) Inducements: direct payments and other inducements;

- (iii) Education and marketing costs;
 - (iv) Program delivery costs; and
 - (v) EM&V costs.
- (B) Workpapers to allow review and reconciliation of accounting information.
- (i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;
 - (ii) General Ledger: a copy of, or access to, the general ledger and subledgers; and
 - (iii) Comparative Trial Balances: a schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year;
- (13) Projected lost revenues;
- (14) Actual calculated lost net revenues, including workpapers and working spreadsheets (formulas, calculations, linkages, and assumptions) in sufficient detail to allow review of adjustments to verify energy and demand savings;
- (15) Projected incentives, including project cost effectiveness tests;
- (16) Actual calculated incentives, including workpapers and working spreadsheets (formulas, calculations, linkages, and assumptions) for updated cost effectiveness tests, in sufficient detail to allow review of cost effectiveness calculations;
- (17) The utility's annual growth in metered energy and peak demand for the previous three (3) years, with a calculation of the average growth rate over that entire period by customer class or major customer class segments;
- (18) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;
- (19) The amount of reduced emissions and water consumption experienced by the utility, including all assumptions and calculations details, during the Demand Program period for the current program year;
- (20) By Demand Program, a summary of spending including the following:
- (A) Administrative costs;
 - (B) Inducements: direct payments and other inducements;
 - (C) Education and marketing costs;
 - (D) Program Delivery Costs; and
 - (E) EM&V costs;
- (21) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;
- (22) A detailed description of each Demand Program reflecting the scale of the program as a part of the Demand portfolio that includes the following:
- (A) Number of customers served by each Demand Program or program category;
 - (B) Program or program category expenditures;
 - (C) Verified energy and peak demand savings achieved by the Demand Program or program category, when available; and
 - (D) A description of proposed changes in the Demand Program plans;
- (23) A list of research and development activities included in the Demand Portfolio, their status, and a report on the connection between each activity and effective Demand Programs;

- (24) Identification of Demand Program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers;
 - (25) The number of customers eligible for High-Volume Electricity User opt out, their aggregate load as a percentage of total energy sales, the number of such customers that have opted out, and the percentage of total energy sales that they comprise. The number of municipal or state customers that have opted out and the aggregated load this represents as percentage of total energy sales; and
 - (26) Identification of instances in new construction or renovation when a natural gas main served a location so a gas furnace or water heater could have been installed but the customer installed an electric device and an electric utility inducement was provided.
- (d) After receiving the report, the Commission:
- (1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing; and
 - (2) Will endeavor to act on the report within ninety (90) days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.
- (e) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in program administration, delivery or planning.

[Source: Added at 26 Ok Reg 1849, eff 6-25-09; Amended at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-8. Incentives

- (a) Each utility shall be eligible to receive an incentive for successful implementation of their Demand Portfolio if:
- (1) the Demand Portfolio achieves a minimum of 80% of the individual utility's goal ratio (Verified savings divided by the Projected savings);and
 - (2) the Demand Portfolio achieves a total resource cost test benefit/cost ratio (TRC:B/CR) that is greater than one; and
 - (3) the Demand Portfolio achieves a utility cost (UC) test benefit/cost ratio that is greater than 1.2.
- (b) No incentive shall be allowed for performance of the Demand Portfolio if the Utility fails to pass all of these threshold measures (OAC 165:35-41-8(a)(1)and(2)).
- (c) The Incentive will be calculated as follows:
- (1) A maximum incentive of 15 percent of Net Benefits will be paid for achievement of 100 percent (100%) or greater of the total annual energy savings goal.
 - (A) The goal ratio (Verified savings divided by the Projected savings) must be 80 percent (80%) or greater to receive an incentive.
 - (B) Incentive for savings achieved between 80 and 100 percent of the savings goal will be determined by multiplying the goal ratio by the maximum incentive percentage.
 - (2) The Demand Portfolio costs to be included for review of achievement of Demand Portfolio shall include all costs incurred for implementation of Demand Programs including all program costs, education or outreach program costs, Administrative costs, and EM&V costs.

- (3) Costs incurred for the implementation or reporting of the Demand Programs which are not directly incurred for a specific program are to be allocated to all Demand Programs and included as part of the Demand Program costs in determining Demand Portfolio cost effectiveness.
- (d) The Incentive will be capped at 15 percent of Demand Portfolio costs inclusive of program delivery costs, education and/or marketing outreach costs, Administrative costs and EM&V costs.

[Source: Added at 31 Ok Reg 1057, eff 1-1-16]

165:35-41-9. Stakeholder process

- (a) Each utility shall have, at a minimum semi-annual stakeholder meetings, one of which is to be held within 30 days of the submittal of the Annual Report, as set forth in 165:35-41-7. Notice of such meetings shall be made at least 30 days prior to the date of the stakeholder meeting.
- (b) At each meeting the utilities will present their most current data as to savings goal attainment and budget expenditures at the Demand Portfolio, customer sector and Demand Program level. The utility will highlight any program changes implemented since the previous meeting and any planned changes that will occur prior to the next meeting.
- (c) In the years in which a utility plans to file a Demand Portfolio application as required by OAC 165:35-41-4, the Public Utility Division shall use one of the semi-annual stakeholder meetings to obtain stakeholder feedback on the proposed application.

[Source: Added at 31 Ok Reg 1057, eff 1-1-16]

SUBCHAPTER 43. TRANSMISSION ONLY UTILITY

165:35-43-1. Purpose of this Subchapter

The purpose of this Subchapter is to establish fair, just and reasonable rules and procedures for a Utility that builds, constructs, owns, operates, controls, manages or maintains Transmission Line(s) or services within the State of Oklahoma. This Subchapter applies to Transmission Only Utilities that build, construct, own, operate, control, manage or maintain Transmission Line(s) within the State of Oklahoma. This Subchapter does not address a Utility's authority to exercise eminent domain, condemnation, siting, or project-specific approval.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12]

165:35-43-2. Definitions

The following words and terms, when used in this Sub-chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Interconnection" means two or more electric systems having a common transmission tie that permits a flow of energy between them. An Interconnection includes a common transmission tie between a Transmission Line and generation facilities, between a Transmission Line and load facilities, or between a Transmission Line and one or more other Transmission Line(s).

"NERC" means the North American Electric Reliability Corporation.

"SPP" means the Southwest Power Pool, Inc.

"Transmission Line" means a set of conductors, insulators, supporting structures, and associated equipment used to move power at 60 kilovolts (kV) or above.

"Transmission Only Utility" or "TOU" means an entity that builds, constructs, owns, operates, controls, manages, or maintains Transmission Line(s) within the State of Oklahoma and provides no retail service subject to the rate jurisdiction under 17 O.S. Section 151 et seq. by this Commission. This shall not include Utilities operated by municipalities, governmental bodies, or unregulated cooperatives.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-43-3. Recognition by the Commission

(a) If an entity wishes to seek recognition by the Commission that such entity is a Public Utility, as is defined by Title 17 O.S. Section 151, such entity shall file an application before the Commission seeking such recognition as a Public Utility.

(b) Appropriate assessment fees may be applied to such entity during the application for recognition process as provided by Commission rules.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12]

165:35-43-4. Reporting

(a) For a TOU providing electric transmission services, other than those facilities operating for the purpose of directly connecting generation resources to the existing grid, regular review of operations is reasonable to preserve the reliability of electric transmission service, to ensure public safety, and the enhancement of economic efficiency in the production and consumption of electricity for the electric consumer. This Subchapter establishes annual reporting requirement(s) to each TOU under Commission jurisdiction.

(b) On or before June 15 of each year, each TOU shall submit information to PUD about any Transmission Line(s) the TOU has built, constructed, owned, operated, managed and/or maintained based on the preceding calendar year. Additionally, on or before June 15 of each year, each TOU shall submit information about any additional Transmission Line(s) it plans to build, own, operate, manage and/or maintain subsequent to June 15. Within such submission, the TOU shall provide information, which includes but is not limited to the following:

- (1) A description of any new transmission route(s) that the TOU has submitted to the SPP's regional planning process or other applicable regional planning process, or that has been approved by a Federal authority;
- (2) A status report of any Interconnection proposal that the TOU has submitted to a regional planning process or that has been approved by a Federal authority;
- (3) Identification of the allocation of transmission costs to Oklahoma Utilities from SPP;
- (4) An analysis of the costs and benefits to Oklahoma rate payers of any transmission project or portfolio of transmission projects, if the TOU or regional planner has prepared such a study, and excluding projects done primarily to comply with NERC standards;
- (5) The expected number of Oklahoma residents that will be employed during construction of any project and the specific type of job(s) utilizing Oklahoma residents;
- (6) The expected number of Oklahoma residents that will continue to be employed after construction of any project and the specific type of job(s) utilizing Oklahoma residents;
- (7) A statement reflecting any known annual property or ad valorem tax assessed to the TOU for Transmission Lines and related operations;

- (8) Aggregate total payments made to private landowners for transmission right-of-way, reported after all right-of-way for a particular project has been acquired;
 - (9) Aggregate total payments made to public landowners for transmission right-of-way, reported after all right-of-way for a particular project has been acquired;
 - (10) Identification of any new energy resource(s) to which the transmission project is directly connected or, to the extent known, resources to which the transmission project could be connected to integrate existing natural gas or other resource generation;
 - (11) Copies of any impact studies previously provided to state or federal agencies concerning the environment and the wildlife in the area of any new Transmission Line(s) built by the TOU will be made available for onsite review as requested;
 - (12) An attestation that the TOU's insurance coverage will be made available for onsite review as requested.
- (c) Any additional information required by the Commission shall be requested from all TOU at such time as the Commission determines the need for such information.
- (d) Information submitted in the reports required by this section shall be deemed confidential records or trade secrets of the reporting TOU under the Open Records Act as provided for by 51 O.S. Section 24A.22 and shall be made available for Commission onsite review, unless such records are successfully challenged or become the subject matter of an enforcement action at the Commission. Utilities will clearly mark all confidential documents as confidential.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-43-5. Public Utility Division consideration

- (a) PUD shall review and may investigate all reported transmission information for compliance with reporting requirements.
- (b) After receiving a report from a TOU pursuant to the preceding Section, PUD:
- (1) Will determine whether the report is compliant with the requirements of the Commission rules; and
 - (2) Inform the TOU of PUD's determination regarding compliance within ninety (90) calendar days of receipt of the report. In the event PUD determines the TOU's report is not in compliance with the rules, PUD shall contact the TOU to require additional information, and such information shall be provided within fifteen (15) calendar days of such notice. If the TOU fails to correct such non-compliance, PUD may reject the report or open an investigation to inquire further into the reported or submitted information.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-43-6. Determining assessment fees

- (a) In causes initiated on the Public Utility Docket to meet requirements of this subsection, fees shall be assessed upon a motion of PUD Staff or upon motion of the Attorney General.
- (b) The Commission shall make a determination of the estimated costs of PUD and the Attorney General required to process, analyze and review filed information as required by this subsection. These estimated costs shall be the basis of the fee assessed on a TOU subject to this Subchapter.

(c) After notice to the TOU to be assessed and hearing, the Commission shall issue an order which shall include the following:

- (1) Whether or not the TOU will be assessed fee(s);
- (2) The amount of the fee(s) to be assessed; and
- (3) The date payment(s) shall be paid.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-43-7. Decommissioning of transmission lines

(a) A TOU shall be responsible, at its expense, for the decommissioning of any and all of its equipment upon abandonment or the end of the useful life of a Transmission Line or other electric transmission facility. After the decommissioning of any Transmission Line, a TOU shall restore the land upon which a decommissioned Transmission Line or other electric transmission facility was located consistent with the TOU's decommissioning plan.

(b) A TOU shall submit a decommissioning plan to identify the methodology used to mitigate potential impacts resulting from the cessation of operation at the end of the project's useful life. The plan shall consist of but not limited to the following:

- (1) Identification of the specific project components that will be removed;
- (2) A description of the decommissioning process in the event of abandonment during construction and abandonment during operation;
- (3) A description of the process used for soil and road restoration; and
- (4) An attestation that a statement of financial capability or insurance coverage sufficient to decommission the project outlined in the plan will be made available to the Commission upon request.

[Source: Added at 29 Ok Reg 1541, eff 7-12-12; Amended at 36 Ok Reg 620, eff 7-25-19]

SUBCHAPTER 45. WIND ENERGY

165:35-45-1. Purpose of this subchapter

The purpose of this Subchapter is to implement provisions of the Oklahoma Wind Energy Development Act, 17 O.S. §§ 160.11 *et seq.*, by establishing rules and procedures for an entity that builds, constructs, owns, operates, controls, manages or maintains a wind energy facility within the State of Oklahoma. This Subchapter applies to the components of wind energy facilities built, constructed, owned, operated, controlled, managed or maintained within the State of Oklahoma, provided however it does not apply to any TOU.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-45-2. Definitions

In addition to terms defined in the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 *et seq.*, the following word(s) or term(s), when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Clearinghouse" means the Military Aviation and Installation Assurance Siting Clearinghouse.

"Determination of No Hazard" means a document issued by the Federal Aviation Administration.

"FAA" means the Federal Aviation Administration.

"Project boundary" means a graphic depiction of a wind energy facility's outer boundary, which should adequately demonstrate the project's outer perimeter,

inclusive of all wind turbines.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 485, eff 12-7-18 (emergency); Amended at 36 Ok Reg 620, eff 7-25-19; Amended at 37 Ok Reg 97, eff 10-2-19 (emergency); Amended at 37 Ok Reg 1167, eff 9-15-20]

165:35-45-3. Annual reporting requirements

On or before March 1 of each year, each wind energy facility owner or operator shall submit information required by PUD. This submission shall provide to PUD information about wind energy facilities the owner constructs, owns, operates, manages or maintains within the State of Oklahoma. Within such submission, the wind energy facility owner or operator shall provide information, which includes but is not limited to the following:

- (1) The commercial generation date of each wind energy facility;
- (2) If a wind energy facility fails to generate power, an explanation of the cause of the failure to generate;
- (3) An attestation indicating that the wind energy facility's insurance coverage will be made available for onsite review by PUD as requested;
- (4) For the first annual report(s) associated with a wind energy facility's first year of commercial operation, the report shall also include: a final project description and a final location description for each turbine, as constructed, and an attestation indicating that setback and notice requirements have been complied with.
- (5) For those wind energy facility components that are otherwise subject to the rules applicable to the annual reports of TOUs, this Subchapter does not require duplicative reporting.
- (6) Electronic submission is preferred; however, all forms of submission will be accepted.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-45-4. Notification of intent to build a wind energy facility and other notices

- (a) Within six (6) months of the initial filing with the FAA, the owner of a wind energy facility shall electronically submit to the PUD Director all initial 7460-1 forms for all individual wind turbines or any other individual structure that requires a FAA Form 7460-1 that is part of a wind energy facility, an attestation of compliance with the provisions of 17 O.S. § 160.20(A), and a map of the project boundary. Within thirty (30) days of the initial filing with the FAA, the owner of a wind energy facility shall submit copies of all initial 7460-1 forms for individual wind turbines and other individual structures that require a 7460-1 that are part of a wind energy facility to the Aeronautics Commission.
- (b) PUD shall provide the owner of a wind energy facility with affirmation of submission of the notification of intent to build by either providing proof of receipt stamp or confirmation of receipt if submission is made electronically.
- (c) The owner of the wind energy facility shall send copies of the notification with the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of submission with the Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be sent to the governing body of the municipality within twenty-four (24) hours of submission with the Commission.
- (d) Within six (6) months of submitting the notification with the Commission as provided for in subsection (a) of this section, the owner of the wind energy facility

shall cause a copy of the notification to be published in a newspaper of general circulation in the county or counties in which all or a portion of the wind energy facility is to be located. Proof of publication shall be submitted to the PUD Director.

(e) Within sixty (60) calendar days of publishing the notification in a newspaper as provided for in subsection (f) of this section, the owner of the wind energy facility shall hold a public meeting. Notice of the public meeting shall be published in a newspaper of general circulation and submitted to the board of county commissioners in the county or counties in which all or a portion of the wind energy facility is to be located. The notice shall contain the place, date and time of the public meeting. Proof of publication of the notice shall be submitted to the PUD Director. The public meeting shall be held in one of the counties in which all or a portion of the wind energy facility is to be located.

(f) If the owner of a wind energy facility is required to file subsequent 7460-1 forms with the FAA due to changing locations or heights of individual structures from the locations or heights originally proposed in the initial 7460-1 forms submitted to the Oklahoma Aeronautics Commission, the owner shall, within ten (10) calendar days of filing with the FAA, submit such subsequent 7460-1 forms to the Corporation Commission and Aeronautics Commission. A wind energy facility owner shall not be required to start the notification processes over unless the subsequent 7460-1 forms expand the project beyond its original project boundary submitted to the Corporation Commission.

(g) The owner of a wind energy facility shall not commence construction on the facility until the notification and public meeting requirements of this section have been met. If an owner of a wind energy facility fails to submit the information as required in this section, the owner shall be subject to an administrative penalty from the Commission not to exceed One Thousand Five Hundred Dollars (\$1,500) per day, per violation following hearing and issuance of a final order of the Commission.

(h) No individual wind turbine or any other individual structure that requires a FAA 7460-1 form that is part of a wind energy facility may be constructed or expanded unless there is an active Determination of No Hazard from the FAA and adverse impacts to the United States Department of Defense, pursuant to Title 32 of the Code of Federal Regulations, Section 211.6, have been resolved as evidenced by documentation from the Clearinghouse for the individual wind turbine or other individual structure. The Mission Compatibility Certification Letter or successor form may serve as such evidence of adverse impacts being resolved with the Department of Defense or successor agency. Determinations of No Hazard and documentation of the resolution of adverse impacts to the Department of Defense shall be submitted by the owner of a wind energy facility to the Corporation Commission and the Aeronautics Commission.

(i) If an owner of a wind energy facility fails to submit an active Determination of No Hazard and documentation that adverse impacts to the Department of Defense have been resolved by the Clearinghouse for the individual turbine or other individual structure prior to the start of construction, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) per day, per violation from the Corporation Commission.

(j) All notices, notifications, Determinations of No Hazard, and proof of compliance with all provisions of the Oklahoma Wind Energy Development Act, shall be retained by the wind energy developer, for a period of three (3) years after commercial operation date; and, upon reasonable request, PUD may inspect these

documents to ensure compliance.

(k) The owner of a wind energy facility shall electronically provide a notice to the PUD Director indicating that it has commenced the 60-day notice as required by 17 O.S. § 160.21(F). Such notice shall be sent to the PUD Director prior to commencement of construction of the wind energy facility. The notice to the PUD Director shall also include an affirmation that all required notices and notifications have been properly provided, and a list of the recipients of all required notices and notifications shall be retained by the wind energy developer and made available to PUD upon reasonable request.

(l) All submissions shall be submitted electronically to PUD, unless prior approval is granted by the PUD Director.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 485, eff 12-7-18 (emergency); Amended at 36 Ok Reg 620, eff 7-25-19; Amended at 37 Ok Reg 97, eff 10-2-19 (emergency); Amended at 37 Ok Reg 1167, eff 9-15-20]

165:35-45-5. Commission consideration

(a) PUD shall review and may investigate all wind energy facility information reported or submitted for compliance with the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or with the notice requirements in this Subchapter or in 17 O.S. § 160.20 or 17 O.S. § 160.21.

(b) After receiving a report or submission from a wind energy facility pursuant to the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or the notice requirements in this Subchapter regarding notice of intent to construct in 17 O.S. § 160.20 or 17 O.S. § 160.21, PUD will:

- (1) Determine whether the report or submission is compliant with the annual reporting or notice requirements; and
- (2) Inform the wind energy facility owner or operator of PUD's determination within thirty (30) calendar days of receipt of the report or submission if it is not in compliance. In the event PUD determines the wind energy facility's report or submission is not in compliance, PUD shall contact the owner or operator to require additional information; and, such information shall be provided within fifteen (15) calendar days of such notice. If the facility owner fails to correct such non-compliance, PUD may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 485, eff 12-7-18 (emergency); Amended at 36 Ok Reg 620, eff 7-25-19; Amended at 37 Ok Reg 97, eff 10-2-19 (emergency); Amended at 37 Ok Reg 1167, eff 9-15-20]

165:35-45-6. Determining assessment of fees

(a) In wind energy facility causes initiated on the Public Utility Docket for alleged violation(s) of any provision of this Subchapter, fees shall be assessed upon motion of the PUD in wind energy facility causes.

(b) The Commission shall make a determination of the estimated costs of PUD required to process, analyze and review wind energy facility causes initiated on the Public Utility Docket. These estimated costs shall be the basis of the fee assessed to a wind energy facility subject to this Subchapter.

(c) After notice to the wind energy facility to be assessed and hearing, the Commission shall issue an order which shall include the following:

- (1) Whether or not the wind energy facility will be assessed a fee(s);
- (2) The amount of the fee(s) to be assessed; and
- (3) The date payment(s) of the fee(s) shall be made.

(d) In causes wherein the wind energy facility owner is also a public utility, as defined in 17 O.S. § 151, required to pay the public utility assessment fee pursuant to 17 O.S. § 180.11 and OAC 165:5-3-20, the above assessment of fees shall not apply.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 620, eff 7-25-19]

165:35-45-7. Decommissioning of wind energy facilities

(a) The owner of a wind energy facility shall be responsible, at its expense, for the proper decommissioning of the facility upon abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility.

Decommissioning shall be in a manner consistent with 17 O.S. § 160.14 and 17 O.S. § 160.15.

(b) Evidence of financial security to cover the anticipated costs of decommissioning may be in the form of a surety bond, collateral bond, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or irrevocable letter of credit.

(c) The owner of a wind energy facility shall submit to the PUD Director, a notice of decommissioning for the proper retirement of the facility upon abandonment or the end of the useful life of the commercial wind energy facility. Such notice of decommissioning shall be submitted not less than sixty (60) calendar days prior to commencement of decommissioning in a manner consistent with 17 O.S. § 160.15.

[Source: Added at 33 Ok Reg 645, eff 8-25-16; Amended at 36 Ok Reg 620, eff 7-25-19]

APPENDIX A. TO VERIFIERS OF UTILITY CONSUMERS HAVING LIFE-THREATENING CONDITIONS

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Source: Revoked and reenacted at 36 Ok Reg 620, eff 7-25-19]

CHAPTER 40. STANDARD TERMS OF PURCHASES FROM PURCHASERS OF 300 KW OR LESS

[Authority: 17 O.S., § 34.1]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:40-1-1. Purpose

These terms and conditions of purchase of this Chapter were adopted by the Oklahoma Corporation Commission through Cause No. 27208, Order No. 326195, May 23, 1988, pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Order No. 69 of the Federal Energy Regulatory Commission (FERC) as amended. This Chapter shall govern the supplying and delivering of power to the cooperative/utility's electric system by a small power producer or cogenerator (producer) of 300 kW or less who:

- (1) Is qualified under an approved purchase rate schedule.
- (2) Has made a proper purchase application.
- (3) Has executed a purchase agreement with the cooperative/utility.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-1-2. Definitions

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

"Cogenerator" means a producer qualified under Section 201 of the Public Utility Regulatory Policies Act of 1978 as a cogeneration facility. A facility's power production capacity:

(A) Must be used to produce both electrical and useful thermal energy for industrial commercial, heating or cooling purposes, through the sequential use of energy.

(B) Must meet the applicable standards as to fuel use and efficiencies.

(C) Shall be qualified by FERC.

"Commission" means the Oklahoma Corporation Commission.

"Consumer" means any person, firm, corporation, municipality, or agency or any political subdivision of the United States or the State of Oklahoma receiving electric service of any nature from the cooperative/utility. (Where or when it becomes necessary to designate the particular party who is the consumer/producer for any reason, the person who contracts for electric service or in whose name it is received shall be considered the consumer/producer.)

"Cooperative/utility" means the electric distributive cooperative/utility or the investor owned utility.

"Electricity" means electric power and energy produced, transmitted, distributed, or furnished by or delivered to the cooperative/utility.

"Force majeure" means a cause reasonably beyond the control of the party affected, such as, but without limitation to, injunction, strike of the party's employees, war, invasion, fire, accident, floods, backwater caused by floods, acts of God, or inability to obtain or ship essential services, materials, or equipment because of the effect of similar causes on the party's suppliers or carriers.

"Fraudulent use or sale of electricity" means any unauthorized use of the cooperative/utility electric service by the producer, or unauthorized use of producer generated electricity.

"Meter" means any device or devices used to measure or register electric power and energy.

"NEC" means the National Electrical Code issued by the National Fire Protection Association.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof or any facility where electric energy is furnished to or delivered by a producer.

"Producer" means a small power producer or cogenerator.

"Prudent utility practices" means the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry prior thereto) known at the time the decision was made, would have been expended to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition, taking into account the facts that the term "prudent utility practice" is not intended to be limited to the optimum practice, methods, or acts to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. "Prudent

utility practice" includes due regard for manufacturer's warranties and requirements of governmental agencies of competent jurisdiction.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Small power producer" means a facility qualified under Section 201 of the Public Utility Regulatory Policies Act of 1978 as a small power production facility.

"Tariff" shall include every rate schedule, purchase rate schedule or provision thereof, service agreement, purchase agreement and all terms, conditions, rules, and regulations for furnishing electric service or purchasing electric energy.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-1-3. Application of terms and conditions of purchase

(a) The terms and conditions of purchase of this Chapter, and any modifications thereof and additions thereto lawfully made, are applicable to all purchase applications, agreements, and rate schedules of producers defined in 165:40-1-1.

(b) Cooperative/utility shall receive and purchase and producer will furnish and sell either all energy produced or net energy in excess of producer's needs, as the producer shall choose.

(c) If producer is also a consumer, the applicable rate schedules for service, service agreement, and terms and conditions of service will continue to apply to such service, except as modified in this Chapter.

(d) The cooperative/utility may decline to serve a producer or prospective producer until such producer has complied with the rules and regulations of the Commission and any applicable federal, state, and municipal or other local laws and rules and regulations. The cooperative/utility may refuse to purchase from any producer for noncompliance with these terms and conditions of purchase or related purchase agreement and purchase rate schedule.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-1-4. Modification of terms and conditions of purchase

No agent, representative, or employee of the cooperative/utility shall have authority to modify the terms and conditions of purchase of this Chapter; provided, however, the cooperative/utility shall have the right to request amendment of these terms and conditions of purchase or to request additional terms and conditions of purchase as it may deem necessary from time to time, subject to the approval of the Commission

165:40-1-5. Administration of purchase tariff

Each party shall designate one person as its representative for the purchase agreement. The representative shall carry out the provisions of the purchase tariff and provide liaison between the parties.

165:40-1-6. Dispute resolution

Dispute on any matter relating to the purchase tariff shall first be discussed by the representatives. If either party feels that the other party is not using their best efforts to amicably and properly resolve the dispute, that party shall have the right to submit the dispute to the Commission for mediation, hearing, or other resolution.

165:40-1-7. Notices

Any notice, demand, or request required or permitted to be given by either party to the other, and any instrument required or permitted to be tendered or delivered by either party to the other shall be so given, tendered, or delivered:

- (1) For consumer/producers, in the same manner as specified in the terms and conditions of service.
- (2) For producers, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the party, or personally delivered to the party, at the address furnished for the representative. Changes in such designation may be made by notice similarly given. Oral notices between the representatives will be sufficient if confirmed in writing.

SUBCHAPTER 3. GENERAL REQUIREMENTS AND INFORMATION

PART 1. BILLING AND PURCHASE AGREEMENTS

165:40-3-1. Application for purchase agreement

- (a) Each producer, before interconnecting and before selling electric energy, shall make written application to the cooperative/utility to purchase the producer's electricity under the applicable purchase rates.
- (b) A written purchase agreement, when signed by the producer and accepted and approved by the cooperative/utility, constitutes a contract. Each application for electric purchase shall be made in the true name of the producer.
- (c) A single application for purchase cannot be made to apply to different locations, nor to cover more than one point of purchase at the same location to be used by the same producer, unless the cooperative/utility determines that the physical or electrical characteristics of the facility requires more than one point of purchase according to good engineering and operating practice.
- (d) The contract is not transferable by the producer. A producer no longer desiring a purchase agreement on a premises must notify the cooperative/utility of his intent to discontinue. When there is a new occupant of the premises or a change in responsibility for operations, a new application for purchase must be made before purchase is begun.
- (e) Any person who delivers electric energy into the cooperative/utility's system without having made application to sell such energy shall be liable to the cooperative/utility for payment thereof under the applicable rate schedule and for any damages caused thereby.

165:40-3-2. Selection of purchase rates or options

- (a) The cooperative/utility's purchase rate schedules state the conditions under which the schedules are available.
- (b) The cooperative/utility, at any time upon request, will determine for any producer the rates or other options best adapted to existing and anticipated electric purchase or service requirements as defined by the producer, but the producer shall always have the final responsibility for the choice between such applicable rates or options.
- (c) The cooperative/utility's purchase rate schedules state the term or period of time for which each is established. A producer having selected a purchase rate or option may not apply for another purchase rate or option during the applicable term.
- (d) A new producer will be given reasonable opportunity (normally not to exceed three (3) months time) to determine his purchase availability before definitely

selecting the most favorable purchase rates and options.

165:40-3-3. Extension of producer's system through public space

For the purpose of obtaining a lower rate by receiving electric service or a higher rate by supplying electricity for purchase through one meter, the producer will not be permitted to extend or connect his electric wiring installation across or under a street, alley, or other public space in order to obtain connection with adjacent property, unless such extension is made pursuant to a special contract or filed rate schedule.

165:40-3-4. Billing for electric purchase

(a) **Consumer/producer.** Billing for electric purchase will be done in the same manner and by the same persons as is done for electric service to the same premises. Invoices for purchases will be prepared by the cooperative/utility and submitted at the same time to the consumer/producer as a separate statement or as a separate item on the bill for service. This procedure will be followed unless otherwise agreed upon between the producer and the cooperative/utility. Any charge for late payment for service will be made in accordance with the terms and conditions of service except that the amount will be calculated after netting for any amounts purchased.

(b) **Producer only.** Purchase meters shall be read by the producer at approximately monthly intervals at a time specified by the cooperative/utility. Invoices will be prepared by the producer. Cooperative/utility will normally make payment within its usual payment cycle. This procedure will be followed unless otherwise agreed upon between the producer and the cooperative/utility.

165:40-3-5. Testing of purchase meters upon request of producers

The cooperative/utility will test the accuracy of any producer's purchase meter in the same manner as for service meters under the terms and conditions of service.

165:40-3-6. Adjustment of invoices for meter inaccuracy and incorrect billing

Adjustment of invoices will be done in the same manner as under the terms and conditions of service.

PART 3. CONTINUITY OF PURCHASES BY COOPERATIVE/UTILITY

165:40-3-10. Continuity and quality of electric connection

(a) The cooperative/utility will use reasonable diligence to receive continuous electric delivery at the point of purchase with the producer within the voltage limits specified by applicable Chapters of this Title.

(b) It shall be the responsibility of the producer to install and maintain protective devices which will protect the producer's equipment or process during abnormal service conditions or the failure of part or all of the electric service.

(c) In order to make repairs to or changes in the cooperative/utility's facilities for supplying electric service or taking electric purchases, the cooperative/utility reserves the right, without incurring any liability therefore, to suspend purchase without notice to a producer for such periods as may be reasonably necessary. Insofar as is practicable, the interruption shall be made at a time which will cause least reasonable inconvenience to producers.

- (d) The cooperative/utility also reserves the right to discontinue purchase from any producer, without advance notice, when a defective condition of wiring or equipment upon the premises of the producer results, or is likely to result in danger to life or property or interference with proper service to others. Upon becoming aware of any condition resulting in discontinuance of purchase, the cooperative/utility shall immediately take action to notify the affected producer. Electric purchase from the producer will not be resumed until the dangerous condition has been remedied to the satisfaction of the cooperative/utility.
- (e) If such dangerous condition is the result of tampering with cooperative/utility equipment, the provisions in 165:40-3-23 shall also apply.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-11. Effect of force majeure

- (a) Neither party to a purchase agreement shall be deemed to be in default if failure of performance is due to force majeure, except for the duty to make timely payments when due. The party unable to perform due to force majeure has the duty to notify the other party in writing as soon as practical of the nature and period of delay and shall exercise due diligence to remove the inability to perform, except with respect to settling labor disputes.
- (b) If party's failure of performance is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch, party is not relieved of liability as a result of the force majeure event.

165:40-3-12. Change of occupancy

- (a) When a producer elects to terminate purchase, the cooperative/utility is to be notified, either by telephone, if subsequently confirmed in writing, or in writing, as to the proposed effective date of such termination. The cooperative/utility will read the meter(s) as required by the terms and conditions of service.
- (b) Leaving an interconnection to vacant premises does not constitute consent by the cooperative/utility for the new occupant of such premises to interconnect or deliver electric energy without making proper application for said purchase.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-13. Discontinuance of electric purchase

- (a) The cooperative/utility may discontinue electric purchase from a producer for the reasons set forth below, after written notice stating the reason for such discontinuance has been given to the producer:
- (1) At any time service is discontinued under the terms and conditions of service.
 - (2) If the producer refuses to provide cooperative/utility reasonable access to its equipment upon producer's premises.
 - (3) Violation of any rule, regulation, or order of the Commission or noncompliance with any applicable federal, state, municipal, or other local laws, rules or regulations.
 - (4) Violation of or noncompliance with any approved tariff or these terms and conditions of purchase.
 - (5) Failure of the producer to make application for purchase.
 - (6) Failure of the producer to make application for electric purchase in the true name of the producer for the purpose of avoiding payment of an unpaid obligation for electric service provided.

- (b) The cooperative/utility may discontinue electric purchase from a producer without advance notice for any of the following reasons:
- (1) Existence of a dangerous or defective condition of wiring or equipment on producer's premises.
 - (2) Fraudulent use or sale of electricity.
 - (3) Tampering with the cooperative/utility's regulating and measuring equipment or other property.
- (c) The cooperative/utility may discontinue purchase for nonpayment of a utility bill, net of purchases, in the same manner as for retail electric service.
- (d) The fact that the cooperative/utility holds a deposit authorized by the terms and conditions of service will not prevent discontinuance of purchase pursuant to this Section.
- (e) As soon as is practicable, after the condition has been remedied for which the producer's purchase was discontinued, the cooperative/utility shall restore purchase; provided, however, where purchase has been discontinued for fraudulent use or sale of electricity or for tampering with the cooperative/utility's regulating and measuring equipment or other property, the cooperative/utility may refuse to restore purchase until ordered to do so by the Commission.
- (f) Whenever purchase has been discontinued for fraud or tampering as defined in this Section, the cooperative/utility may charge a reconnection fee of \$5.00 during normal working hours and \$10.00 during other hours, in addition to any charges under the retail terms and conditions of service. The producer must pay, or make arrangements for paying same, before purchase will be reconnected.
- (g) Noncancellation of purchase does not waive right to cancel for future breach.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

PART 5. RETAIL SALES BY COOPERATIVE/UTILITY

165:40-3-20. Exclusive use of cooperative/utility's electric service

The standard retail rate schedules for service, now on file and approved by the Commission, are based on exclusive use of cooperative/utility's service. Purchase under these terms and conditions and applicable purchase rate schedules is not a violation of those rate schedules.

165:40-3-21. Resale of the cooperative/utility's electric service

The producer will not resell the electricity purchased from the cooperative/utility or sell its own electricity to any other party.

165:40-3-22. Deposits as security for payment of bills

Any deposits required as security for payment of bills and any deposit procedures specified in the terms and conditions of service shall not be modified as a result of a purchase agreement.

165:40-3-23. Fraudulent use or sale of electricity

(a) In the event fraudulent use or sale of electricity or evidence of attempting fraudulent use or sale of electricity is discovered, or where the cooperative/utility's regulating or measuring equipment or other property has been tampered with, electric purchase may be discontinued by the cooperative/utility without advance notice to the producer.

(b) Unless otherwise ordered by the Commission, purchase from the producer will not be resumed until such producer shall have paid all bills including:

- (1) The charge for the estimated amount of electricity fraudulently consumed or sold.
- (2) The cost of replacement or repair of any damaged meter or associated equipment.
- (3) The cost of installation of system protection facilities, or of relocation of the meter, if determined necessary by the cooperative/utility.
- (4) All reconnection charges.

(c) If it has been shown to the satisfaction of the cooperative/utility that the producer or applicant for purchase had no connection with, or knowledge of, such fraudulent use or sale of electricity or such tampering, electric purchase may be resumed after the condition causing or permitting the fraudulent usage or sale has been corrected and such producer or applicant for purchase has paid for any unmetered service received.

PART 7. LIABILITY AND RESPONSIBILITY FOR PROPERTY

165:40-3-30. Liability

(a) Each party hereto shall indemnify and save the other party harmless from any loss or damage to the facilities of the other party due to the sole negligence of other party; provided however, that the producer shall provide, install, and maintain at his own expense all electrical wiring and apparatus, including any protective equipment, required either by the National Electrical Code and/or the applicable municipal code and with all requirements prescribed by any governmental authority having jurisdiction thereof, and compliance with such duty shall be a condition to liability of the company under this indemnity.

(b) Neither party is liable for revenue loss resulting from interruption or partial interruption of service.

(c) Should the producer dispute the interpretation by the cooperative/utility of the requirements of the National Electrical Code and/or any applicable municipal code, such producer may request the dispute be resolved by the Commission.

(d) The cooperative/utility reserves the right to refuse to connect to any wiring or apparatus which does not meet these requirements, and the cooperative/utility may, without advance notice, discontinue its connection with any producer's wiring or apparatus when a dangerous condition of wiring or equipment upon the premises of the producer is discovered.

[Source: Amended at 10 Ok Reg 2641, eff 6-25-93]

165:40-3-31. Responsibility for cooperative/utility property

(a) Notwithstanding any provisions of this Chapter to the contrary, the producer shall be responsible for all damage to, or loss of, the cooperative/utility's property located upon the producer's premises, unless occasioned by causes beyond the producer's control. The producer shall not authorize anyone to change, remove, or tamper with cooperative/utility's property.

(b) No regulating or measuring equipment or other property or equipment owned by the cooperative/utility, wherever situated, whether upon producer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise.

SUBCHAPTER 5. INSTALLATION AND PARALLEL OPERATION

PART 1. PRODUCER'S WIRING AND INTERCONNECTION

165:40-5-1. Producer's wiring and apparatus

(a) Interconnection agreements between an electric utility and a producer must include provisions which address subsections (b), (c) and (d) below:

(b) All apparatus and electrical wiring connected or to be connected to the cooperative/utility's distribution system point of delivery shall be at the producer's expense, and shall be installed and maintained in accordance with the NEC, as adopted by the Commission in OAC 165:35, to the extent consistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations, and with all requirements prescribed by governmental authority having jurisdiction thereof. In the event of a conflict between the NEC and an applicable municipal code, the latter shall govern. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any wiring or apparatus which does not meet the requirements in (b) of this Section, and the cooperative/utility may, without advance notice, discontinue purchase from any producer when a defective condition of wiring or equipment upon the premises of the producer is discovered. In the event a producer desires to change the size of his electrical equipment and maintain his status, he shall notify the cooperative/utility in writing sufficiently in advance so that its meter and other equipment may be enlarged to properly handle the increased load or generation.

(c) Power inverter based apparatus utilized in the system to be connected to the cooperative/utility's distribution system point of delivery shall be Underwriters Laboratory ("UL") 1741 listed or certified by a nationally recognized testing laboratory as being compliant with UL 1741, 2nd Revision standards before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (c) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(d) All relevant apparatus utilized in the system to be connected with the cooperative/utility's distribution system point of delivery shall be certified by a nationally recognized testing laboratory as compliant with the Institute of Electrical and Electronics Engineers (IEEE) 1547 *Standard for Interconnecting Distributed Resources with Electric Power Systems* before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (d) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(e) Beginning December 31, 2014, and annually thereafter, each utility shall submit a Certification Letter to the PUD Director certifying that as of the date of the Certification Letter, the utility's interconnection agreements meet the requirements in (b), (c) and (d) of this Section, or if the interconnection agreements do not meet the requirements in (b), (c) and (d) the reason therefor.

[Source: Amended at 31 Ok Reg 1065, eff 9-12-14; Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-5-2. Availability of electric interconnection

The type of electric interconnection which will be required of the producer will depend on and must be compatible with the location, size, and type of load to be served as well as the generating equipment and capacity. It is necessary that the producer obtain from the local office of the cooperative/utility the phase and voltage of the interconnection that will be furnished before proceeding with the purchase of generators or other equipment. Also, the point of purchase on the premises must be determined before the producer's wiring installation is made.

165:40-5-3. Single-phase and three-phase connection

- (a) Producers shall normally be furnished single-phase or three-phase purchase under the corresponding provisions of electric service.
- (b) Generation itself may represent a load, such as for some inductive wind generators. The class of service may be different than it would be without the generator load.

165:40-5-4. Point of delivery of electric service

The point of delivery for purchase shall be the same as the point of delivery for service for consumer/producers or a point similarly determined for producers only.

165:40-5-5. Meters

- (a) All purchase meters and detents shall be furnished, installed, and maintained by the cooperative/utility, and remain its property. All meter bases, enclosures, and other associated equipment shall be furnished and owned by the cooperative/utility and maintained by the producer. Producer shall reimburse the cooperative/utility for all furnished meters, bases, and associated equipment.
- (b) No metering equipment shall be bypassed for any reason, without prior approval of the cooperative/utility.
- (c) Location of self-contained installations and instrument transformers shall be governed by the corresponding terms and conditions of service.

165:40-5-6. Relocation of meters

- (a) The cooperative/utility may, at its option and at its expense, relocate any meter.
- (b) In case of a relocation which is made necessary by the producer's conditions or actions, the producer shall, at his expense, relocate the metering equipment and service entrance facilities to a location agreeable to the cooperative/utility and the producer.
- (c) Under no circumstances shall any meter be moved or relocated except as authorized by the cooperative/utility.

165:40-5-7. Ownership, design, operations, and maintenance

- (a) Producer will, except as otherwise noted, design, construct, install, own, operate, and maintain all equipment required to generate and deliver energy and/or capacity specified in this Chapter.
- (b) Producer will further provide all necessary easements, licenses, and other rights to enable cooperative/utility to deliver, purchase, and sell.
- (c) Cooperative/utility may set reasonable requirements for the producer's facilities and equipment.

165:40-5-8. Plans and specifications

- (a) Producer will submit all equipment specifications to cooperative/utility for review prior to interconnection and as part of the application.
- (b) Producer will allow cooperative/utility to make facility description available and public to aid in evaluating performance.

165:40-5-9. Inspections and tests

- (a) The cooperative/utility shall have the right to inspect the producer's electric generating facilities, to be present at initial tests, to measure power factor at any time, to conduct such operating tests as are necessary to ascertain that the protective devices function properly, to review any data collected from such facilities at all reasonable times, and to independently monitor the aforesaid system and related energy regime.
- (b) The producer shall have the right to review and copy, at producer's expense, any data collected by the cooperative/utility.

165:40-5-10. Access by cooperative/utility authorized agents

The producer shall give authorized agents of the cooperative/utility permission to enter the producer's premises at all reasonable times for any purpose incidental to the purchasing of electricity, including tree trimming and tree removal. Refusal on the part of the producer to provide reasonable access for the above purposes shall be deemed to be sufficient cause for discontinuance of service and/or purchase.

165:40-5-11. Disconnect and location of producer facilities

- (a) Producer shall install, own, and maintain a disconnecting device at a location which shall at all times be accessible to cooperative/utility personnel.
- (b) The producer shall be responsible for locating and installing all facilities in compliance with applicable laws codes, and regulations, and shall locate all such facilities sufficiently away from utility lines to avoid falling or making contact with utility lines.

PART 3. COOPERATIVE/UTILITY FACILITIES

165:40-5-20. System extension, reinforcement, and protection facilities

- (a) For consumer/producers the cooperative/utility will construct and maintain facilities in accordance with the standard extension policy contained in the terms and conditions of service. Calculations will be made on the estimated load including any generating load. The producer will reimburse the cooperative/utility for all facilities in excess of these amounts as provided for in the retail terms and conditions of service.
- (b) Those who only produce electric energy will reimburse the cooperative/utility for all necessary system extension, reinforcement, and protection facilities.

165:40-5-21. Change of facility requirements

- (a) The cooperative/utility shall have the right to change transformers and interconnection voltage when necessary.
- (b) The producer shall make or bear the cost of changes in interconnection, protection, and reinforcement facilities necessary to meet changing system conditions and requirements.

PART 5. OPERATING PROCEDURES

165:40-5-30. Reactive power

- (a) Producer will generate sufficient reactive power reasonably necessary to meet requirements of the service agreement.
- (b) Cooperative/utility may request new capacity and/or reactive power rating for facility if it is reasonably apparent they are no longer correct.
- (c) To the extent that producer's facility fails to achieve a power factor of at least eighty-five (85%) percent, producer shall pay for var support under the appropriate tariff.

165:40-5-31. Operating procedure

- (a) Producer and cooperative/utility shall develop mutually acceptable operating procedures and employ prudent utility practices.
- (b) Producer will have qualified personnel available to operate the cogeneration or small power production facility for testing at cooperative/utility request.

165:40-5-32. Equipment which adversely affects electric service

- (a) Many types of electric equipment can adversely affect the quality of electric service. This is true of all generating equipment. Close consultation between the producer and the cooperative/utility will be required before such equipment is interconnected and to remedy unsatisfactory operating conditions.
- (b) Producers whose use of or production of electricity is intermittent and subject to violent fluctuations may be served with other electrical loads or by a transformer dedicated solely to that equipment and served as a separate account. Producers contemplating the installation of such equipment must make specific prior arrangements with the cooperative/utility.
- (c) Producers contemplating the installation of electric equipment, whose performances may be adversely affected by voltage fluctuations and distorted 60 Hz. wave forms, must make specific prior arrangements with the cooperative/utility.
- (d) Producers found to be operating electric equipment which produces frequencies that result in interference or generate distorted wave forms into the 60 Hz. electric supply system, which adversely affects the operation of equipment owned by producer or by other consumers of the cooperative/utility or the cooperative/utility's system, shall be required to consult with the cooperative/utility and to eliminate the cause of the interference.
- (e) If it is determined by the cooperative/utility that remedial action is required to correct an adverse effect produced by the producer through use of any equipment causing such adverse effect, the cooperative/utility reserves the right to have the producer install, at the producer's expense, any system protection facilities necessary to reasonably limit such adverse effect.
- (f) In lieu of requesting the producer to install such system protection facilities, the cooperative/utility may, at its option, install additional facilities (which may or may not be dedicated solely to such producer) or other equipment specially designed to reasonably limit such adverse effect. The cost of these facilities will be paid for by the producer.

SUBCHAPTER 7. STANDARD PURCHASE RATE SCHEDULE FOR POWER PRODUCERS OF 300 KW OR LESS

165:40-7-1. Area affected

Standard purchase rate schedule for power producers of 300 kW or less is effective in all territories served.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-7-2. Availability

Standard purchase rate schedule for power producers of 300 kW or less is available to cogenerators or small power producers who:

- (1) Have a maximum rated capacity of 300 kW or less.
- (2) Employ equipment compatible with the particular line segment of the cooperative/utility.
- (3) Sign a purchase agreement with the cooperative/utility.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-7-3. Purchase option

Producer shall have the option of selling gross production of energy from the generating unit, or net production of energy after serving own load.

165:40-7-4. Purchase rate (firm vs. non-firm)

The purchase for firm vs. non-firm power will be set forth in the rate schedule as follows:

- (1) Firm power at _ cents per kWh. Contracts may provide that if producer fails to provide firm power, as contracted, the producer shall reimburse the cooperative/utility for the difference between the firm and non-firm rate;
- (2) Non-firm power at _ cents per kWh; or
- (3) Purchase rate described in 165:40-7-5.

165:40-7-5. Purchase rate (summer vs. winter)

The purchase rate for summer vs. winter power will be set forth in the rate schedule as follows:

- (1) Winter from _ to _ at _ cents per kWh.
- (2) Summer from _ to _ at _ cents per kWh.
- (3) Plus the fuel adjustment as calculated under the Commission order.

165:40-7-6. Design, operation, and maintenance data

In addition to the requirements of the terms and conditions of purchase, the producer shall maintain a diary of the facility including installation date, date and nature of any changes, non-routine maintenance and repair, and date and reason for any extended periods of non-generation, and such other information as is reasonably necessary to evaluate the facility and its potential impact on the cooperative/utility electrical system. The producer shall make such records available to the cooperative/utility and to the Commission.

165:40-7-7. Rights of producer

The producer has the right:

- (1) To generate in parallel with the cooperative/utility in a manner which does not degrade the integrity of the cooperative/utility's system. The cooperative/utility shall make reasonable effort to operationally accommodate the producer's facility.

- (2) To good faith negotiation with the cooperative/utility.
- (3) To bring complaint or dispute to the Commission for mediation, hearing, or other resolution.

165:40-7-8. Modifications

The purchase agreement, purchase rate schedules, and conditions of purchase may be changed from time to time as approved by the Commission. The purchase rates will change as additional information becomes available on avoided costs, reliability of technologies, and other pertinent factors.

SUBCHAPTER 9. OPTIONAL NET ENERGY BILLING PURCHASE RATE

165:40-9-1. Area affected

Optional net energy billing purchase rate is effective in all territories served.

165:40-9-2. Availability

Optional net energy billing purchase rate is available to cogenerators or small power producers who:

- (1) Have a maximum rated capacity of 300 kW or less.
- (2) Employ equipment compatible with the particular line segment of the cooperative/utility.
- (3) Sign a purchase agreement with the cooperative/utility.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

165:40-9-3. Purchase rate

(a) For power produced in excess of on-site requirements, subject to OAC 165:40-9-2, the producer will be compensated by the retail purchase meter running in reverse. The cooperative/utility shall bill the producer for the excess of energy supplied by the cooperative/utility over and above the energy supplied by the producer during each billing period according to the cooperative/utility's applicable retail rate schedule.

(b) When the energy supplied by the producer exceeds the energy supplied by the cooperative/utility during a billing period, the monthly charge and/or minimum bill of the retail rate schedule shall be billed by the cooperative/utility; any net excess energy for the billing period shall be credited, or paid, in dollars in the next billing period(s), at the utility's avoided energy cost.

(c) The billing period shall be considered the monthly bill period associated with the monthly meter reading.

(d) Systems with an installed capacity greater than 125% of the customer's peak load may be excluded from the net-metering provision, and shall be paid under the small power producer or qualifying facilities tariff, subject to Subchapter 11 herein.

(e) The utility shall file a tariff with the Commission to enact the provisions of this rule.

[Source: Amended at 36 Ok Reg 666, eff 7-25-19]

SUBCHAPTER 11. METHOD OF CALCULATING PURCHASE RATES FOR THE STANDARD RATE SCHEDULE

165:40-11-1. Costs

All costs in calculating purchase rates for the standard rate schedule are in current dollars and shall be updated annually.

165:40-11-2. Firm power purchase rates

Annual firm power purchase rates will be calculated by the following method:

- (1) The purchase rate (PR) will be equal to the sum of the capacity component (CC), the energy component (EC), and the fuel adjustment component (FA); thus, the equation being $PR = CC + EC + FA$.
- (2) The initial capacity component (CC) will be equal to the average annual cost of the next unit of capacity or the next unit of capacity of the wholesale power supplier per kWh (CAP/KWH); thus, the equation being $CC = CAP/KWH$. The next unit of capacity may be equal to the average annual cost of a purchased power contract.
- (3) In turn, the average annual cost of the next unit (CAP/KWH) is equal to the product of the initial total capital investment per KW (CI/KW) times annual carrying, fixed operation, and fixed maintenance and administrative expense per dollar of investment (ACI/CI) divided by the product of the hours in the year times the capacity utilization ratio. The initial capacity utilization ratio will be .60., resulting in $(CI/KW \times ACI/CI)/(8760 \times .60)$.
- (4) The energy component (EC) shall equal the current average cost per kWh of fuel embedded in the base retail rates or the fuel imbedded in the base wholesale rates of the wholesale power supplier(s) (ER), and shall be changed if the base rate amounts change; plus, an amount equal to average variable generation operations and maintenance expense (OM) per kWh; plus, the savings in line loss. The savings will be calculated as five percent (5%) of energy charges, resulting in equation of $EC = ER + .05ER + OM$.
- (5) The fuel adjustment component (FA) for each month shall be the current month's retail fuel adjustment for investor owned utilities or the current month's fuel adjustment of the wholesale power supplier(s) for distribution cooperatives.
- (6) Firm power means energy delivered to the cooperative/utility with at least a sixty-five percent (65%) on-peak season capacity factor. The on-peak season is those hours specified as peak period in the cooperative/utility's retail tariffs or in the tariff of the wholesale power supplier. If not specified in either the retail or wholesale supplier tariffs, the on-peak season shall be 4:00 p.m. to 8:00 p.m., June through September.

165:40-11-3. Non-firm purchase rates

Non-firm power purchase rates shall be calculated as the energy component (EC) plus the fuel adjustment component as for firm power purchases. No capacity component shall be applied for non-firm power.

165:40-11-4. Seasonal purchase rated

Seasonal buy-back (purchase) rates may be selected in lieu of annual rates at the cooperative/utility's option if there are seasonal rates for standard retail service. If selected, the seasonal rates will be calculated as follows: the sum of the months in effect for each period times the rate for each period must equal twelve months times the annual rate, and the difference between the summer and winter rates for purchase must be the same as the difference between rates for service at the standard residential service rates. The following formula will calculate the

summer purchase rate (SPR):

CHAPTER 45. GAS SERVICE UTILITIES

[Authority: OKLA. CONST. art IX, § 18; 17 O. S., §§ 151 et seq. and 160.1 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:45-1-1. Purpose

The rules in this Chapter are intended to define good business practice under normal conditions, to insure safe, adequate and reliable service, and to ensure fairness to the public and to the utility.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"Aggregation point" means any Commission approved interconnection point of more than one citygate at which gas can be aggregated for the purposes of supplying reliable and least cost natural gas services for more than one city or municipality.

"ANSI" means the American National Standards Institute, Inc.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Citygate" means the interconnection point between the local distribution facilities which are located downstream of such interconnection point and the transmission lines and/or other facilities located upstream of such interconnection point at a point in time to be determined by the Commission during the unbundling plan hearing, or as otherwise ordered by the Commission.

"Citygate gas service(s)" means any one or more of the services of natural gas supply, gathering, storage or transmission of natural gas upstream of the citygate or other delivery point acquired by a gas utility at the citygate or other delivery point pursuant to the competitive bidding procedures in Subchapter 17 of this Chapter in order to provide natural gas service to end-users on its local distribution facilities.

"Competitive bid" means a response provided based on a public competitive bidding process.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral or written communication by an interested party requesting an investigation or corrective action regarding the provision of

natural gas services. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of natural gas service. Any reference to a "customer" or "end-user" or "ratepayer" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporate Support Services" or **"Shared Services"** are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a gas utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"CSD" means the Consumer Services Division of the Oklahoma Corporation Commission.

"Customer rate class" means a division of rates as provided by a utility's tariff for pricing natural gas service.

"Customer sector" means a major division of consumers, i.e., residential, commercial, or industrial.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives natural gas from a transmission system, gathering line, or other natural gas supply source for service to one or more consumers.

"Distribution" or **"Distribution service"** means the downstream transportation of natural gas services from the citygate to end-users through a utility's local distribution facilities unbundled from all citygate gas services, but generally bundled with any one or more of the services of billing, metering, customer service and similar services.

"Downstream (or "merchant" or "retail") service" means any one or more of the citygate(s) service(s) of natural gas supply, gathering, storage or transmission of natural gas marketed downstream by an entity at the retail or merchant level to end-users rather than through the competitive bidding process pursuant to Subchapter 17 of this Chapter, and which entity uses the local distribution facilities of a utility, rather than bypass for ultimate delivery of such downstream or merchant or retail service to the end-user.

"Electronic notification" means any automated communication received by e-mail, phone, text message, or fax.

"End-user" means any consumer receiving natural gas service of any nature.

"FERC" means the Federal Energy Regulatory Commission.

"Filed" means to present a document and have it accepted by the Court Clerk of the Oklahoma Corporation Commission.

"Gas" means manufactured gas, natural gas, other hydrocarbon gas, or any mixture of gases produced, transmitted, distributed or furnished by a utility unless otherwise specifically designated.

"Gas supply source" means gas from the wellhead, any type of storage, processing plant, or other provider of gas.

"Gathering line" means a pipeline that transports gas from a production facility within a gathering system.

"Gathering system" means a pipeline system bringing gas from the wellhead to an aggregation point or transmission line or other gas handling facility.

"Gas utility" means natural gas utility as defined in this Chapter.

"Independent producer" means, for purposes of this Chapter only, any person who produces natural gas and is not engaged in marketing natural gas except for its own account or for other working interest owners in operated wells or who derives a majority of his or her oil or natural gas related income from working interests.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of natural gas services.

"Intrastate pipeline" means a common carrier transmission pipeline as defined in 52 O.S. § 24 and as applied in this Chapter.

"Legal holiday" means any day declared to be a legal holiday by law or proclamation of the Governor of Oklahoma, or a day on which mail the United States Postal Service does not deliver mail.

"Local distribution company" means the utility distributing natural gas, delivered to its citygate from a transmission pipeline or gathering system, to residential, commercial and industrial end-users over a local geographic area.

"Local distribution facilities" means facilities whose function is the local distribution of natural gas to residential, commercial and industrial consumers and which facilities are characterized by a system of pipes, meters, stations, valves and other equipment for distributing natural gas among consumers within a particular local community or in smaller diameter lines at lower pressures in contrast to movement in larger diameter lines at higher pressures characteristic of transmission, unless otherwise ordered by the Commission.

"Local forecast" means a statement of what the weather is predicted to be, that is issued by the National Weather Service for a specific county, city, and/or zip-code area.

"Meter" means any device that measures the quantity of gas transferred from one party to another.

"Meter shop" means a shop used for the inspection, testing and repair of meters.

"Municipality" means an incorporated city or town in the State of Oklahoma.

"Natural gas services" means any of the services in the natural gas industry, including, but not limited to, local distribution, transmission, gathering, storage, and gas supply, and as specified in Subchapter 17 of this Chapter.

"Natural gas utility" means a natural gas utility as defined in 17 O.S. § 151 *et seq.*, and that includes all utility affiliate assets which the Commission has determined to be included in ratebase.

"NWS" means the National Weather Service.

"P.s.i.a." means pounds per square inch absolute.

"Pipe" means any tubing used in the gathering, transmission or distribution of gas which meets the specifications of the U.S. Department of Transportation (U.S.D.O.T.).

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where gas service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Public competitive bidding process" means a gas utility process to solicit from all entities offers to provide natural gas services upstream of the citygate as provided in Subchapter 17 of this Chapter.

"Regulator" means a device used to reduce the gas pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Request for bid" means a gas utility's request for proposals to provide natural gas services at a Commission approved gas utility's designated citygate or aggregation point.

"Service line" means a line that branches off a distribution main or distribution line in order to transport gas from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Shipper" means any person, firm or corporation engaged in the intrastate or interstate transmission of natural gas for third parties.

"Special contract" means a written Commission-approved agreement between a utility and a consumer for the provision of gas service on terms and conditions which are different from those authorized by a tariff.

"Statistical sampling" means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

"Storage" means an underground natural or man-made facility used to store natural gas for extended periods of time.

"Stranded costs" means those prudent and verifiable costs and investments incurred by a natural gas utility, which were "used and useful" to meet the needs of its end-users, including but not limited to, its upstream capacity and supply commitments that cannot be avoided or mitigated or recovered from end-users under an existing tariff which have been caused as a result of the restructuring of the natural gas industry which were incurred prior to February 19, 1997, the date of issuance of Commission Order No. 409563, which closed the Notice of Inquiry, Cause No. PUD 960000133, and which ordered the promulgation of rules to restructure the natural gas service industry, such date being the date the gas utilities were placed on notice of the Commission's intent to restructure natural gas utility service(s). Prior to or during the utilities' stranded cost hearing, this date may be modified by order of the Commission, after notice and hearing. Stranded costs may include prudent and verifiable transition costs.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme

or plan of advertising.

"Submit" means to present a document to the Director of the Public Utility Division.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing gas service filed with the Commission and approved by the Director of the Public Utility Division.

"Therm" means 100,000 British thermal units of heat.

"Transition costs" means those prudent and verifiable costs and investments incurred by a public gas utility after February 18, 1997, in implementing the Commission's gas utility restructuring rules and to restructure its facilities, contracts and operation. Such costs as determined by the Commission may include education for the public related to the natural gas industry restructuring.

"Transmission or transmission service" means the upstream transportation of natural gas through pipelines and/or other facilities from a well-head, gathering line or other receipt point to a local distribution facilities or an end-user located on the transmission pipeline.

"Transmission pipeline" means a pipeline, either a gas utility owned transmission line or an intrastate pipeline, other than a gathering system that transports gas from a gathering system, interstate pipeline or storage facility to a citygate, aggregation point, storage facility or other delivery point.

"Unbundling" means the identification and separation of natural gas services and/or products and the associated costs to provide each such service and/or product which have been part of the "bundled" complement of services provided by a public gas utility.

"Unbundling plan" means a public utility's proposal(s) to separate its previously bundled services offered upstream of the citygate and to price these services individually.

"Uniform System of Accounts (USOA)" means the system of accounts as currently prescribed the Federal Energy Regulatory Commission (FERC), those accounting systems as published by the National Association of Regulatory Utility Commissioners (NARUC) or other accounting methods approved by the Commission.

"Upstream of the Citygate" means all natural gas services provided at the gas utility's citygate or other point of delivery to local distribution facilities which are necessary to serve end-users.

"Upstream related entity" means an affiliate of a gas utility or that portion of a gas utility which provides citygate gas services.

"U.S.D.O.T." means the United States Department of Transportation.

"Utility" means a natural gas utility as defined in this Chapter.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 21 Ok Reg 2095, eff 7-1-04; Amended at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1067, eff 9-12-14; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-1-3. Commission authority

The Commission has authority to promulgate rules concerning the provision of natural gas service to all end-users within the State of Oklahoma pursuant to Okla. Const. Art IX, §§ 18 and 34, 17 O.S. § 151 et seq., and 52 O.S. § 24 et seq.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-1-4. Scope of this Chapter

(a) This Chapter shall apply to the operations of any gas utility, including gas supply gathering, transmission and storage facilities operating within the State of Oklahoma subject to the jurisdiction of the Commission. Amendments or changes to this Chapter shall not apply retroactively to existing systems that were in physical compliance with all applicable laws that were in effect at the time of their installation, unless otherwise specifically stated in this Chapter.

(b) All tariffs filed by gas utilities shall conform to this Chapter. The filing or acceptance of a tariff which is in conflict herewith shall not be deemed a waiver of this Chapter, unless it specifically states that this Chapter is waived and cites the specific authority for the waiver.

(c) Gas utilities shall submit proposed tariffs which conform to the provisions of this Chapter, as revised, within one hundred twenty (120) calendar days after July 1, 1996.

(d) Gas utilities shall submit proposed tariffs which conform to the provisions of Subchapter 17 of this Chapter within thirty (30) calendar days from the effective date of Subchapter 17, or the date of the Commission order approving the utility's unbundling plan or alternative to an unbundling plan, as applicable.

(e) Nothing provided in this Chapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma or the United States.

(f) No rate, special contract, agreement, rule, or term and condition of service which is in conflict with the rules of this Chapter shall be effective unless the utility has been granted a waiver by the Commission pursuant to OAC 165:45-1-4.2.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-1-4.1. Interpretation of rules of this Chapter

(a) The words contained in this Chapter shall be given their ordinary and customary meanings, with technical terms and words being construed as generally understood in the gas industry, except where otherwise expressly provided.

(b) This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-1-4.2. Relief from rules of this Chapter

(a) Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to a party or parties subject to the requirements of this Chapter, or for other good cause shown, the Commission may waive or modify the requirements of this Chapter consistent with Federal and/or State law, upon application of an affected party and after notice and hearing. Such application shall set forth the specific rule or rules sought to be waived and the reasons for requesting such waiver.

(b) If relief from Subchapter 17 is requested, a copy of the application requesting a waiver shall be served on all parties who participated in the rulemaking docket in which Subchapter 17 was promulgated by the Commission. The Commission may determine, after notice and hearing, whether to grant such waiver.

(c) The Commission may grant temporary relief from the requirements of this Chapter pending hearing.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-1-4.3. Controversy over rules of this Chapter

Whenever a controversy exists in connection with the interpretation of this Chapter and the applicability of the requirements set forth herein, or any right or duty imposed thereby, the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-1-4.4. Severability

If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-1-5. Exceptions or variances

(a) A utility shall not prescribe terms and conditions for furnishing service that are inconsistent with this Chapter. Utility-prescribed terms and conditions shall not be valid until filed with and approved by the Commission.

(b) A utility may refuse or discontinue service for noncompliance with its service terms and conditions only in cases where its terms and conditions, as approved by the Commission, specifically so provide.

(c) If a utility seeks an exception or variance from this Chapter in its rates or terms and conditions of service, such exception or variance shall be clearly shown by a footnote on each respective page of the tariff. The footnote must be sufficient to plainly bring to the Commission's attention the exact nature of the requested exception or variance. Any exception or variance not so marked or identified in the tariff shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Such waiver or modification shall apply only to the party seeking such waiver or modification unless otherwise stated in the order approving the variance. Upon approval by the Commission, the tariff shall state the Commission order number approving the variance.

(d) The provisions of this Chapter shall in no way preclude the Commission from allowing or requiring additional or different terms and conditions of service, service, equipment, facilities, or standards other than those prescribed by this Chapter.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98]

165:45-1-6. Violations

Aviolation of this Chapter shall constitute contempt of the Commission pursuant to 17 O. S. § 1 et seq.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:45-3-1. Maintenance of plant, equipment, and facilities

(a) Each utility shall install, operate, and maintain its entire plant and system in such condition as will enable it to furnish safe, adequate and reliable gas service, subject only to emergency conditions beyond its control.

(b) The transmission and distribution systems, including transmission lines, distribution mains, compressing equipment, regulators, meters, services, etc., shall be constructed, installed, and maintained in accordance with the U.S. Department of Transportation, Regulations for Transportation of Natural and other Gas by Pipeline - Title 49 C.F.R. §192; and all applicable rules adopted by the Commission.

(c) Each utility shall file with the Commission, annually, a statement regarding its plant, equipment, and facilities in such form as the Commission may require.

(d) If PUD informs the utility of any safety issues concerning the utility's plant, equipment, or facilities by identifying the relevant Commission rule, or other applicable Federal or State laws implicated by the safety issue, the utility shall electronically provide photographic evidence to PUD showing completion of work and that the issue has been resolved. These safety issues shall not include those under the jurisdiction of the Commission's Pipeline Safety Department.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-3-2. Extent of system in which utility shall maintain service

(a) Each utility shall operate and maintain in safe, efficient, and proper condition all of its facilities and instrumentalities used in connection with the transmission, distribution, storage, regulation, measurement, and delivery of gas to each consumer up to and including the point of delivery into the piping owned by the consumer. Unless otherwise agreed by the utility and the consumer, the point of delivery shall be at the outflow side of the meter.

(b) Customer owned piping shall conform to requirements of the applicable city or town ordinances. In towns, villages, and suburban territory where there are no applicable regulations as to gas service, customer owned piping, and venting shall comply with the International Gas Code.

(c) Customer owned piping shall include a shut-off valve on the outside of the structure for the consumer's use. The consumer shall cause to have one installed on all new construction or when the customer owned piping is altered outside the structure.

(d) All gas lines, pipes, and equipment owned by the consumer shall be maintained in safe, efficient, and proper condition by and at the expense of the consumer. The utility shall have the right to inspect a new installation prior to furnishing service, the right to inspect an existing installation under reasonable conditions, and may refuse or discontinue service until the provisions of this Chapter are complied with. Service may be refused or discontinued wherever a test reveals excessive loss of gas through leakage on consumer's premises.

[Source: Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-3-3. Service lines

(a) Upon application by any bona fide applicant for service, a utility shall, at its own expense, furnish and install a stopcock and service line of suitable capacity to the meter location.

(b) Where by agreement between the utility and the consumer the meter is located at a point other than at the property line or curb line of the consumer, the proper consumer's service line shall be installed and maintained by or at the expense of the consumer. The utility shall install and maintain the service line up to the property or curb line and all measurement equipment wherever located. Any such agreement hereafter made shall be in writing, signed by the consumer first taking service thereunder, and shall be binding upon all consumers subsequently receiving service at the premises. The agreement shall not be deemed a special contract under 165:45-15-2.

(c) Where a utility and consumer cannot agree upon the location, dimensions, and type of equipment to be installed, the Commission shall, upon application of either the consumer or the utility and after notice and hearing, designate the installation to be made.

(d) When the installation of a service line requires a trench to remain open on the consumer's property for an inspection or waiver of inspection, the utility shall perform the inspection, or request that the inspection be performed if done by a third party, within fourteen (14) calendar days of the installation.

(e) All open trenches shall be clearly marked for the safety of the public using, at a minimum, caution tape or flags.

[Source: Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-3-4. Extension of distribution mains

(a) **General.** A utility shall extend its distribution mains to serve consumers within the corporate limits of a municipality served by the utility, or any recorded addition thereof, or within a reasonable distance from the utility's existing distribution system in accordance with the provisions of this Chapter.

(b) **Free extensions.** A utility shall extend its distribution system, as needed, up to one hundred feet (100') per residence without cost to the "party" requesting service. In arriving at the length of such main extension necessary to render service to the party, the distance shall be measured along lines of proper construction from the nearest distribution main with adequate capacity.

(c) **Extension above free limit - advance.** If the extension necessary to furnish service is greater than allowed as a free extension under subsection (b) of this Section, a utility may require an advance of the cost of the main extension over the free limit. However, the utility shall not arbitrarily or with disparity impose the obligation of requiring an advance, but rather shall determine whether to require an advance and the amount thereof on a case-by-case basis. Whenever such advance is made, the utility shall be required to refund to the party who made the advance an amount equal to the cost of one hundred feet (100') of free extension for each additional consumer whose service line is connected to such main within a period of ten (10) years from the making of the extension. No refunds shall be made for consumers connected to future extensions tied into such an extension. This refund will cease after ten (10) years from the making of the extension but the total of all refunds shall not exceed the original advance. The advance shall not draw interest.

(d) **Extensions above free limit - revenue basis.** The Commission may authorize a utility to make extensions above the free limit upon receipt of a lesser advance, or no advance, when the gross anticipated annual revenue from an extension will provide the utility with an adequate return on its investment pursuant to a formula or other method approved by the Commission. After such authorization, the utility shall make extensions when requested by the party pursuant to such approved formula or method.

(e) **Extension above free limit - special contract.** In lieu of making an extension pursuant to subsections (c) or (d) of this Section, a utility may make an extension above the free limit with a lesser advance or no advance, when the utility has entered into an agreement whereby the party proposing to provide the advance guarantees a minimum annual revenue from the extension to the utility. Such an agreement shall be deemed a special contract governed by OAC 165:45-15-2.

(f) **Determining cost of extension.** In determining the amount of advance, if any, which shall be made for an extension pursuant to this Section, the total construction cost of the extension shall first be determined in accordance with the approved system of accounts for gas utilities and from such total construction cost there shall be deducted:

(1) Costs incident to any increase in size of the main in excess of that required to adequately and satisfactorily provide service, costs incident to future expansion or to continue a construction plan of the utility, and costs necessary to correct inadequate capacity.

(2) The total construction cost of that portion of the extension constituting a free extension, which includes meters, service regulators, stopcocks, and service connections.

(g) **Extensions applicable in prospective real estate subdivisions.** In lieu of an extension pursuant to other provisions of this Section, a utility may require a developer desiring an extension to a prospective real estate subdivision to make an advance equal to the estimated cost of the extension before construction is started, and such advance shall not draw interest. At least annually for a period not to exceed ten (10) years, the utility shall refund to the developer a sum equivalent to the cost of the free extension under subsection (b) of this Section for each consumer connected to the extension during the calendar year. In no case will the total amount refunded exceed the amount advanced to the utility. Consumers locating on an extension made pursuant to this Section will not be required to make an advance for an extension.

(h) **Extension above free limit.** If the extension above the free limit is of such length and the future anticipated revenues therefrom so small that it is doubtful that the extension would ever make a fair return on the investment, the utility or any interested party may apply to the Commission for an appropriate order after notice and hearing.

(i) **Property of extension.** Every extension shall at all times be the property of the utility regardless of whether an advance or contribution is made for its construction. Any unrefunded portion of an advance shall become the property of the utility.

(j) **Filing an extension policy.** In lieu of the extension provisions described in subsections (b)-(i) of this Section, a gas utility may file with the Commission an Extension of Facilities Policy governing reasonable extensions of facilities to consumers. This plan must be approved by the Commission.

(k) **Other extensions of facilities.** A utility may implement a policy whereby consumers who request gas service requiring the installation of new distribution mains may apply to the utility for service in compliance with Commission-approved tariffs, and may negotiate with the utility to perform some of the work necessary to install the new mains. If a mutually acceptable agreement is reached, the utility and the consumer shall enter a written agreement which conforms with the requirements provided in the utility's Commission-approved tariff. The utility shall own any distribution main installed pursuant to this subsection, and shall be responsible for proper maintenance and operation of the line.

165:45-3-5. Sale or disposal of jurisdictional facilities by utility

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a natural gas utility's jurisdictional plant or operating system or the transfer of some or all of a natural gas utility's customers to a person or entity that is not an affiliate of such utility, shall, at least ninety (90) calendar days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with 165:5-7-1, with the Commission's Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Pipeline Safety Division. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing natural gas service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

- (1) The names of the parties to the transaction and the addresses of their respective principal places of business;
- (2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;
- (3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;
- (4) A narrative description of how the transferred customers will continue to receive safe and reliable natural gas service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;
- (5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;
- (6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide natural gas service to the transferred customers after the effective date of the transaction;
- (7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for PUD and CSD and who will be primarily responsible for:
 - (A) Customer service issues;
 - (B) Repair and maintenance issues;
 - (C) Customer complaint issues;
 - (D) Authorizing and furnishing refunds to customers;

(E) Tariff issues; and

(F) Receiving notices related to causes docketed at the Commission.

(8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;

(9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;

(10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable natural gas utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;

(11) The information required by 165:45-11-1(q) and (s) and an affirmation that the records and reports required by 165:45-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to 165:45-9 and 165:45-11-1(q) and (s), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) calendar days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) calendar days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for natural gas service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in

the current cause or in a subsequent cause, the acquiring party shall have thirty (30) calendar days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to 165:45-15-2, reflecting the changes or additions to rates and/or terms of service to PUD for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to 165:45-1-4.2.

(i) This section does not apply to transactions that involve the acquisition, control, or merger of a domestic public utility pursuant to 17 O.S. §§ 191.1 through 191.13, discontinuance of service pursuant to 165:45-11-10 or 165:45-11-11, nor routine retirement or replacement of facilities.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 25 Ok Reg 2215, eff 7-11-08; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-3-5.1. Acquisition, control, or merger of domestic public gas utilities

(a) An original and four (4) copies of an application for approval, consistent with 165:5-7-1, shall be filed with the Commission's Court Clerk no less than forty-five (45) calendar days prior to the effective date of any of the following transactions pursuant to 17 O.S. §§191.1 through 191.13:

- (1) acquisition of all or any controlling interest in a domestic public utility,
- (2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Commission's Pipeline Safety Division. The application shall include the following additional information, made under oath or affirmation:

- (1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph.

- (2) *The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests. [17 O.S. § 191.3(A)(2)]*

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) calendar days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application.

(4) *Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.* [17 O.S. § 191.3(A)(4)]

(5) *The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in 17 O.S. §191.2 . . . ;*

(6) *The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.* [17 O.S. § 191.3(A)(6)]

(7) *A full description of any contracts, arrangements, or understandings with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.* [17 O.S. § 191.3(A)(7)]

(8) *A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore.* [17 O.S. § 191.3(A)(8)]

(9) *Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.* [17 O.S. § 191.3(A)(9)]

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member,

person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within sixty (60) calendar days after the application is filed and shall be concluded within sixty (60) calendar days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) calendar days after the conclusion of such hearing, entered its order approving or disapproving the merger or other acquisition.

[Source: Added at 25 Ok Reg 2215, eff 7-11-08; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-3-6. Tampering with measuring or regulating equipment

(a) No regulator, regulator station, meter, meter house, or other property or equipment owned by a utility wherever situated, whether upon the consumer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise, except by representatives of the utility owning the same. Official responsibility under authority of a municipal government shall not constitute an exception to this Section.

(b) If the customer tampers with the utility's equipment or receives the benefit of the tampered service, the utility may:

- (1) Disconnect service.
- (2) Charge a tampering fee in accordance with the utility's tariff.
- (3) Charge a reconnect fee in accordance with the utility's tariff.
- (4) Charge a deposit in accordance with OAC 165:45-11-1.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 22 Ok Reg 1808, eff 7-1-05]

165:45-3-7. Supply of gas and pipeline capacity

The supply of gas and the pipeline capacity to transport this supply must be sufficient to meet all normal peak day demands for service and provide a reasonable reserve for emergencies. This subsection is not applicable to curtailable or interruptible gas service contracts, to less than full requirements gas supply and/or transmission service contracts, whether firm or interruptible, to stand-by gas supply and/or transmission service contracts, whether firm or interruptible, to service under interruptible tariffs or to where gas supply is obtained from or furnished by a third-party supplier.

[Source: Added at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98]

SUBCHAPTER 5. METERS AND REGULATORS

PART 1. GENERAL PROVISIONS

165:45-5-1. Installation

- (a) Each utility shall provide and install, at its own expense, and shall continue to own, maintain, and operate sufficient equipment for the regulation and accurate measurement of gas delivered to each consumer.
- (b) Where additional meters are furnished by the utility for the convenience of the consumer, a charge for such meters may be made in accordance with a schedule filed with and approved by the Commission.
- (c) No residential meter shall be installed inside a residence after the effective date of this Chapter.
- (d) Every meter shall be installed at the nearest feasible point to the property line or curb line of the premises of the consumer except where the utility and consumer agree upon a different location.

165:45-5-2. Adjustment of bills for meter error

- (a) **Fast meters.** Whenever any meter tested by PUD or the utility is found to have an average error of more than two percent (2%) fast (or in favor of the utility), the utility shall refund to the consumer the overcharge based upon the corrected meter reading for a period equal to one-half ($\frac{1}{2}$) of the time elapsed since the last test, but not to exceed six (6) months unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, or the error was due to meter tampering or theft, in which case the charge shall be computed from that date.
- (b) **Slow meters.** Whenever any meter tested by PUD or the utility is found to have an average error of more than two percent (2%) slow (or in favor of the consumer), the utility may charge for the gas consumed, but not included in bills previously rendered based upon the corrected meter reading for a period equal to one-half ($\frac{1}{2}$) the time elapsed since the last previous test, but not to exceed six (6) months unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the corrected amount, in installment payments, over the same period of time in which the incorrect billing took place, unless otherwise agreed to by the utility and consumer.
- (c) **Nonregistering meters.** If a meter is found not to register or to register intermittently for any period, the utility may charge for an estimated amount of gas used which shall be calculated by averaging the amounts registered over corresponding periods in previous years or, in the absence of such information, over similar periods preceding or subsequent thereto. The estimated billing shall not exceed six (6) months, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the estimated billing amount, in installment payments, over six (6) months, unless otherwise agreed to by the utility and consumer.
- (d) **Incorrect register, regulator, or multiplier on meter.** If a meter is found to have an incorrect register, regulator, or multiplier, the error shall be corrected. Where the error is adverse to the consumer, the utility shall refund the excess charged for the amount of gas incorrectly metered over the period of time the meter was used in billing the consumer. Where the error is adverse to the company, the utility may charge the consumer the undercharge for the amount of gas incorrectly metered for the period of time, not to exceed six (6) months, the meter was used in billing the consumer, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay any unbilled amount

over the same period of time in which the under-billing took place, but not to exceed six (6) months, unless otherwise agreed to by the utility and consumer.

(e) Notwithstanding the provisions set forth in (a)-(d) above, any corrections for billing as set forth in said subsections shall not exceed a period of three (3) years from the date of discovery.

(f) **Scope.** This Section shall not apply to routine testing and replacement of meters pursuant to OAC 165:45-5-13.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-5-3. Information as to reading of meters

(a) **Means of informing consumers concerning the method of reading meters.**

Each utility supplying metered service shall adopt a means of informing its consumers as to its method of reading meters, either by printing on its bills a description of the method of reading meters, by distributing booklets or folders describing the method, or by notice to the effect that the method will be explained at the office of the utility upon application for service.

(b) **Clarification of method by which quantity is determined.** Each service meter shall indicate clearly the number of cubic feet of gas registered by the meter. Where gas is measured under high pressure or where the quantity is determined by calculation from recording devices, the utility, upon request, shall supply the consumer with sufficient information clarifying the method by which the quantity is determined.

(c) **Meter reading information.** Each service meter shall be read by the utility or their designated representative at monthly intervals at least ten (10) times a year, on approximately the same day of each meter reading period. If it is necessary for the utility to estimate more than two (2) bills per year due to actions of the consumer regarding meter accessibility, and where the inaccessibility is beyond the control of the utility, it will be permissible for the utility to submit an estimated bill based upon consumer reading or past service records, and the amount of such estimated bill shall to be adjusted as necessary when the next actual reading is obtained.

(d) **Meters read by consumers.** For each utility which permits its consumers to regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at monthly intervals. The utility shall verify such readings not less than once every six (6) months; however, a utility which has a residential rate schedule which does not have seasonal variations shall verify such readings not less than once a year. The utility shall file its proposed plan for implementing this subsection for approval by the Commission. Upon approval, said plan will become part of the utility's terms and conditions of service. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous two (2) months average usage and other available information or based on previous usage adjusted for weather or other comparative data. The amount of such estimated bill will be adjusted as necessary when the next actual reading is obtained.

(e) **Authorization of meter reading.** Upon application of the utility and after notice and hearing, the Commission may authorize the reading of meters less frequently than required by this Section and prescribe conditions and procedures therefore. However, a utility is not prohibited from reading meters more frequently than required by this Section.

(f) **Utility records.** The utility records shall show the following:

- (1) Consumer's name, address and rate schedule symbol;
- (2) Identifying number and type of the meter;

- (3) Meter reading and dates thereof;
- (4) Whether the reading has been estimated; and,
- (5) Any applicable multiplier or constant.

(g) **Meter charts.** All charts taken from recording meters shall be marked with the date of recording and sufficient information to identify the location.

(h) **Meter constants or multipliers.** Each service meter shall clearly indicate the reading from which the charge is made to the consumer. In any case where the dial reading of a meter must be multiplied by a factor due to gas being delivered at a pressure not consistent with the meter index pursuant to OAC 165:45-7-12(a), the gas bill will be calculated with the correction factor.

(i) **Access to meters and other property.** The utility shall, at all reasonable times, have access to meters, service connections, and other property owned by it on a consumer's premises for the purpose of meter reading, maintenance, inspection and discontinuance of service. Refusal on the part of the consumer and/or property owner to provide reasonable, safe and unobstructed access for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility, after ten (10) business days written notice. In the event the customer is a tenant, the utility shall attempt to notify the property owner of the access violation and the pending disconnection. If the consumer and/or property owner does not correct unsafe conditions or obstructions, including dangerous animals, the utility may relocate the meter to a safe and accessible location at the expense of the consumer and/or property owner. The utility shall provide its employees with a means of identification in order to claim the right of access.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

PART 3. TESTING

165:45-5-10. Meter testing facilities and equipment

(a) **Equipment and facilities arranged for accurate testing of meters.** Each utility furnishing metered gas service shall own or arrange for equipment and facilities and follow test procedures necessary for accurate testing of its meters to the limits of accuracy specified in this Subchapter. The laboratory apparatus and equipment shall be available at all times for inspection or use by the Commission or its authorized representative. A utility may contract for testing of its meters by another utility. A facility operated by a person other than a utility engaged in the repair and testing of meters, may, after inspection by the Commission, be authorized to test and certify meters for utilities as provided in this Section.

(b) **Equipment for testing small capacity meters.** Each utility shall own and maintain, or have available, a minimum of one (1) meter prover of approved type and of a capacity adequate for the testing of small capacity meters. Each meter prover shall be equipped with all accessories needed for accurate meter testing, and it shall be maintained in proper adjustment so that it will be capable of determining the accuracy of any service meter to within plus or minus one-half (1/2) of one (1) percent. Each meter prover shall be so placed that it will not be subjected to drafts and excessive changes of temperature.

(c) **Equipment for testing large capacity meters.** Each utility furnishing metered gas service through large capacity meters shall have available and maintain in proper adjustment, proving equipment, equipped with all accessories needed for accurate meter testing and suitable for determining the accuracy of any large capacity meter to within plus or minus one-half (1/2) of one (1) percent

(d) **Equipment for testing orifice meters.** Each utility furnishing metered gas through orifice meters shall have available and maintain in proper working condition, equipment suitable for the testing and calibration of such devices to ensure the accuracy based upon nationally recognized industry standards and practices such as American Gas Association Report Number 3.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-5-11. Place and methods for meters and test equipment

(a) Domestic meters-diaphragm type (under 500 c.f.h. capacity).

(1) All tests on domestic meters in service, provided for in this Chapter, shall be made at an approved testing facility with a suitable meter prover as specified in OAC 165:45-5-10. The differential pressure carried on the prover shall not exceed two inches (2") of water column pressure.

(2) Meters shall be tested at two or more rates of flow as needed to ascertain their accuracy. When two rates are used, the low flow rate shall be equivalent to 20% to 40% of the applicable badged capacity and the high flow rate shall be equivalent to 80% to 120% of the applicable badged capacity (See ANSI B109.1 Section 4.2.4). Before being placed in service, meters shall be adjusted to an accuracy of 100% within the limits of plus or minus one (1) percent at a low flow rate (20% to 40% of capacity) and a high flow rate (80% to 120% of capacity). The numerical difference between the test values for these two rates should not exceed one (1) percentage point.

(b) Special meters-diaphragm type (500 c.f.h. or more capacity).

(1) All tests on large positive meters in service provided for in this Chapter shall be made with approved testing apparatus as specified in OAC 165:45-5-10. Such meters shall be tested on location on the consumer's premises, if feasible. Meters shall be tested with air at one or more rates of flow as needed to ascertain their accuracy. When two rates are used, the low flow rate shall be equivalent to 20% to 40% of the applicable meter capacity and the high flow rate shall be equivalent to 80% to 120% of the applicable meter capacity. These tests shall be conducted on the basis of either the 0.5 or 2 inch water column (125 or 500 Pa) capacity of the meter as appropriate for its use. (See ANSI B109.2 Section 4.2.4). Before being placed in service, meters shall be adjusted to an accuracy of 100% within limits of plus or minus one percent at low flow (20% to 40% of capacity) and a high flow rate (80% to 120% of capacity). The numerical difference between the test values for those two rates should not exceed one percentage point.

(2) All tests on orifice meters in service provided for in this Chapter shall be made in their permanent location on the consumer's premises with approved testing apparatus as specified in OAC 165:45-5-10. The accuracy of the differential pressure registration shall be determined on a rising and falling pressure throughout the entire range of the differential element. The accuracy of the static pressure registration shall be determined at zero or atmospheric pressure and at least a second point which approximates the normal operating pressure of the recorder.

(c) Rotary type meters. Rotary meters shall be tested and calibrated at the factory and/or the utility's meter shop in accordance with recognized and accepted practices, and shall be correct to within plus or minus one percent when operating at rated capacity. Meter accuracy shall be 100% plus or minus one percent from approximately 20% to 100% of the meter's rated capacity (See ANSI B109.3

Section 4.2.3.). Rotary meters may be tested and calibrated on location or at the utility's facilities with an approved apparatus as specified in OAC 165:45-5-10. Meters shall be tested at one or more rates of flow to ascertain their accuracy. When one rate of flow is used, it shall be 10% to 30% of the rated capacity. When two rates are used, one of the flow rates shall be the same as the single test. The high flow rate shall be 60% to 100% of the rated capacity. If this is not attainable, then it shall be the maximum capacity of the proving equipment. If an intermediate flow rate is used, it should be approximately midway between the low and high rates. After the initial accuracy tests have been made by the manufacturer or user, differential tests may be used to confirm the continued accuracy of in-service rotary meters (See ANSI B109.3 Section 4.2.2.).

(d) **Turbine meters.** Turbine meters shall be tested and calibrated at the factory and/or the utility's meter shop in accordance with recognized and accepted practices and shall be correct to within plus or minus one (1) percent when operating at rated capacity (See American Gas Association Report No. 7 Sections 8 and 9). Turbine meters may be tested and calibrated on location or at the utility's facilities with an approved testing apparatus as specified in OAC 165:45-5-10.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-5-12. Meter accuracy requirements

(a) Installation test.

(1) Every domestic meter, whether new, repaired, or removed from service for any cause, shall be in good order when installed and shall not be more than plus or minus one (1) percent in error on check proof, and the open proof shall be within plus or minus one (1) percent of the check proof. Each repaired meter shall be marked to indicate the month and year of the last test made on that meter.

(2) Every orifice meter, linear, or positive meter with more than 500 c.f./hr. capacity, whether new, repaired, or removed from service for any cause, shall be in good order when installed and shall not be more than plus or minus one (1) percent in error when operating at any rate of flow within the limits of its capacity as specified in OAC 165:45-5-11.

(b) **Allowable error in adjustment of charges.** Whenever any gas meter is tested, at the request of the Commission or by the utility at the request of the consumer to determine its accuracy, it shall be considered correct if it is found to have an average error of no more than plus or minus two (2) percent. The utility shall not be required to make an adjustment in past charges for gas service, unless the error revealed by such a test exceeds plus or minus two (2) percent.

(c) **Average error.** The average error of a meter shall be determined as follows:

(1) **Domestic meters.** For domestic meters, one-half of the algebraic sum of the error at check proof and the error at open proof.

(2) **Special meters.** For orifice, linear, and positive meters with more than 500 c.f./hr. capacity, the algebraic average of the errors determined at the various rates of flow at which the meter was tested as specified in OAC 165:45-5-11; however, if the rates of flow at which the meter has been registering in service can be definitely established, the weighted average error shall be determined.

(d) **Prepayment meters.** No utility shall use prepayment meters geared or set to produce a rate or amount higher than would be paid if a standard type meter were used, except pursuant to a special rate schedule approved by the Commission for the particular class of service.

(e) General.

- (1) All meters and/or associated metering devices, when tested, shall be adjusted as closely as practicable to the condition of zero error.
- (2) All tolerances set forth in this Subchapter are to be interpreted as maximum permissible variations from the condition of zero error. No meter shall be adjusted to be in error, even within the tolerance authorized by this Subchapter.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-5-13. Periodic testing of meters and test equipment

(a) Every utility shall make periodic tests of all meters, associated devices, and instruments to insure their accuracy. Such tests shall be scheduled within the calendar year, or earlier, when the interval is stated in years; or within the calendar month, or earlier, when the interval is stated in months. The basic periodic test interval shall not be longer than provided in the following schedule (Note: Maintenance programs suggested by manufacturers of the following meters and devices should be carefully followed.):

- (1) Positive displacement meters:
 - (A) Schedule as provided in programs submitted to and approved by the Commission as provided in subsection (b) of this Section
 - (B) 500 c.f./hr. or less - 10 years
 - (C) 501 to 1500 c.f./hr. - 7 years
 - (D) 1501 to 2500 c.f./hr. - 5 years
 - (E) Over 2500 c.f./hr. - 3 years
- (2) Orifice meters - 6 months
- (3) Base pressure correcting devices - 24 months
- (4) Base volume correcting devices - 24 months
- (5) Secondary standards:
 - (A) Immersion Type Cubic-Foot Bottle, one (1) cubic foot - 10 years
 - (B) Dead weight tester - 10 years
 - (C) Pneumatic dead weight tester - 2 years
- (6) Working standards:
 - (A) Bell provers - 5 years
 - (B) Rotary displacement test meters - 5 years
 - (C) Flow provers - 5 years
 - (D) Laboratory quality indicating pressure gauges - 6 months

(b) The Commission may, upon application of the utility and after notice and hearing, extend the test intervals on any meters or class of meters, based upon a statistical sampling methodology or a similar methodology, upon proper showing that the extension would not be detrimental to consumers.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-5-14. Meter testing on request of consumer

- (a) If a written request of a consumer is received at an office of a utility, the utility shall, within twenty (20) calendar days, test the accuracy of the meter through which the consumer is being served.
- (b) A charge may be made for a meter test requested by the consumer if it is found to test within limits of accuracy prescribed by OAC 165:45-5-12. The utility may make the charge if prescribed in the utility's Commission-approved tariffs.

(c) A consumer may make a written request to be present when the utility conducts the test on the meter, and may have an expert or other representative present at that time. The utility shall conduct the test in the presence of the persons requested during regular working hours of the utility.

(d) A written report stating the name of the consumer requesting the test, the date of the request, the location of the premises where the meter has been installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the result of the test shall be supplied to such consumer within ten (10) business days after the completion of the test.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-5-15. Meter tests monitored by the Commission

(a) Upon request to the Commission by a consumer, a test may be made of the meter through which the consumer is being served by the utility in the presence of a representative of the Commission. The test shall be made within twenty (20) calendar days after receipt of the request, during regular working hours of the utility and the Commission. The consumer shall be notified of the scheduled test and be invited to attend or have a representative present to witness the testing of the meter.

(b) Upon receipt of such request, the Commission shall either notify the utility to remove and seal the meter in the presence of the consumer for the purpose of testing the meter at a meter testing facility, or shall notify the utility to perform the meter test at the consumer's premises if feasible. If directed to seal the meter, the utility shall keep the meter in the same condition with the seal unbroken until the test can be made in the presence of the consumer and/or his representative and the representative of the Commission.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 22 Ok Reg 1808, eff 7-1-05]

165:45-5-16. Replacement of meters

A request from a consumer for replacement of the service meter on his premises shall be deemed a request for the test of the meter pursuant to OAC 165:45-5-14. If such meter tests within the tolerances set forth in this Subchapter, the meter may be left in place. Any meter which cannot be repaired to operate within the tolerances set forth in this Subchapter shall be replaced by the utility at no cost to the consumer.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

SUBCHAPTER 7. GAS PRESSURE, MEASUREMENT, AND ODORIZATION

PART 1. GAS PRESSURE

165:45-7-1. Gas pressure limits

As a safety measure, the pressure of gas as measured at the outlet of the utility's service pipe to any consumer, or in the case of high pressure system, at the outlet of the utility's service regulator, shall be maintained as uniformly as practicable. It shall not be less than one-half nor more than twice the pressure at which the regulator is set, provided, however, that such limit may be exceeded by 2 p.s.i.g. if the regulator fails.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-2. Allowable variations

(a) The maximum pressure of gas at the outlet of the utility's service supply or regulator on any day to any consumer shall not be greater than twice the minimum set pressure on that day at that outlet.

(b) The utility shall not be deemed to have violated (a) of this Section if the variations in gas pressure were due to documented temporary conditions beyond the control of the utility.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-3. Pressure testing equipment

Each utility shall comply with the pressure control, testing and other requirements imposed by the U.S.D.O.T., Regulations for Transportation of Natural and other Gas by Pipeline - Title 49 C.F.R. §§ 192.195, 192.197, 192.199, 192.739, 192.741, and 192.743.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-4. Pressure surveys

Each utility shall comply with the pressure survey, recording, and other requirements imposed by the U.S.D.O.T., Regulations for Transportation of Natural and other Gas by Pipeline - Title 49 C.F.R. §§ 192.195, 192.197, 192.199, 192.739, 192.741, and 192.743. Each utility shall regularly record the pressures in various parts of its distribution system. The charts or records thus obtained shall bear the date and place where the pressure was taken and shall be retained for a period of at least two (2) years.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

PART 3. GAS MEASUREMENT

165:45-7-10. Definition of a cubic foot of gas

(a) For the purpose of determining heating value of gas under this Chapter, a cubic foot of gas means that amount of gas having a gross heating value of at least nine hundred (900) British thermal units, which when saturated with water vapor at a temperature of sixty degrees Fahrenheit (60°F) and subjected to an absolute pressure equivalent to 14.73 p.s.i.a. and occupies a volume of one (1) cubic foot.

(b) For the purpose of measurement of gas to a consumer, a cubic foot of gas shall contain no less than the heating value prescribed in subsection (a) of this Section, and shall be that amount of gas occupying one (1) cubic foot at a pressure base which shall be stated in the utility's tariffs on file with and approved by the Commission.

(c) No gas regulator shall be adjusted to allow gas to be metered to a consumer at less than the pressure base stated in the utility's tariffs on file with and approved by the Commission.

(d) Where gas delivered to the consumer is measured at a pressure greater than the pressure base upon which it is computed, the volume registered by the meter shall be corrected by a multiplier accepted by industry standards.

(e) Where a utility has a contract or a tariff in effect on the effective date of this Chapter specifying a pressure base other than 14.73 p.s.i.a., the pressure base so specified may continue to be used for billing purposes. However, all reports to the Commission will be at 14.73 p.s.i.a. pressure base, detailing the conversion

multipliers used.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-11. Gas measurement requirements

- (a) All gas transmitted by any utility shall be measured accurately by proper apparatus prior to entering the pipe line, and all gas consumed for light, heat or power in connection with its transmission shall be measured accurately in order that the "lost and unaccounted for" gas may be accurately determined.
- (b) All gas transmitted by any utility shall be measured accurately by proper apparatus, and all gas consumed for light, heat, or power in connection with its distribution shall be measured in order that the "lost and unaccounted for" gas in distribution may be accurately determined.
- (c) Each utility shall keep a record of the monthly input and output of its system.
- (d) All the measurements required by this Section shall be recorded and the totals of the input and output measurements shall be reported each month to the Commission on its Forms G.D. and G.T., "Comparative Monthly Report of Revenues and Expenses." The measurements shall be reported on the 14.73 (p.s.i.a.) pressure base. Sales to consumers may be reported as billed when the pressure at which the gas is delivered is at standard delivery pressure.
- (e) The utility shall treat each point of delivery as a separate consumer, or contract, and shall separately meter and charge accordingly. The utility shall not combine meter readings for the purpose of giving the consumer a lower rate, except as otherwise authorized by the Commission. More than one point of delivery to a single consumer at a single location will be permitted only if required by the physical characteristics of the facilities served. In such cases, total usage at multiple points of delivery shall be combined for billing purposes.
- (f) All gas service rendered by a utility shall be subject to meter measurement, except as otherwise authorized by the Commission.
- (g) Service to newly-constructed multiple residences, apartment complexes or similar residential units shall be individually metered, one meter per residence, and billed under the applicable rate schedule.
- (h) Where four (4) or fewer rooms are rented to the public, for strictly residential purposes, within a residence with a single meter, the residential rate shall be applied to service for the entire residence.
- (i) Exceptions to the standard set forth in subsection (g) of this Section for service to multiple residences may be granted by the Commission with respect to newly-constructed multiple residence units. A utility or the owner of such a multiple residence unit may submit an application seeking authorization to furnish service at one or more points of delivery. While the Commission may deny authorization for safety and other reasons, the Commission shall grant such authorization only if it determines that providing service in the manner requested will encourage:
 - (1) Conservation of energy;
 - (2) The efficient use of facilities and resources by the utility providing such service; and,
 - (3) Equitable rates to the consumers of such service.
- (j) Except as provided in this subsection, no consumer shall separately meter or submeter and separately bill another consumer for gas. A landlord or innkeeper may include the cost of gas in rent. A landlord may utilize any formula in computing the energy component of rent, provided that component is not separately metered and billed as "gas." A consumer violating this Section is subject to termination of service by the utility. This Section shall not apply to the sales of natural gas to or by

a distributor for use as a vehicular fuel.

(k) Service to previously constructed multiple residences, apartment complexes or similar residential units may continue to be provided with a single or multiple meters. At the option of the utility, individual consumers may be served with individual meters at the applicable rate schedule.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-12. Measurement of gas under high pressure

(a) When gas is measured through positive or linear meters at a pressure greater than the pressure base used for measurement, such meters shall either be equipped with reliable pressure-volume recording gauges or compensating devices, as necessary or as otherwise required by the Commission, for accurately determining, in accordance with contracts or other tariff provisions, the quantity of gas that has passed through the meter, or the dial reading of the meter shall be multiplied by a correction factor.

(b) In computing the volume of gas on a given pressure base from a pressure volume chart, the multiplier shall be obtained by the weighted average method, which method consists of determining the average pressure for each unit volume indicated on the chart.

(c) In computing the volume of gas on a given pressure base from an orifice meter chart or charts, the average static pressure and the average differential pressure shall be determined for periods not exceeding one (1) hour. Where pressure variations are extreme during the hour, such average should be based on measurements taken at no more than fifteen (15) minute intervals.

(d) The calculation of volume shall be made in accordance with the Ideal Gas Law and may be corrected for deviations from Boyle's Law, all in accordance with methods and tables generally recognized by and commonly used in the natural gas industry.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-7-13. Calorimeter equipment and heating value requirements

(a) **Method of determining heat content.** Each utility shall maintain or have access to an approved type calorimeter or other accurate method of determining heat content, and shall periodically test representative samples of gas being distributed in its system.

(1) A recording calorimeter shall be checked at least once a month with an approved standard calorimeter or by some other accurate means.

(2) Whenever the utility materially changes its operations or source of gas, a new test will be made of the heating content of gas furnished.

(3) Both calorimeter and method of testing shall be subject to inspection and approval by a representative of the Commission.

(4) The results of all tests shall be kept on file by the utility for a period of three (3) years.

(b) **Standard of heating value.** Each gas utility shall establish its own minimum heating value for the gas it furnishes the consumer, provided the standard it establishes shall not be less than nine hundred (900) British thermal units per cubic foot at 14.73 p.s.i.a. and sixty degrees Fahrenheit (60°F).

(c) **Daily average heating value.** At no time shall the daily average heating value be less than the utility's minimum provided in subsection (b) of this Section.

(d) **Adopted heating value.** The minimum adopted heating value by the utility shall be stated in its Commission-approved tariffs.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

PART 5. ODORIZATION AND PURITY OF GAS

165:45-7-20. Odorization and purity of gas

- (a) Odorization of gas will comply with the U.S. Department of Transportation Regulations for Transportation of Natural and Other Gas By Pipeline - Title 49 C.F.R. 192.625.
- (b) The purity of all gas distributed shall be substantially free from dangerous or objectionable quantities of impurities such as hydrogen sulphide, nitrogen, or other combustible or noncombustible constituents which, if the gas is completely burned, yield noxious or toxic products of combustion.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

SUBCHAPTER 9. RECORDS AND REPORTS

165:45-9-1. Preservation and availability of records; reporting contact persons

- (a) Unless otherwise specified, all records required by this Subchapter shall be preserved by the utility in the form and for a period of time not less than that specified by rules of FERC or, in the absence thereof, for two (2) years.
- (b) All records required by this Subchapter shall be kept within the State of Oklahoma at the office or offices of the utility, and shall be open for examination by the Commission or its authorized representatives; provided, if the principal place of business of the utility is located outside of the State of Oklahoma, the records may be kept at the principal place of business of the utility or at such other location where the records are regularly kept. Each utility shall maintain accurate and detailed records reflecting the original cost of property located in and required for doing business in the State of Oklahoma, including the cost of fuel. The utility shall make any such records available for examination by the Commission or its authorized representative. Each utility shall notify the Commission as to the location of the office or offices at which the various classes of records are kept, and shall file with the Commission's Court Clerk such reports as the Commission may from time to time require.
- (c) **Contact persons.** Each utility shall notify in writing, the PUD Director within thirty (30) days of a change in the company-designated contacts for PUD and CSD issues.

- (1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s), and shall be furnished applicable to each operating district, town or any segment of the utility so that PUD will be able to reach the responsible person at any time. If this information is unavailable, the utility may seek a waiver from the PUD Director by making the request in writing.
- (2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers;
 - (E) Tariff issues;
 - (F) Regulatory matters;

- (G) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (H) Primary emergency;
- (I) After hours emergency;
- (J) Annual reporting;
- (K) Attorney for regulatory matters;
- (L) Community liaison; and
- (M) Engineering operations, meter tests and repairs.

(d) **Other information.** Each utility shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-9-2. Interruptions of service

- (a) It shall be the duty and responsibility of the utility to make reasonable effort to notify all affected consumers when the gas supply is to be turned off, or turned on after having been turned off.
- (b) Whenever service is interrupted, other than under emergency conditions, the interruption shall be made whenever possible at a time which will cause the least inconvenience to consumers. Where feasible, the utility shall give advance notice to consumers who will be affected (including hospitals, police, fire, schools and other public buildings responsible for public health and safety).
- (c) Each utility shall keep a record of any condition resulting in an interruption of service affecting its entire system, or major division thereof, including a statement of the time, duration, and cause of any such interruption and such record shall be available to the Commission or its authorized representative upon request. Class C and D utilities shall be required to keep records should an interruption of service occur affecting fifty (50) or more consumers, of the time and nature of the interruption of service, the time and method of restoration of service, and the approximate number of consumers affected and areas of the system affected. Class A and B utilities shall be required to keep records should an interruption of service occur affecting two hundred or more consumers, of the time and nature of the interruption of service, the time and method of restoration of service, and the approximate number of consumers affected and areas of the system affected. These records shall be retained for five (5) years.
- (d) A utility may cause emergency interruption of service without notice when required by failure of equipment, unexpected and prolonged increase in load, fire, storm, strike, or other cause beyond its control. Each utility shall establish and train employees in emergency procedures designed to prevent or shorten service interruption where conditions require interruption of service. The utility may in good faith select the areas or consumers whose service is to be interrupted as emergency conditions require.
- (e) Each utility shall prepare and maintain a plan for scheduled interruptions, emergency interruptions, and restoration of service which is consistent with this Section.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 19 Ok Reg 1977, eff 7-1-02]

165:45-9-2.1. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each gas utility shall

have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy on file with the CSD Director and the Commission's Emergency Liaison, and updated as changes occur. No later than September 30 of each year, this policy shall be reviewed by the utility at least annually and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each gas utility shall provide and keep current, the phone number of any 24 hour emergency operations center or a list with a minimum of two individuals with 24-hour contact numbers, to the Commission's CSD Director and the Commission's Emergency Liaison. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.
- (3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time, and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.
- (4) Once gas service to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.
- (5) Attempted notification of high-priority customers or major gas consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.
- (6) Commission notification through the CSD Director and the Commission's Emergency Liaison to implement the process outlined in paragraphs A through C of this subsection. The Commission notification process to the designated Consumers Services Division individual(s) and the Commission's Emergency Liaison may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:
 - (A) An initial contact to notify Staff of outages which involve a major utility substation or facility; or which, may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

[Source: Added at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 23 Ok Reg 1677, eff 7-1-06; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-9-3. Records of service complaints; investigations

(a) Each utility shall make a full and prompt investigation of every formal complaint made to it by its consumers, either directly, or through the Commission after the consumer or other interested party has contacted the utility. It shall keep a record of all formal complaints received, which record shall show the name and address of the complainant, the date, the character of the complaint, and the adjustment, or disposal made thereof, which record shall be retained for examination by the Commission or its Staff. For purposes of this Section, a formal complaint is an oral or written communication by a consumer or other interested party to the utility's business office that prompts an investigation by the utility. All records of formal complaints shall be retained for a period of at least two (2) years from the date of final disposition.

(b) In the event of a dispute between the consumer and the utility regarding the accuracy of a metering device, the utility shall make such investigation as shall be required by the particular case and report the result thereof to the consumer. In the event that the complaint is not reconciled, the utility or the consumer may request that the Commission's CSD mediate the dispute, or make application to the Commission for review of the complaint.

(c) When a utility has been notified that a complaint regarding meter accuracy has been referred to the Commission, the questioned meter equipment shall be handled in accordance with OAC 165:45-5-15. Violation of this subsection will be considered substantiation of the complainant's contentions.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-9-4. Record of meter and meter test

(a) Whenever any service meter is tested, the original test record shall be preserved, including the information necessary for identifying the meter, the reason for making the test, the reading of the meter before and after the test, together with all data taken at the time of the test in sufficiently complete form as to permit the convenient checking of the method employed and the calculations. After removal from service, only the record of the latest test need be preserved.

(b) A record shall be made for each meter used by any utility showing the date of acquisition, the most recent test and/or repair to which it has been subjected, and its present location. The record shall be retained until six (6) months after the meter is permanently retired from service.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-9-5. Record of accidents [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-9-6. Filing of maps

Each utility shall maintain suitable detailed maps of its entire system, which shall be made available to the Commission upon request. The general system maps shall be filed with the Commission when a utility files its original application for approval of its rate schedules.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-9-7. Reporting of storage gas

Each utility having gas in underground storage shall report to the Commission on or before the 60th day following the last day of each month the amount and purchased cost of gas in storage as of the last day of the preceding month as set forth in OAC 165:50-3-2(a)(2)(D). The report shall be made as prescribed by the Director of the Public Utility Division.

[Source: Amended at 12 Ok Reg 2127, eff 7-1-95]

165:45-9-8. Reporting of nonutility operations or subsidiaries

(a) When a utility is engaged in any type of nonutility operations through subsidiaries or otherwise, or in any business not considered in the ratemaking process, and personnel, services, material, equipment, or the use of any facility of the utility is supplied for the operation of such other type of business or subsidiary, the utility shall keep an accurate account of the allocation of all such costs between utility and nonutility operations. All such costs shall mean actual cost plus any direct or indirect charges related to the cost of personnel, services, material, equipment or facilities calculated on the same basis used in allocating direct and indirect charges to the utility operations. There shall be a written accounting of the allocation of these costs between utility and nonutility operations on a monthly basis.

(b) The cost of keeping records and any other expense caused by furnishing such personnel, services, material, equipment or facilities shall be charged to the recipient thereof. Such costs shall be calculated as set forth in subsection (a) of this Section.

(c) Records of and reports on personnel, services, material, or facilities allocated to other types of business or subsidiaries referred to in this Section shall be available to the Commission or its representatives.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-9-9. Reporting of purchased gas for adjustment purposes

A utility having an adjustment for cost of purchased gas clause in its approved tariffs shall file periodic and detailed reports of its gas purchases in such form as the Commission may require and as set forth in OAC 165:50.

[Source: Amended at 12 Ok Reg 2127, eff 7-1-95]

165:45-9-10. Accounting

(a) Gas utilities operating within the State of Oklahoma shall be classified as prescribed by OAC 165:70-1-4 (a) and (b).

(b) All gas utilities having multi-state operations shall maintain records in such detail that the costs of property located in and required for doing business in the State of Oklahoma in accordance with jurisdictional boundaries can be accurately and readily ascertained.

(c) No change in or departure from the system used by the utility will be permitted except upon order of the Commission made after notice and hearing.

(d) The Annual Report FERC Form 2 - Class A and B Natural Gas Companies and FERC Form 2A - Class C and D Natural Gas Companies promulgated by the FERC are hereby adopted for purposes of the annual report to this Commission by all Class A, B, C, and D Gas Companies filing reports with the FERC. Each utility, in addition to filing with the Commission a copy of its annual report to the FERC, if any, shall file an annual report on a form furnished by the Commission of its utility service and operations in the State of Oklahoma. Any allocation of costs or revenues necessary in developing results of operations for the State of Oklahoma shall be accomplished on a basis approved by the Commission.

(e) The results of operations reported by each gas utility in its annual report to the Commission shall be reconciled with the results of operations shown on its books, records and in its other reports to the Commission.

(f) Each utility shall report to the Commission, at the end of the utility's fiscal year and on summary sheets furnished or approved by the Commission, the book value of its utility plant. These reports and the annual reports required by subsection (d) of this Section shall be delivered to the Commission not later than ninety (90) calendar days after the end of the fiscal year, provided that the Commission may grant an extension of time for good cause shown.

(g) Each utility shall make special reports at such time and in such form as the Commission may from time to time require.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-9-11. Utility acknowledgement of customer complaint inquiries

If PUD contacts a utility concerning a customer complaint, the utility shall respond to PUD within the following time periods:

(1) Inquiries regarding disconnection, suspension, or termination of service shall be acknowledged by the utility within one (1) business day of receipt of inquiry from PUD.

(2) Inquiries other than for disconnection, suspension, or termination of service shall be acknowledged by the utility within three (3) business days of receipt of inquiry from PUD.

[Source: Added at 36 Ok Reg 668, eff 7-25-19]

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. INITIATION OF SERVICE

165:45-11-1. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plans shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (d) and (k).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application for new service. The utility plan may establish other relevant criteria which will qualify the

consumer for nonpayment of a deposit.

(c) No utility shall require a deposit of more than one-sixth (1/6) the estimated annual bill. The utility may allow smaller deposits to be made in conformance with relevant objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments. The utility may also require consumers to pay the entire deposit prior to initiating service.

(d) A residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months pursuant to OAC 165:45-11-11 or has presented a check subsequently dishonored.

(e) A non-residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twenty-four (24) billing periods or if the consumer has had service disconnected during the last twenty-four (24) months pursuant to OAC 165:45-11-11 or has presented a check subsequently dishonored.

(f) Interest shall be paid on cash deposits by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of 10-year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of the one (1) year Treasury Security, as referenced in subsection (e)(1) of this Section, for the first year the deposit is held.

(3) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in paragraph (1) and/or (2) of this subsection results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(4) The PUD Director shall calculate the interest rates as pursuant to (e)(1) and (2) of this Section, and shall mail notice to the gas utilities by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e) of this Section, otherwise the current interest rate(s) will remain in effect.

(g) If refund of deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after final discontinuance of service.

(h) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(i) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(j) Each consumer posting a cash deposit shall receive a nonassignable receipt in writing at the time the deposit is made or within ten (10) days thereafter. When a consumer pays a deposit as a portion of a gas service bill, payment of the bill shall serve as a receipt for payment of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any balance to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of this deposit or balance.

(k) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored.

(l) The utility shall automatically refund non-residential service deposits of less than \$20,000, with accrued interest, after twenty-four (24) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, that service has not been disconnected within the twenty-four (24) month period. Non-residential consumers, who meet the above-referenced eligibility criteria, must have a minimum of five (5) years continuous service at the service location with the utility before a deposit will be refunded.

(m) The utility plan shall provide for the review of all residential deposits at least annually and deposits for non-residential service at least every twenty-four (24) months and shall provide that refunds will be paid by negotiable instrument, upon request of the consumer provided the consumer's bill is not delinquent, or by credit against current billing.

(n) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days either in person or by mailing it to the consumer's last known address.

(o) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(p) The utility may withhold refund or return of the deposit pending the resolution of a dispute with respect to charges secured by such deposit.

(q) The utility company shall keep records to show:

- (1) The name, account number, and address of each depositor;
- (2) The amount of the deposit and date received; and,
- (3) Each transaction concerning the deposit.

(r) Such records shall be retained for two (2) years after the deposit and/or interest is refunded or applied.

(s) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the application of transfer a verified list of all consumers for whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(t) The deposit made by the consumer with the utility at the time of application for gas service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or

other proper charges.

[Source: Amended at 10 Ok Reg 2643, eff 6-25-93; Amended at 11 Ok Reg 3747, eff 7-11-94; Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-2. Right to refuse service

- (a) The utility may refuse to provide service to an applicant or consumer from whom there remains owing an unpaid account for service of a similar character previously supplied to such applicant or consumer at any location within that utility's service territory by a gas utility governed by this Chapter, or a judgement arising from an unpaid account remains unpaid in the applicant's name.
- (b) The utility shall not deny service to a consumer for failure to pay any obligation to the utility except the amount due for utility service. Utilities shall not deny service to a consumer for nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.
- (c) The utility may refuse to provide service to an applicant for misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.
- (d) The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld, upon request of the consumer.
- (e) The utility may refuse to provide service to an applicant when the applicant is not in compliance with a Commission order, a deferred payment agreement, or an extension agreement with the utility entered into with respect to service previously rendered by the utility to the applicant.
- (f) The utility may refuse to provide service to an applicant when the applicant has not paid the utility an approved fee, charge, or deposit as provided for in this Subchapter or the utility's approved tariffs.
- (g) The utility may refuse to provide service to an applicant when the applicant has not furnished adequate assurance of payment in the form of a deposit or other security for service within twenty (20) calendar days of an order for relief under the United States Bankruptcy Code, U.S.C.A. Title 11 Section 366.
- (h) The utility may refuse to provide service to an applicant when there is evidence that the applicant is using service in an unauthorized manner or is tampering with the equipment furnished and owned by the utility.
- (i) The utility may refuse to provide service to an applicant when the applicant has not provided an acceptable valid and non-expired proof of identity. Acceptable valid and non-expired proof of identity may include the following:
 - (1) Driver's license or state identification card.
 - (2) Department of Defense identification.
 - (3) Employment identification.
 - (4) Social security card.
 - (5) Student identification card.
 - (6) Passport.
 - (7) Birth certificate.
 - (8) Any other verifiable proof which would establish identity.
- (j) The utility may refuse to provide service when:
 - (1) The applicant is not in compliance with all state and/or municipal regulations governing the service for which applied.

- (2) The applicant is not in compliance with the utility's tariffs which have been approved by this Commission.
- (3) The service applied for is of such character that it is likely to unfavorably affect the service of other consumer.
- (4) The connection of utility service to the applicant's equipment would create a hazard.
- (5) The applicant is causing or threatening injury to a utility employee or an employee's family to retaliate for or prevent an act the utility performs in the course of business.
- (6) The applicant is causing or threatening damage to utility's property.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-3. Connection, disconnection, and reconnection charges

The utility shall make no charge for connection, disconnection or reconnection of gas service for a consumer except the charges specified in the approved tariffs and terms and conditions of service of the utility.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 15 Ok Reg 2177, eff 7-1-98]

165:45-11-4. Consumer information

(a) Each utility shall:

- (1) Maintain maps, plans or records of its transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective consumers and others entitled to the information as to the services available in any locality; and,
- (2) Annually, transmit to each of its nonresidential consumers a statement that the rate tariff on which they are served is available upon request. Additionally, the consumer shall be advised that the utility company, upon request, will review the consumer's applicable rate tariff to determine if the consumer is receiving the rate tariff that is best suited to the consumer.

(b) The utility shall provide, in each telephone directory covering any area it serves, a telephone listing of the number by which the utility can be notified at any time during a twenty-four (24) hour day of any utility service deficiency or emergency, or the information may be published in a regular newsletter or publication furnished to its subscribers. In addition, the telephone number shall be published on the homepage of a utility sponsored website, if applicable.

(c) The utility shall advise its residential consumers through its consumer mailing, no less than once a year, of the Commission rules regarding the following:

- (1) Disconnection information which states the rights listed in the "Disconnect Notice," as outlined in OAC 165:45-11-16 *et seq.*;
- (2) Commission-approved deferred payment plans;
- (3) Twenty (20) calendar day government and/or private financial aid assistance deferral;
- (4) Life Threatening Certificate and consumer responsibilities;
- (5) Elderly or Consumers with disabilities can request their account to be flagged by the utility so that CSD can intervene on their behalf, when requested by the consumer, in the event of a disconnection of service notice and extend the disconnection date by up to five (5) business days;
- (6) Average Monthly payment plans;
- (7) The address and telephone number of the Commission's CSD;
- (8) The limitations for disconnection, including days or periods of time when service shall not be disconnected as outlined below in OAC 165:45-

11-14(c); and

(9) The availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:45-11-12.

(d) The mailing required by paragraph (b) of this Section, shall occur during the months of September and/or October of each year.

(e) The utility shall provide the location of pay agents upon the consumer's request.

(f) The utilities are strongly encouraged to have bilingual customer service personnel available to assist non-English speaking consumers regarding disconnection and related matters.

[Source: Added at 13 Ok Reg 3259, eff 7-25-96; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 21 Ok Reg 2095, eff 7-1-04; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-5. Identification of class of service

(a) Upon application for service by the consumer, it is the responsibility of the utility to provide each consumer, orally or in writing, if requested, with the proper tariff and the identity of the consumer's respective class of service. The utility may rely upon the information supplied by the consumer to the utility for purposes of identifying the proper class of service and appropriate tariff rate. Upon notice from the consumer or upon discovery by the utility in the normal course of business of an alleged incorrect service classification, tariff rate or apparent change in the consumer's type of service, the utility shall make a prompt review and, when appropriate, change the consumer's account to the appropriate service classification, tariff rate or any other service modifications which are necessary to ensure future service is delivered under the proper service classification and tariff rate.

(b) If the consumer has not been charged the appropriate tariff rate for that consumer's class of service, the utility shall be responsible for correcting the billings that have occurred since the last notification of available rates by the utility as set forth in OAC 165:45-11-14(a)(2). In the absence of such notification, the period of time for which billing corrections shall be made shall not exceed three (3) years from the date of discovery. When the billing corrections result in a credit account balance for the consumer, the utility shall apply the credit to future billings or, at the consumer's request, refund the credit account balance to the consumer.

(c) Utilities that have volumetric tariffs that do not classify consumer accounts by type of service shall not be subject to the retroactive billing corrections as stated in subsection (b) of this Section, except in the following circumstances:

(1) The consumer's volumetric billing rate was changed without written notification to the affected consumer and the utility had available to it historical volume usage levels which contradict the volumetric rate applied to the consumer's billing; or

(2) The utility failed to complete reasonable investigation of consumer-supplied estimates of volume usage used to identify the tariff for billing purposes.

(d) The utility shall annually notify consumers in billing inserts that the consumer must advise the utility if there has been a change in usage necessitating a change of service classification.

[Source: Added at 13 Ok Reg 3259, eff 7-25-96]

PART 3. DISCONNECTION OF SERVICE

165:45-11-10. Discontinuance of service by a consumer

A consumer may be required to give up to five (5) business days notice of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and or service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariff.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 31 Ok Reg 1067, eff 9-12-14]

165:45-11-11. Physical disconnection of service by a utility

(a) **Sufficient reasons for physical disconnection of service.** A utility may physically disconnect service to a consumer for any of the following reasons:

- (1) Nonpayment of all or any portion of undisputed utility bills.
- (2) Nonpayment of an account for service of a similar character previously supplied to such applicant or consumer by the utility.
- (3) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or with a Commission order.
- (4) Failure to post a deposit as prescribed in OAC 165:45-11-1.
- (5) Failure to make application for service.
- (6) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.
- (7) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.
- (8) Unauthorized use of gas accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or other utility equipment.
- (9) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.
- (10) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.
- (11) Potential adverse effect of the service required by the consumer on the service to other consumers of the utility, provided the consumer has been notified and given a reasonable opportunity to correct the adverse effect.
- (12) Abandonment of the premises served.
- (13) Upon request of the consumer pursuant to OAC 165:45-11-10.
- (14) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.
- (15) Violation of the utility's terms and conditions regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the

terms and conditions.

(16) Violation of federal, state, or local laws or regulations through use the service.

(17) Causing damage to utility property.

(18) A condition exists which poses a health or safety hazard.

(b) Insufficient reasons for disconnection of service. A utility shall not disconnect service to a consumer for any of the following reasons:

(1) Failure to pay for a different kind or classification of service.

(2) Failure to pay a bill correcting a previous underbilling, due to misapplication of rates, unless the utility offers the customer a deferred payment agreement as provided elsewhere in this Chapter.

(3) Failure of a previous owner or occupant of the premises, or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.

(4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter or the consumer regularly reads the consumer's own meter and fails to supply a current meter reading.

(5) If a current consumer is good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.

(6) If a consumer or potential consumer has a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.

(7) Pending verification, service cannot be withheld nor disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.

(8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.

(9) Failure to pay a past due amount to another utility.

(c) Effective period of notice. A utility may disconnect service on the date specified in the notice or within thirty (30) calendar days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor noon (12:00p.m.) on Fridays until Monday morning.

(d) Documentation of reason(s). The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-12. Utilities encouraged to keep current lists of energy assistance programs

(a) Compilation. The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal energy assistance programs and

public/private charitable organizations offering or known to offer energy payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling this information and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall give a copy of this list to any consumer who asks for such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, for the utility to better assist its consumers. Failure of the consumer to gain funding in full or part, from any of the proffered resources under this Section shall not result in any liability to the utility.

[Source: Added at 19 Ok Reg 1977, eff 7-1-02; Amended at 31 Ok Reg 1067, eff 9-12-14]

165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility that they wish to be included in the following notification procedure:

(1) For those who have registered with the utility as elderly and/or consumer with disabilities, the utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional business days upon request of the Commission's CSD.

(2) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 31 Ok Reg 1067, eff 9-12-14; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-14. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the NWS issues a local forecast predicting the temperature will drop below 32 degrees Fahrenheit for any time period during the following twenty-four (24) hours, the utility shall suspend its disconnection of service if the gas service is used for heating purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast

on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(2) If the NWS issues a local forecast predicting the temperature will be 101 degrees Fahrenheit heat index or higher on the day of disconnection, or if the actual heat index is 101 degrees Fahrenheit or higher, the utility shall suspend its disconnection of service activity if the gas service is used for cooling purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) calendar days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency is provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no conditions is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility may mail or provide electronic notification to customers who make an affirmative election to receive electronic notification of such information a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

- (A) Consideration of the consumer's gross income.
- (B) Size of the delinquent account.
- (C) Consumer's ability to pay.
- (D) Consumer's payment history with the utility.
- (E) Length of time and reasons why the debt has not been paid.
- (F) Other extraordinary expenses of the consumer.
- (G) Loss of income through unemployment or illness.
- (H) Any other relevant factors concerning the circumstances of the consumer.

- (2) The payments under such an agreement need not be equal in size.
- (3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement if the consumer's financial conditions change, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer change during the payment period.
- (4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection period as provided in OAC 165:45-11-11(c) on the first and second notice has not been passed. If the disconnection period has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.
- (5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) Life-threatening situation.

- (1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on gas, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitor, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, and range/stove.
- (2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend disconnection of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should gas service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection
- (3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening condition. This form is provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is

applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for gas service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of gas service to the specified residence for a period of thirty (30) calendar days from the initial notification. This 30-day period allows the consumer to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) calendar days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the customer beyond a total of sixty (60) calendar days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain utility service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not fulfill the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming a life-threatening situation once full payment of the account balance from a previous life-threatening claim is made and a valid Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility. The utility may disconnect service upon the utility providing notice to the customer in accordance with OAC 165:45-11-16(a).

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for

utility service.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 23 Ok Reg 1677, eff 7-1-06; Amended at 31 Ok Reg 1067, eff 9-12-14; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-15. [RESERVED]

165:45-11-16. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as provided in subsections (b), (c) and (f) of this Section, OAC 165:45-11-14(e) and OAC 165:45-11-18, service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing, in bolded lettering, and state the reason for the disconnection, the amount due, if applicable, and the utility company's name, telephone number, and contact information. After the utility company's contact information, the notice shall include the telephone number of CSD in a printed size smaller than the print size used for the utility company's contact information, not bolded, and shall include the following statement: "For clarification of statutes and rules governing services, or escalations of disputes, you may contact the Oklahoma Corporation Commission's Consumer Services Division." The utility shall submit a copy of the notice to PUD for approval prior to usage.

(b) **First residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a security deposit after a reasonable time, the utility company shall give at least ten (10) days written notice from the date of mailing to the consumer. Said written notice shall be sent by first-class mail, address correction requested, by the utility company to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the ten (10) days written notice from the date of mailing to the consumer requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" or "CUT OFF NOTICE" in bold print no smaller than one-half inch (½") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility company where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility company regarding the disconnection, prior to contacting the Commission's CSD, and should contact CSD if they cannot reach a resolution with the utility.

(H) The address and telephone number of the Commission's CSD, in print size which is smaller than the print size used for the utility company's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/consumer with disabilities notification.

(K) A statement that advises the consumer of the life-threatening certificate.

(L) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(M) A statement that advises the consumer of the availability of a list of agencies providing assistance to consumers for their utility bills as identified by OAC 165:45-11-12.

(N) A statement that advises the consumer, that a list of pay agents is available upon request.

(3) The utility company shall notify the consumers in writing, at least annually, of the availability of and the method of accessing the name and address of the authorized payment agencies, other than the utility company's offices, where consumers may make payments.

(c) **Second residential notice.** During the time period of November 15 through April 15, the utility shall give a minimum of forty-eight (48) hours notice (at least two (2) business days) prior to disconnection of residential service that service will be disconnected unless the consumer enters into a deferred payment agreement as prescribed in OAC 165:45-11-14(e) or unless disconnection of service would create a life-threatening situation for the consumer or other permanent resident of the premises where the utility service is rendered. If the utility elects to give oral notice, it shall only be after it has complied with (b) of this Section. The second notice may be in writing, in person or by telephone.

(1) If the second residential notice is in writing, it shall be entitled "CUT OFF NOTICE" in bold letters of not less than one-half inch (½") in height and shall contain, in nontechnical language, the following information:

(A) The reason for service disconnection and the amount of the unpaid bills, if any.

(B) The date on or after which service will be disconnected unless the consumer takes appropriate action.

(C) The telephone number of the utility office, in bold print, where a consumer may call for assistance, make inquiries, enter into a deferred payment agreement, obtain information on utility assistance programs, pay the bill or notify the utility of a life-threatening situation.

(D) The telephone number of the Commission's CSD in print size which is smaller than the print size used for the utility's telephone number.

(2) The utility company shall keep a written log of all oral communication with at least the following information when contact has been made:

(A) Date and time of call or personal visit and identity of utility company representative.

(B) Name of the individual and relationship to the account. If the contact is made with a designated representative for the consumer, then a statement of authority to represent the account should be

included.

(C) Nature of the call and telephone number called.

(D) A narrative of the communication between the utility and the consumer.

(E) A statement that the consumer must notify the utility company on the day of payment, as to the place and method of such payment, when the bill is paid at a place other than the office of the utility company.

(F) A statement that the consumer was advised of the telephone number of the Commission's CSD.

(3) The oral communications log shall be maintained and retained in accordance with the record keeping requirements contained in this Chapter.

(4) A copy of the oral communications log shall be provided to the Commission or to the consumer and/or their designated representative upon oral or written request.

(5) Oral communications with the consumer shall not begin before 8:00 a.m. or continue beyond 9:00 p.m. during normal business days.

(6) Oral communications shall be deemed as not to have occurred, including but not limited to the following circumstances:

(A) When there is no answer, the telephone line is busy or no one is home.

(B) When a message is left on an answering device or made on a recording device.

(C) When the message or attempted message is left with an individual having a physical and/or mental impairment that impedes communication or mutual understanding.

(D) When the communication is with a minor under the age of eighteen (18), unless the minor is the consumer or the spouse of the consumer.

(E) When the communication is with an individual who is not either the consumer or the designated representative of the consumer.

(F) When the communication is with a consumer or consumer's designated representative whose primary language is other than English and the consumer or consumer's designated representative has a language barrier, unless the communication is made in the primary language of the consumer or consumer's designated representative.

(7) Unless otherwise directed by the CSD, the utility company shall not contact the consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(8) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the two (2) days written notice from the date of mailing to the consumer requirement above.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be

posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Nonresidential service shall be disconnected for nonpayment of all or any portion of an undisputed utility bill only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-17. Manner of disconnection of service

When service is disconnected at the premises of the consumer:

- (1) Receipt of a subsequently dishonored negotiable instrument in response to a notice of disconnection shall not constitute payment of the consumer's account, and after the consumer is notified of such, the utility shall allow one (1) business day for the consumer to make payment at the utility company or its authorized agent(s) in cash, cashier's check, money order, or a check from a social service agency.
- (2) The utility employee shall leave a written statement at the premises that service has been disconnected, the reason for the disconnection, and the telephone number and/or address where the consumer may arrange to have the service reconnected.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-18. Exceptions to Section regarding discontinuance of service

Notwithstanding any other Section regarding disconnection of service, a utility may at any time disconnect service without notice and without delaying disconnection of service as prescribed in other Sections of this Part, if:

- (1) It reasonably believes that such action is necessary to correct a condition that poses a health or safety hazard to the consumer, the general public, or the equipment of the utility. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification to customers who make an affirmative election to receive electronic notification of such information, personal contact, or notice left at the premises.
- (2) For the purpose of essential repair, maintenance, or testing of utility equipment, the utility shall make such efforts as are reasonable under the circumstances to minimize the adverse effects of disconnection of service and to inform affected consumers prior to disconnection of service.
- (3) The utility may disconnect for unauthorized use of gas accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without a contract. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification to customers who make an affirmative election to receive electronic notification of such information, personal contact, or notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to

pay the following applicable charges before service is restored:

- (A) The applicable charges for reconnecting service prescribed in the utility's approved tariffs.
- (B) The amount due for unmetered or unpaid usage, when such usage can be determined exactly. If the exact usage cannot be determined, the utility may compute the charge for the estimated usage based on historical usage from the date the consumer became an occupant or user or began unauthorized use.
- (C) The cost associated with the disconnection, testing, repair, or replacement of any damaged equipment.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 31 Ok Reg 1067, eff 9-12-14]

165:45-11-19. Reconnection of service

(a) The utility shall give priority to reconnection of service when disconnection was the fault of the utility.

(b) When disconnection of service was the fault of the consumer, the utility shall reconnect service in the normal course of its reconnection workload, as soon as possible, but no later than two (2) business days, not to exceed three (3) calendar days after the consumer eliminates the reason for disconnection and requests reconnection, except as provided for in subsection c of this Section. If the reason for disconnection is unauthorized use of gas accomplished through bypassing the utility's measuring equipment or tampering with the pipes, meters, or other utility equipment, the utility may, prior to reconnecting service, require a reasonable payment for estimated service rendered or may refuse to reconnect service until ordered by the Commission. A utility may require payment of a reconnection charge when disconnection of service was the fault of the consumer, if such a charge is provided in the utility's tariffs.

(c) During the time period of November 15 through April 15, the utility shall reconnect service in the normal course of reconnection workload, as soon as possible, but no later than forty-eight hours; however, if disconnection for nonpayment of service has occurred immediately preceding periods of severe weather pursuant to OAC 165:45-11-14(c), the utility shall reconnect service as soon as possible but no later than twenty-four (24) hours, while the consumer or the consumer's representative is present, subject to an intervening Act of God, upon receipt of one of the following:

- (1) Payment of the past due bill for which service was disconnected; or
- (2) Submission of a Life-threatening Certificate from the consumer as described in OAC 165:45-11-14.
- (3) Guarantee by a federal, state, or local social service agency that payment will be made directly to the utility.

(d) Reconnection or continuance of service under this Section shall not in any way relieve the consumer of their liability incurred for utility service.

(e) The consumer of record or their representative must be present in order for service to be restored. If the consumer or their representative fails to be present for service to be restored through no fault of the utility, the return trip may be scheduled in accordance with subsection b and c of this Section.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-20. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to any of the following, the matter may be brought by either party to the Commission's CSD:

- (1) The existence of or seriousness of a life-threatening situation.
- (2) The existence of elderly or handicapped status.
- (3) The question of financial assistance or guarantee of payment by a federal, state or local social service agency.
- (4) The provisions of a deferred payment agreement.
- (5) The terms and conditions of payment of any part of a bill as rendered.
- (6) The proper interpretation of this Section.
- (7) Other issues addressed in this Chapter.

(b) The Commission's CSD shall review the matter and issue an informal review decision in writing setting forth the terms and conditions for continued service, disconnection of service, or deferred payment plan agreement. If it is the desire of the consumer, the consumer may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the Commission's CSD is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the Commission's CSD. Upon complaint by the consumer to the Commission, disconnection of service shall be held in abeyance, for as long as a resolution of the complaint is pending at the Commission, provided the consumer pays the portion of the bill which is not in dispute.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 23 Ok Reg 1677, eff 7-1-06; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-21. Commission review

The utility's disconnect notice, service violation disconnection notice, life-threatening certificate, and any notice or form used by the utility to comply with the requirements of this Part shall be submitted to the Commission for approval. Upon approval, the forms or notice shall become a part of the utility's approved tariff.

[Source: Amended at 12 Ok Reg 2129, eff 7-1-95]

PART 5. CHARACTER OF SERVICE

165:45-11-30. Service to irrigation consumers

(a) Irrigation consumers are to be served pursuant to tariffs on file for irrigation consumers.

(b) Irrigation consumers being served under special contracts, which are on file with this Commission, shall continue to be served under such contracts.

(c) The utility may adopt a policy for extensions to be made for the purpose of serving irrigation wells and for deposits for payment of all or part of the cost thereof by the consumer, which policy shall be prescribed in its approved tariffs.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-11-31. Temporary service

(a) A consumer requiring temporary service shall pay the regular rates applicable to the class or classes of service rendered for all energy used. In addition, the consumer shall pay the installation and removal cost, less salvage value, of facilities installed by the utility to furnish temporary service to the consumer. The utility may require a deposit of such cost in advance.

(b) "Temporary service" is defined as service for purposes which, by their very nature, indicate short duration, and shall not exceed ninety (90) calendar days without notification and justification being provided to CSD prior to the expiration of the ninety (90) calendar day period.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-32. Service to mobile homes and mobile home parks

(a) No utility shall be required to furnish gas service to a mobile home park until the utility has been furnished, at no cost to the utility, the necessary easements. Such easements may terminate when the property ceases to be used as a mobile home park if the utility no longer needs the easement to maintain service to other consumers adjacent to or beyond the park.

(b) A mobile home shall be served by an individual meter under the same terms as a single residence. Service to mobile home parks existing on or before the effective date of this Chapter may continue to be provided with a single or multiple meter.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-11-33. Service from other than distribution system

(a) When a consumer desires natural gas service from a production, gathering or transmission line which is not a part of the distribution system, the utility may, at its sole discretion, make a tap on the line and furnish the consumer with natural gas service under the applicable rate schedule approved by the Commission for the type of service rendered or, if there is no such rate schedule, pursuant to a Special Contract approved by the Commission. When necessary for operational efficiencies or safety reasons, the utility may discontinue or abandon service to the nondistribution system consumer or remove, abandon or relocate the pipeline from which the nondistribution system consumer is furnished natural gas service, upon thirty (30) calendar days written notice to the consumer at the consumer's last known address. If the pipeline is owned and operated by a company that also has a gas distribution system, the pipeline will be considered part of the distribution system if, for a period of three (3) years, the volume of gas sold off the pipeline is equal to or more than fifty percent (50%) of the gas transported by the pipeline. The utility may seek a waiver of an impending recharacterization before or after the three (3) year period if the pipeline leakage is minimal and the utility desires to continue to provide natural gas service from the pipeline.

(b) If a consumer requests service from a transmission line that is not owned by the utility and the company owning the line assesses a fee for making the tap, the consumer requesting the tap will be responsible for paying the fee.

(c) Unless otherwise ordered by the Commission, after notice and hearing, a utility shall not provide service from a production, gathering or transmission line unless the gas in the line is of a suitable quality and free of liquid hydrocarbons. When it has come to the attention of the utility that a temporary gas quality problem exists in a line, the utility shall be allowed a reasonable time in which to correct the

problem. This subsection shall not apply to existing consumers receiving service. (d) Under this Section, a private line served from other than a distribution system will not be considered to be a distribution system, and private line customers on these systems will be considered as a single service under the master meter agreement for purposes of abandonment.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-34. Free service; service to consumer's appliances

(a) Each gas utility shall have on file with the Commission a detailed statement of all free service of any nature furnished or offered to any consumer or class of consumers. The utility shall offer the same free service to all consumers of the same class. The utility shall not discontinue, change or amend its policy, or offer any new free service or type of free service to any consumer or class of consumers except upon order of the Commission made upon application, and such notice and hearing as the Commission shall direct.

(b) A utility may, with approval of the Commission, service or repair gas appliances or gas piping owned by its consumers and make a charge for such service. The Commission, upon application of the utility and after notice and hearing, may grant the utility authority to service and repair all specified types of gas appliances or gas installations of consumers in the State of Oklahoma or in a specified town, city, or locality. Each utility shall maintain books and records with regard to service and repair of consumer appliances pursuant to 17 O.S. (1991) § 154. Any authority granted pursuant to this Section shall not supersede any federal, state, or local requirements for licensing of service providers.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-11-35. Change in character of service

(a) If a change in service to a consumer is required for the convenience or benefit of the utility, the utility shall pay such part of the cost of changing the consumer's equipment as determined by mutual agreement, or by the Commission in the absence of such an agreement, including the cost of making the necessary change in consumer piping. This subsection shall not apply to discontinuance of service because of abandonment of nondistribution piping.

(b) Each utility shall, upon request, give its consumers such information and assistance as is reasonable in order that consumers may secure safe and efficient service. Upon request, the utility shall render every reasonable assistance in securing appliances properly adapted and adjusted to the service furnished. This Section shall not be interpreted to authorize servicing or repair of appliances of a consumer by a utility.

(c) Any change in the heating value or the characteristics of the gas service which may impair safe operation or materially affect the utilization of the gas in the consumer's appliances shall not be made without the approval of the Commission and adequate notice to all consumers affected. In such event, the gas utility shall make any necessary adjustments to the consumer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the consumers.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

PART 7. BILLS

165:45-11-40. Office location and telephone listing

(a) Where economically feasible, each gas utility shall provide an office or agent in or convenient to each municipality served by it where the consumer may pay bills, which office or agency shall be open for business during posted business hours.

(b) The utility shall provide in each directory published by the telephone company in any areas the utility serves, a telephone listing of the number by which the utility can be notified at any time during a twenty-four (24) hour day of any utility service deficiency or emergency.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-11-41. Information on bills

The utility shall bill each consumer as promptly as possible following the reading of the consumer's meter. The bill shall show:

- (1) The reading of the meter at the end of the period for which the bill is rendered.
- (2) The date on which the meter was read, or the end of the billing period.
- (3) The number and kind of units metered.
- (4) The applicable rate schedule or identification of the applicable rate schedule. If the actual rates are not shown, the bill shall carry a statement to the effect that the applicable rate schedule will be furnished upon request.
- (5) The total amount due for gas used. In the case of prepayment meters, the amount of money collected shall be shown.
- (6) The date by which the consumer must pay the bill in order to avoid addition of a penalty.
- (7) The total amount due after addition of any penalty for nonpayment within a designated period or the dollar amount of the penalty or the rate at which the penalty will be calculated. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.
- (8) A distinct marking to identify an estimated bill.
- (9) Any conversions from meter reading units to billing units, any calculations to determine billing units from recording or other devices, or any other factors used in determining the bill.
- (10) Total tax amount billed, pursuant to OAC 165:45-15-3.
- (11) The purchased gas adjustment ("PGA") amounts associated with the respective clauses on the consumer's bill.
- (12) The amount due pursuant to an Equalized (Average, Budget, Equal, Levelized, etc.) Monthly Payment Plan shall be shown on the bill, when applicable.
- (13) Utilities that serve one-hundred fifty-thousand Oklahoma Customers or more; the historical usage, e.g., a chart, table or graph, shall be displayed prominently on each bill, depicting the actual usage of the residential customer, at the place of service for which the bill is issued. Such historical usage shall be tracked and displayed over the previous twelve (12) month period.
- (14) Utilities that serve less than one hundred fifty thousand Oklahoma Customers shall provide, in a conspicuous manner, notice on each residential customer bill that historical usage information is available at no charge, upon the consumer's request.

(15) The name and toll-free telephone number of the Commission's CSD, to which the end-user may direct complaints and questions regarding utility services.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 19 Ok Reg 1977, eff 7-1-02; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-11-42. Penalty or charge for late payment and payment by negotiable instrument

(a) **Late payment penalty.** A utility may make a penalty charge in an amount not to exceed one and one-half percent of the charges for gas service for delay in receipt of payment by the utility past the due date of the bill. If a utility, prior to the effective date of the 1996 amendments to this Section, is charging a penalty in excess of one and one-half percent of the charges for gas service, such utility will be allowed to continue to collect the previously approved percentage until such time as its rates are next reviewed by the Commission. The due date shall be stated on the face of the bill and shall not be earlier than ten (10) calendar days after the bill was mailed or provided electronically to customers who had made an affirmative election to receive electronic notification of such information, except that for residential consumers, the due date shall not be earlier than twenty (20) calendar days after the bill is mailed, or provided electronically to customers who had made an affirmative election to receive electronic notification of such information. If no late charge is imposed, the due date of a bill shall not be less than fourteen (14) calendar days after the date a bill is mailed. The late payment penalty may be applied at any time after the due date to any unpaid balance due at the time of assessment.

(b) **Delay of monthly bill.** Utilities offering billing programs that delay issuing the monthly bill (i.e., summary billing, preferred due date billing, etc.) may request an earlier due date.

(c) **Payment by negotiable instrument.** The utility shall not refuse to accept payment by check from any consumer unless the utility has, within the preceding twelve (12) months, received as tendered payment of the consumer's account two (2) or more negotiable instruments which were dishonored by the financial institution on which they were drawn. If payment by a negotiable instrument is given in response to a disconnect notice, the utility may contact the financial institution involved for verification of sufficient funds in the account to cover the negotiable instrument. If the account does not contain sufficient funds for payment, the utility may reject the offered negotiable instrument. The utility may make a charge outlined in its tariffs for negotiable instruments which are dishonored.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 31 Ok Reg 1067, eff 9-12-14]

165:45-11-43. Equalized Monthly Payment Plan (EMP)

(a) Each utility shall offer to its residential consumers the option of being billed on an Equalized (Average, Budget, Equal, Levelized, etc.) Monthly Payment Plan. Each utility's plan shall be submitted to the Commission for approval and shall then become a part of that utility's approved tariffs.

(b) At least once a year, and consistent with OAC 165:45-11-4(b) above, the utility shall give written notice to its residential consumers of the availability of an Equalized Monthly Payment Plan.

[Source: Added at 13 Ok Reg 3259, eff 7-25-96; Amended at 19 Ok Reg 1977, eff 7-1-02]

SUBCHAPTER 13. PROMOTIONAL POLICIES AND PRACTICES

165:45-13-1. Provisions governing promotional policies and practices

The promotional policies and practices of each utility shall be governed by 17 O.S. (1991) §§180.1 et seq., and future amendments or supplements thereto.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-2. Promotional practices prohibited [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-3. Promotional practices permitted [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-4. Advertising expenditures prohibited [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-5. Advertising expenditures permitted [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-6. Contributions [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

165:45-13-7. Submission of promotional practices

The utility shall submit an annual submission of current promotional practices by May 1, and as programs are updated, to PUD. The report shall include a list and description of all promotional practices and activities. Although submission by the utility shall not assume approval by PUD, it will allow PUD and the utility to review and dialogue as to the appropriateness of the promotional practices, whether or not the expenses should be recovered through rates, and ensure that the promotional practices are provided on a nondiscriminatory basis.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-13-8. Exceptions; prior conditions and rules [REVOKED]

[Source: Revoked at 13 Ok Reg 3259, eff 7-25-96]

SUBCHAPTER 15. MISCELLANEOUS PROVISIONS

165:45-15-1. Resale of gas prohibited

(a) Gas and/or service furnished by a utility shall not be resold or caused to be resold by any consumer except pursuant to a tariff or special contract on file with and approved by the Commission which authorizes resale. Except as set forth in subsection b below, no utility shall knowingly furnish gas and/or service under a retail tariff for purposes of resale, except pursuant to a tariff or special contract approved by and on file with the Commission.

(b) If it comes to the attention of the utility that any consumer is reselling gas, it shall notify the Commission's Pipeline Safety Department and the PUD Director of the name and address of any consumer reselling gas and/or service. Unless

otherwise directed, the utility may continue to provide gas and/or service to the consumer pending review and action by the Commission's Pipeline Safety Department or the PUD Director. This Section shall not apply to the sales of natural gas to or by a distributor for use as a vehicular fuel.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 22 Ok Reg 1808, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-15-2. Filing of rate schedules, contracts, agreements, and terms and conditions

(a) It shall be unlawful for a utility to furnish, charge for, or receive payment for gas service, except as authorized by a tariff, special contract or rate schedule on file with and approved by the Commission.

(b) No jurisdictional tariff or rate schedule shall be added, deleted, changed, closed, discontinued, or instituted except by order of the Commission after such notice and hearing, if any, as directed by the Commission or otherwise pursuant to the laws of the state of Oklahoma.

(c) Annual tariff submissions submitted for review and approval by the PUD Director, pursuant to prior Commission order, may be accepted or rejected. If there is a dispute and resolution is not accomplished, the tariff shall be subject to refund as of the date of notice of filing of a cause before the Commission to resolve the dispute.

(d) A utility shall not demand or accept payment for service of any kind of a sum greater or less than specified in an approved tariff.

(e) A special contract or agreement other than a filed tariff under which gas service is furnished to one (1) or more consumers shall be deemed a tariff for purposes of this Section. No service shall be furnished pursuant to such a contract which has not been filed with and approved by the Commission. Any special contract for gas service shall not become effective except after approval by order of the Commission as herein provided for a tariff.

(f) The utility shall maintain in each local office or furnish to a member of the public on request:

(1) A copy of every tariff and rate schedule under which gas service is being furnished to consumers within the area serviced by that local office.

(2) A copy of the approved terms and conditions of service of the utility governing furnishing of gas service.

(3) A copy of this Chapter, and all amendments thereto.

(4) A copy of every franchise, agreement, or permit granted a utility by any municipality and a copy of each rate schedule and contract approved by the FERC applicable to sales by the utility in the State of Oklahoma.

(g) An agency for collection of utility bills, not operated by utility company employees, shall not be deemed a local office for purposes of this Chapter.

[Source: Amended at 10 Ok Reg 2645, eff 6-25-93; Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-15-3. Municipal fees, taxes, and other exactions

The aggregate amount of all franchise payments, or contributions or payments in lieu thereof, or other exactions imposed upon gas utilities by any municipality of this state for engaging in business within the municipality, or for the use and occupancy of its streets and public ways is a matter between the municipality and the gas utility. The amount of the exactions charged to and collected from the consumers by the utility shall be in accordance with the

respective municipal ordinance or statute. The amount of such exactions shall be charged to consumers within said municipality pro rata in accordance with actual revenue associated with the provided service. The amount of such charges shall be separately stated as a line item on the regular billings to consumers as a dollar amount.

[Source: Amended at 14 Ok Reg 2561, eff 7-1-97; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-15-4. Settlement of disputes

Whenever a dispute or disagreement arises involving the furnishing of utility service or the interpretation of this Chapter, either the utility or any person affected may request the Commission's CSD to mediate the dispute, or file a written application or complaint with the Commission. The Commission, after notice and hearing, will make such order thereon as it may deem proper. Proceedings upon such an application or complaint will be governed by the provisions of OAC 165:5.

[Source: Amended at 13 Ok Reg 3259, eff 7-25-96; Amended at 36 Ok Reg 668, eff 7-25-19]

SUBCHAPTER 17. COMPETITIVE BIDDING AND AFFILIATE TRANSACTION RULES FOR THE PROVISION OF NATURAL GAS SERVICES OF GAS SUPPLY, GATHERING, TRANSMISSION AND STORAGE OF NATURAL GAS UTILITIES UPSTREAM OF THE CITYGATE

165:45-17-1. Purpose of this Subchapter

(a) The purpose of Subchapter 17 is to establish a fair and reasonable process, wherein, the natural gas utility service industry can be restructured in such a manner that will be in the best public interest of all natural gas consumers, and that would complement and improve the state's economic growth by increasing its market base for Oklahoma's greatest natural resource, natural gas. To accomplish this two-fold objective, Subchapter 17 provides for the unbundling of the currently bundled services of gas supply, transmission, storage and gathering upstream of the citygate by the utility, and further provides that these services be competitively bid by entities desiring to participate in a competitive market. Accordingly, the Commission believes that a competitive bidding process is among the most effective means to achieve these objectives. Therefore, it is the policy determination of the Commission that competitive bidding and an unbundling process be utilized by natural gas utilities, and further, the Commission expects Oklahoma gas utilities to comply with this policy determination of the Commission.

(b) It is not the intent of Subchapter 17 to be applicable to downstream unbundling or competition.

(c) Since it is recognized that competitive bidding is not the only means to acquire and receive reliable and least cost natural gas services, this Subchapter also allows for other processes to be proposed by the utility for Commission consideration to acquire and receive those services. A utility seeking to propose processes other than competitive bidding must notify and obtain Commission approval, after notice and hearing, within thirty (30) calendar days prior to implementation of those processes in nonemergency situations. In emergency situations, the utility must notify the Commission within thirty (30) calendar days following implementation.

(d) Failure to utilize competitive bidding to obtain the natural gas services of gas supply, gathering, transmission and storage at the least cost, shall subject the utility to a prudency review, as defined in OAC 165:45-1-2, by the Commission.

Subsequent to this review, after notice and hearing, the Commission shall make a determination as it deems necessary and proper, including, but not limited to, disallowance of recovery of the difference between the market price and the price at which the natural gas services were purchased.

(e) It is the intent of the Commission to create a fair and nondiscriminatory competitive market for natural gas services. It should not be construed that this Subchapter absolves or relieves any utility, competitive bidder, or downstream marketer or provider from any duty prescribed by the laws of the State of Oklahoma or the United States including, but not limited to, any state or federal law regarding contractual rights and obligations, antitrust enforcement or liability, or laws against improper restraint on trade or "takings" of property.

(f) This Subchapter also establishes reasonable standards of conduct for transactions between the natural gas utilities and their affiliates conducting business on the utility-owned transmission pipeline within the State of Oklahoma, and for competitive bidders.

(g) To ensure that the public interest is best served by the restructuring of the natural gas industry, the Commission may implement a consumer education program of its own design. The Commission may seek assistance of those parties directly or indirectly involved in the retail sale of natural gas.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-2. Scope of Subchapter

(a) The competitive bidding, affiliate transactions and financial transactions rules (such as stock, bond, derivatives, and any financing instrument issuance) are promulgated to establish enforcement, reporting and monitoring provisions of utilities regarding these transactions.

(b) The intention of this Subchapter includes [but is not limited to]:

- (1) The establishment of standards for transactions between utilities and their affiliates for purposes of determining fair, just and reasonable rates and charges;
- (2) The prevention of subsidization of an affiliate by a utility;
- (3) The support of fair and clear cost allocations; and
- (4) The protection of customers of a utility from being subjected to any unreasonable financial obligations or costs of an affiliate.

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98; Added at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-3. Application of Subchapter

(a) This Subchapter is applicable to all natural gas utilities operating within the State of Oklahoma.

(b) All services rendered by natural gas utilities shall remain subject to Commission rate regulation pursuant to this Subchapter until or unless the Commission, after notice and hearing, makes an affirmative determination that rate regulation as to a customer, citygate, or aggregation point of natural gas service at a particular location is no longer required and further makes a finding that effective competition exists upstream of each citygate for each individual service. Accordingly, there shall be no presumption of effective competition upstream of any citygate for any service prior to a Commission order reflecting the same.

- (c) To the extent that any entity seeks to competitively bid to provide the natural gas services of gas supply, gathering, transmission and storage to natural gas utilities upstream of the citygate, the Commission shall impose reasonable standards of conduct to establish and preserve a fair competitive bid process.
- (d) **Required Information.** Upon request by the Commission, affiliate information shall be provided pursuant to this Subchapter and shall contain records and work papers which provide, at a minimum, the following information and such other information that the Commission shall request:
- (1) Consolidated Companies and Subsidiaries Balance Sheet.
 - (2) Income Statements.
 - (3) Cost Allocation Basis, if applicable.
 - (4) Affiliate/Subsidiary General Data: Narrative(s) providing:
 - (A) The date of establishment of each affiliate and/or subsidiary;
 - (B) A statement of each affiliate and/or subsidiary's core businesses;
 - (C) The utility company resources used in establishment of each affiliate and/or subsidiary; and
 - (D) The utility company resources currently being used by each affiliate and/or subsidiary, either directly or indirectly.
 - (5) Affiliate/Subsidiary Contracts: Copies of any and all contracts with affiliates and/or subsidiaries.
 - (6) Assets Sold/Transferred to Affiliates/Subsidiaries: A listing, by asset category and net book value, of assets sold or transferred to any affiliate and/or subsidiary since the utility's last rate case.
 - (7) Services/Products from Affiliates/Subsidiaries: A listing and description of the services and/or products (and related costs) provided by each affiliated and/or subsidiary company to the utility for the required period.
 - (8) Services/Products to Affiliates/Subsidiaries: A listing of any significant utility company facilities and/or resources, whether plant, other assets or personnel that were used during the required period, by each affiliate and/or subsidiary. The cost of the resources shall be indicated.
 - (9) Cost of Debt or Financing: A listing of debt instruments bearing any cost of financing transactions, in part or in full, or any debt, equity, trading activity, or derivative which has a direct or indirect financial or cost impact upon the utility.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-5. Confidential information

- (a) If a utility or any entity that seeks to competitively bid to provide the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate, is required by this Subchapter to submit information to the Commission that is alleged to be confidential, a motion for a protective order concerning said confidential information may be filed requesting a determination be made by the Commission to protect said information pursuant to 51 O.S. § 24A.22.
- (b) A bid which is determined to be a successful bid, pursuant to the competitive bidding process of OAC 165:45-17-13, must be publicly disclosed and shall not be subject to the confidentiality provisions of this Subchapter, unless otherwise ordered by the Commission.

(c) Pending a determination regarding approval of any protective order by the Commission, the Staff may, at its option, review the information claimed to be confidential at a mutually agreed upon location.

(d) In the absence of a protective order, all information considered by the Commission in establishing utility unbundled tariffs shall not be maintained in confidence by the Commission.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-6. Exemption for corporate and shared services

Corporate and support services are exempt from asymmetrical pricing, to the extent that the affiliate information requirements in Chapter 70 and 165:45-17-3 (d) are satisfied.

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98; Added at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-7. Unbundling of natural gas services of gas supply, gathering, transmission and storage of all natural gas utilities upstream of citygates and proposed aggregation points

(a) To establish a fair and reasonable process, wherein, the natural gas service industry can be restructured in such a manner that will be in the best public interest of all natural gas consumers, and that would complement and improve the state's economic growth by increasing its market base for natural gas and to effectuate the policy of the Commission that a competitive bidding process is among the most effective means to achieve these objectives, the natural gas services of gas supply, gathering, transmission and storage of all natural gas utilities shall be unbundled upstream of the citygate or proposed aggregation points. Any entity, including an intrastate pipeline, an interstate pipeline, a utility owned transmission pipeline and, where applicable, any marketer, gas producer or natural gas aggregator, may seek to competitively bid to provide these natural gas services. Gas supply, gathering, transmission and storage of all natural gas utilities upstream of the citygate shall be provided and priced on a separate and individual basis. All customers of a gas utility located upstream of a citygate and/or proposed aggregation point shall have the opportunity to purchase these services on an unbundled basis. Any customer which is subject to an existing pipeline tariff agreement or other tariff agreement shall not have the opportunity to purchase these services on an unbundled basis until the expiration or termination of such tariff agreement except upon order of the Commission. The Commission shall consider an application to modify any tariff agreement upon good cause shown as a result of the change in circumstances due to the restructuring of the natural gas service industry as reflected in this Subchapter, or for such other reason as the Commission may determine.

(b) Customers shall have the choice of what services to purchase and can pay for only the services which they need or desire:

(1) Each natural gas service offered on an unbundled basis by a gas utility shall be identified and provided under a separate tariff and available on a separate basis from other natural gas services offered by such utility.

(2) The rates to be charged by a gas utility for any unbundled natural gas service shall be based upon the cost of providing that service. In determining the costs of providing a specific unbundled service, no costs of providing any other natural gas service shall be charged or allocated to such specific unbundled service. These rates shall be system-wide rates by customer class or a sub-group of a customer class applicable to the particular unbundled service subject to subsection (a).

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-8. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-9. Unbundling of utility services and access

(a) An application shall be filed by gas utilities with the Commission proposing an unbundling plan for the natural gas services of gas supply, gathering, transmission and storage upstream of all citygates and proposed aggregation points and the appropriate cost allocation and rate design for each of the unbundled services, as classified in OAC 165:70, as follows:

(1) Class A natural gas utilities which provide natural gas services upstream of all citygates and proposed aggregation points shall file an application for an unbundling plan by April 1, 1998, with appropriate documentation including, but not limited to, maps and lists of facilities owned and unbundling of the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate and the appropriate cost allocation and rate design for each of the unbundled services.

(2) Class A natural gas utilities which, at the time of the effective date of Subchapter 17, do not provide natural gas services, except gas supply, upstream of all citygates and proposed aggregation points, shall provide a letter to the PUD Director, within sixty (60) calendar days after the effective date of this Subchapter, stating the same with appropriate documentation, including but not limited to, maps and lists of facilities owned. After review, PUD will make a recommendation to the Commission regarding exempting the utility from the requirement to file an unbundling plan.

(3) Class A natural gas utilities which provide natural gas services upstream of all citygates and proposed aggregation points that have less than 25,000 customers may have an automatic waiver for one year or until April 1, 1999, whichever is the shorter time period, to file their respective unbundling plan. The utility seeking said automatic waiver shall contact the PUD Director of such intention within sixty (60) calendar days of the effective date of this Subchapter.

(4) Class B, C and D natural gas utilities which provide natural gas services upstream of all citygates and proposed aggregation points may have an automatic waiver for two years or until April 1, 2000, to file their respective unbundling plan. The utility seeking said automatic waiver shall contact the PUD Director of such intention within sixty (60) calendar days of the effective date of this Subchapter.

(5) Class B, C and D natural gas utilities which, at the time of the effective date of Subchapter 17, do not provide natural gas services, except gas supply, upstream of all citygates and proposed aggregation points, shall provide a letter to the PUD Director, within sixty (60) calendar days after the effective date of this Subchapter, stating the same with appropriate documentation, including but not limited to, maps and lists of facilities owned. After review, PUD will make a recommendation to the Commission regarding exempting the utility from the requirement to file an unbundling plan.

(6) Recognizing the unique situations of small utilities, those utilities serving one thousand (1000) customers or less, regardless of their

classification, may file an application requesting an alternative plan or process in lieu of an unbundling plan or may request a complete waiver of the unbundling provisions. The Commission may grant such requested relief if the applicant natural gas utility can establish one or more of the following:

- (A) The utility adequately shows that unbundling the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate would create an unreasonable financial hardship for the utility;
- (B) The utility would be unable to solicit reasonable competitive bids;
- (C) The Commission finds it would not be in the best interest of public health and safety to require natural gas unbundling; or
- (D) For other good cause shown as determined by the Commission, after notice and hearing.

(b) **Informal collaborative process.** Prior to the filing of the unbundling plan, the Commission desires that an informal collaborative process and dialogue commence between each Class A utility and potential competitive bidders, including but not limited to, amounts and volumes needed or available, interconnection points, requests for bids, engineering and operational issues, metering, eminent domain, and any other information which can be reasonably discussed prior to approval of the unbundling plan. Any interested party may file a statement with the Commission, with a copy mailed to the utility and the Attorney General, giving its notice of intent to participate in the collaborative process set forth in this subsection.

(c) **Open access to intrastate pipelines.** Comparable nondiscriminatory open access by intrastate pipelines shall be required. Intrastate pipelines shall not take any action that imperils or impedes a competitive bidding process directly or indirectly.

(d) **Access by the utility.** All natural gas utilities must provide comparable, non-discriminatory open access to their facilities and services upstream of the citygate.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-10. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-11. Application requirements for an unbundling plan; public hearing and plan implementation

(a) In an application for approval of an unbundling plan, the utility shall identify in detail the following:

- (1) All Oklahoma jurisdictional facilities it owns and those owned by an affiliate, which have been or can be used in the provision of natural gas services of gas supply, gathering, transmission or storage upstream of the citygate or proposed aggregation point.
- (2) The capacity of such facilities identified in paragraph (1) of this Subsection.
- (3) Each Oklahoma geographic area in which the utility or an affiliate has provided or can provide the services of gas supply, gathering, transmission or storage upstream of the citygate,
- (4) The proposed citygates or other delivery points for which the aforementioned services will be competitively bid. There will be a

designated citygate for every city and municipality regardless of the recommended aggregation point. Such designation does not mean actual installation, unless ordered by the Commission.

(5) All natural gas service agreements which may have sole supplier and full requirements provisions or other provisions which may have the effect of restricting competition.

(6) A schedule for competitive bidding for each citygate or proposed aggregation point.

(7) Actual or estimated volumes of natural gas supply delivered to each citygate and proposed aggregation point for the utility's distribution service over each of the thirty-six (36) months preceding the date of application and an estimate for each of the subsequent twelve (12) months.

(8) The actual or reasonable estimate of the peak volume requirements by month of each citygate and/or proposed aggregation point.

(9) The actual or reasonable estimate of the maximum daily and hourly demand for each citygate and proposed aggregation point during the year.

(10) Separate proposed tariffs reflecting all of the natural gas services upstream of the citygate and/or proposed aggregation point including gas supply, gathering, transmission and storage, which the utility proposes to make available for competitive bidding and which the utility will make available. Full documentation together with disaggregated cost of service studies identifying the system wide cost by consumer class or subgroup of each of the services and the allocation of those costs to each citygate or proposed aggregation point, together with all workpapers supporting such studies, shall be included with the proposed tariffs. In addition, an allocation of these system wide costs to each of the utility's citygates and proposed aggregation points shall be included, together with the methodology for making such allocation and workpapers supporting such allocation. The proposed tariff shall also contain the terms and conditions associated with each such service and, with the exception of gas supply, the rate to be charged for each such service based upon the supporting disaggregated cost of service study.

(11) Standard form requests for competitive bidders for gas supply, gathering, transmission and storage upstream of the citygate or proposed aggregation point.

(12) A detailed, itemized estimate to the extent known of the utility's total prudent and verifiable stranded and transition costs together with all workpapers supporting such estimate and the competitive market and any other assumptions underlying such estimate(s).

(13) A standard competitive bidder contract for natural gas services, which shall include appropriate guarantees regarding the delivery of the natural gas services to the citygate.

(14) A map(s) of the gas utility's facilities which includes;

(A) Separate delineation of gathering facilities, storage facilities, transmission facilities and local distribution facilities;

(B) The location of each citygate and/or proposed aggregation point;

(C) The operating pressures of all facilities at and upstream of each citygate and/or proposed aggregation point; and

(D) The capacity of all facilities at and upstream of each citygate and/or proposed aggregation point.

(15) All contracts regarding upstream natural gas services executed subsequent to February 18, 1997.

(16) Any amendments or addendums to any existing contracts regarding upstream natural gas services that were executed after February 18, 1997.

(b) All information and data submitted pursuant to subsection (a) shall be updated annually by supplemental filings. Such filings shall be public information.

(c) Each utility's unbundling application shall be subject to public review, comment and hearing. All hearings on each utility's unbundling application shall be completed and a final Commission order issued no later than one hundred and twenty (120) calendar days following the filing date of the utility's unbundling application, unless otherwise ordered by the Commission.

(d) Upon approval of the unbundling plan, the utility shall implement said plan within twenty (20) calendar days from the date of the Commission's order, unless otherwise ordered by the Commission

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-12. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-13. Competitive bidding

(a) To effectuate the policy of the Commission that a competitive bidding process is among the most effective means to restructure the natural gas service industry in such a manner that will be in the best public interest of all natural gas consumers, and that would complement and improve the state's economic growth by increasing its market base for natural gas, natural gas utilities are to acquire citygate or Commission approved aggregation point gas services through a public bidding process, unless otherwise ordered by the Commission, in accordance with the schedule set forth in each utility's Commission approved unbundling plan, which bidding process shall be subject to Commission oversight.

(b) Recognizing the importance to expediently implement the Commission's policy to begin a competitive bidding process by the heating season of 1998, the citygates of Oklahoma City and Tulsa will have an in-service date of November 1, 1998, subject to a final order by the Commission approving the utility's unbundling plan prior to September 1, 1998. Such bidding shall not commence until the utility's unbundling plan is approved by the Commission.

(c) Any entity desiring to provide the natural gas services of gas supply, gathering, transmission or storage upstream of the citygate or Commission approved aggregation point for a utility may file with the Commission, with a copy mailed to the utility, a written notice of its desire to provide one or more of such citygate natural gas service(s). Such notice shall identify with specificity:

(1) The type of natural gas services it proposes to provide and the geographic areas in which the service(s) would be rendered;

(2) The facilities which would be used in the provision of such service; and

(3) The capacity of such facilities.

(d) All upstream citygate or Commission approved aggregation point gas services required, acquired, or obtained by a gas utility for its citygate(s) or Commission approved aggregation point(s) shall be acquired or obtained by a competitive bid procedure with the following exceptions:

(1) Such citygate or Commission approved aggregation point gas supply which the natural gas utility is obligated to purchase under existing long-term gas purchase or transmission contracts which were entered into prior

to February 18, 1997, and were not amended after that date with non-affiliated entities, or were entered into or amended after February 18, 1997 with affiliates or nonaffiliates if such contracts or amendments were approved by Commission order, after notice and hearing; provided that these contracts are in effect and such contracts shall be terminated at their earliest opportunity. Nothing in this subpart shall diminish the authority of the Commission to review any contract of a gas utility for prudence or other reasons.

(2) Such citygate or Commission approved aggregation point gas service required during a bona fide emergency; provided, however, until the initial commencement of competitive citygate or Commission approved aggregation point service to such citygate(s) or Commission approved aggregation point(s), the gas utility shall continue to acquire natural gas services in a manner consistent with all other Commission rules and orders.

(3) Services which are generally not available through competitive bidding such as emergency services, or services which the Commission has found to be acceptable following a prudence review.

(4) Class A utilities shall notify the Commission within fifteen (15) calendar days of the effective date of Subchapter 17, of all contracts that fall under the exception of subsection (d)(1). The utility shall make such contracts available for inspection by the Commission and to intervening parties upon Commission order, after notice and hearing.

(e) When a citygate or Commission approved aggregation point becomes available for competitive bidding pursuant to the schedule set forth in the utility's Commission approved unbundling plan and a notice for such citygate or Commission approved aggregation point has been received as provided under subsection (c), the utility shall provide a request for competitive bid.

(f) If no notice has been received when the citygate or Commission approved aggregation point becomes initially available for competitive bid, the utility shall submit a request for competitive bid within thirty (30) calendar days after receipt of a notice under subsection (c).

(g) A request for competitive bid shall be in accordance with the requirements of this subsection as follows:

(1) The gas utility shall provide a request for competitive bid to the sender of such written notice and any other person or entity the gas utility reasonably believes would be capable of providing natural gas services in question, as well as to the Commission.

(2) Each request for bid shall set out in detail the natural gas services required with sufficient specificity as to volumes, delivery dates, term of contract not less than two (2) years or more than five (5) years for bids submitted prior to the year 2002, and the types of service or other pertinent information, which would permit an informed and meaningful bid to be made.

(3) Each request for bid shall provide for an in service date of not later than six (6) months from the date the bid is awarded to the successful bidder.

(4) If the successful bidder is unable to complete construction by the designated in service date, the bid shall provide that a third party may provide service to the citygate or Commission approved aggregation point on an interim basis until construction can be completed to initiate new service.

(5) Any successful bidder that requires third party service by the utility or its affiliate, pursuant to subsection (g)(4), shall be assessed no more than the rate proposed by that successful bidder. Such interim service shall not exceed one hundred twenty (120) calendar days, except upon order of the Commission.

(h) Any interested person may, within a period of fifteen (15) calendar days following the filing of such request for competitive bid with the Commission, file a complaint with the Commission challenging the criteria or parameters of the request for bid as non-competitive or not necessary to meet the needs or not in the best interest of the customers of the natural gas utility. The Commission shall set the matter for hearing at which all interested persons may appear and the Commission shall determine the criteria.

(i) Any person interested in submitting a bid in response to a request for bid shall submit its bid to the Commission and submit a copy of such bid, under seal, to the utility within thirty (30) calendar days after the natural gas utility's filing of the request for bid with the Commission, or if a complaint is filed challenging the criteria of the request for bid within twenty (20) calendar days following a determination of proper criteria by the Commission. It is the intent that a bid will be sufficiently definite and firm so that, when taken together with the request for bid, its acceptance will result in the formation of an enforceable contract.

(j) To reinforce the integrity of the process, the gas utility and the Commission Staff shall promptly open all sealed bids received, at a date certain, and at the Commission.

(k) The gas utility shall promptly evaluate all bids and make a decision thereon within thirty (30) calendar days following the deadline for submitting bids. A gas utility shall make its decision on an arm's length, stand-alone basis showing no preferential treatment to its affiliate.

(l) The gas utility shall promptly file its decision with the Commission and mail copies of such filing to all bidders and the Attorney General identifying the successful bidder, which filing shall include a copy of the successful bid. Any unsuccessful bidder and the Attorney General shall have fifteen (15) calendar days following filing of the successful bid decision with the Commission to file with the Commission a complaint challenging the decision as not meeting the criteria for decision specified in this subsection and the request for bids.

(m) Upon a determination of the successful bidder, the gas utility and the successful bidder shall promptly proceed to finalize contracts necessary to implement the bid. The contract shall contain appropriate guarantees, as set by the Commission, regarding the reliability of services to be delivered at the citygate or Commission approved aggregation point.

(n) At the request of either party and upon notice and hearing, the Commission shall have authority to determine any disputes between the parties as to terms incidental to the bid. All matters to be determined by the Commission under this Section shall be heard on an expedited basis and a decision rendered thereon within thirty (30) calendar days from filing.

(o) After notice to all bidders and hearing, the Commission shall determine whether the gas utility's decision reveals either a clear departure from the criteria for decision or is erroneous, in which event the gas utility shall be required immediately to rebid, in accordance with this Section, the citygate gas services which were the subject of such determination.

(p) An upstream related entity or an affiliate of the gas utility may bid competitively to furnish citygate gas service to such natural gas utility in response

to such natural gas utility's request for bid. In no event may a gas utility give any preferential treatment or consideration to an upstream entity, including an affiliate of the gas utility, in the preparation of the request for bid, evaluation of bids or in the award of any contract for the supplying of natural gas services to a citygate or Commission approved aggregation point, and no person shall have any right to match any bid made by others or any right of first refusal.

(q) The Commission believes that the public interest would be best served by having independent producers participate in the competitive bidding process. To encourage independent producers, including those new market entrant producers that aggregate their production or that have their production aggregated through amended or prospective agency agreements as service providers to citygates or Commission approved aggregation points, to participate in the competitive bidding, the following provisions apply:

(1) 10% of the competitive bid for gas supply to each citygate or Commission approved aggregation point, which is the subject of a request for bid, will be awarded to the independent producers, provided the independent producers' bids are sufficient to serve 10% for such bid package.

(2) 10% of transmission services for each Commission approved citygate and aggregation point shall be designated for independent producers pursuant to (q)(1).

(3) Independent producers receiving the award pursuant to (q)(1) and/or the discount pursuant to (q)(2) shall be required to match the lowest bid for the service and/or supply.

(4) Upon Commission determination, after notice and hearing, that effective competition exists, any future awards available pursuant to (q)(1) and the discount pursuant to (q)(2) shall be discontinued.

(r) All costs of the utility in providing the natural gas services to a citygate or Commission approved aggregation point that are competitively bid and provided shall be removed from the utility's rates effective the date the competitively bid services are provided to a citygate or Commission approved aggregation point pursuant to this Subchapter. The utility shall file with the Commission documentation of the removal of such costs, which shall be subject to the review and approval or disapproval of the Commission. The utility will be allowed to recover the actual costs paid, as ordered by the Commission, for competitively bid services through either the utility's purchased gas adjustment (PGA) or through a surcharge with a time period which coincides with the contract term for such services. The Commission may determine the method of recovery at the time the utility's unbundling plan is approved. A Commission determination on the recovery of costs should not be construed as deregulation of the utility's facilities and assets. For competitively bid services, the gas utility shall utilize the cost and allocation data filed pursuant to OAC 165:45-17-11 in determining the costs to be removed from the utility's rates with amounts to be adjusted upward or downward by the Commission as appropriate.

(s) No gas utility may charge or allocate any of the costs of furnishing unregulated service or competitively bid service to other regulated service or recover any of the costs of furnishing unregulated service or competitively bid service in its rates and charges for other regulated service. Facilities serving competitively bid service and other regulated service and unregulated service shall be allocated between competitively bid service, other regulated service and unregulated service based on the fully allocated costs actually incurred and separately determined for

competitively bid service, other regulated service and unregulated service.

(t) After Commission review of the results of the competitive bidding process, the Commission will make a finding as to whether or not effective competition exists at each citygate or Commission approved aggregation point for each individual service which was competitively bid and what level of regulation is appropriate, if any, and will issue an order to that effect. Accordingly, there shall be no presumption of competition at any citygate or Commission approved aggregation point for each individual service that is being competitively bid prior to a Commission order reflecting the same.

(u) Once there has been a determination by the Commission that effective competition exists at a citygate or Commission approved aggregation point for any individual service which is being competitively bid for such citygate or Commission approved aggregation point, the utility owned transmission pipeline shall not be required to maintain tariffs for services obtained through the competitive bidding process for such specific citygate or Commission approved aggregation point, or in the alternative, the utility shall maintain tariffs as a ceiling level and may be allowed to discount its tariff in order to competitively bid to a specific citygate or Commission approved aggregation point, unless otherwise ordered by the Commission.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-14. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-15. How effective competition is to be determined

(a) Upon application by an interested party, the Commission may commence an investigation to determine whether the provision of one or more natural gas services is subject to effective competition. Such determination may only be made on an unbundled and citygate by citygate or other Commission approved geographic area basis.

(b) In determining whether a natural gas service is subject to effective competition, factors which the Commission may consider include, but are not limited to:

- (1) The number and size of competing providers operating in the relevant geographic area;
- (2) The extent to which comparable natural gas services are available from competing providers in the relevant market;
- (3) The ability of competing providers to provide equivalent natural gas services quantity and reliability at competitive rates, terms and conditions;
- (4) Market barriers;
- (5) Public interest consideration; and
- (6) Other indicators of market power with respect to the subject service, which may include market share, growth in market share, and whether the competing providers of natural gas services are affiliated with the natural gas utility.

(c) In considering these or other factors, the Commission is not required to give equal weight to each factor in subsection (b), but has discretion to give more weight to a particular factor or factors, based on the evidence.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-16. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-17. Public information regarding competitive bidding; bypass and partial and standby service

(a) **Public information regarding competitive bidding.** Each intrastate pipeline or utility owned transmission pipeline shall establish and operate a public web site. The public web site shall be accessible through the Internet and will allow for the posting of gas bidding information in the State of Oklahoma. Within one hundred and twenty (120) calendar days from the effective date of this Subchapter, the transmission pipeline shall submit a good faith statement of operation to the PUD Director which states that the public web site has been established, is operational and is accessible via the Internet, and shall give the specific address of the site.

(1) The following information shall be posted to the site within a reasonable time of the transaction:

(A) Operationally available capacity at mutually agreeable citygate or Commission approved aggregation points and selected interstate delivery points; and

(B) Prices for operationally available capacity at those delivery points itemized in (A) above.

(2) PUD shall have free and unrestricted access to the site.

(3) Any entity seeking to competitively bid or requesting access to a transmission pipeline shall be given access to that transmission pipeline's public web site.

(4) Pursuant to the complaint procedures established in OAC 165:45-17-29, PUD will assist in negotiations regarding disputes related to information posted to the public web site or nondiscriminatory open access. If no successful agreement can be reached by the parties, any party to the dispute may file an application with the Commission for relief.

(b) **Bypass.** While neither encouraged nor prohibited, it is recognized by the Commission that competition in the natural gas industry creates the opportunity for some end-users of gas utilities, which receive natural gas services pursuant to their respective tariffs, to now, through bypass or duplication of facilities, receive these services from other providers.

(c) **Partial service and standby service.** Any utility, which provides citygate or Commission approved aggregation point natural gas services, must make available partial service and standby service at rates appropriate for such service. Pursuant to this Subchapter, partial service means providing some fractional percentage of service which is less than one-hundred percent (100%) and standby service means a type of service wherein the utility does not provide service continuously but rather stands ready to do so when called upon by the customer. Provision of partial and standby service by a utility shall not jeopardize the reliability of service to residential and other small volume customers. When necessary to protect residential and small volume customers, partial and standby service shall be provided on an interruptible basis.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-18. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-19. Utility stranded costs

It is recognized that a utility, as a result of the restructuring and unbundling of its natural gas services pursuant to this Subchapter, may have stranded costs. After the Commission has approved the utility's unbundling plan, any utility may seek to recover its prudent and verifiable stranded costs through the filing of a general rate cause or through an application for recovery of its stranded costs. If the utility elects to file an application for recovery of its stranded costs outside of a general rate cause, the utility shall provide information and data comparable to the information and data required pursuant to OAC 165:70, unless otherwise ordered by the Commission. The Commission shall conduct a hearing and the utility shall have the burden of identifying proposed stranded costs, the amount of such costs and proposed methods for recovery of its stranded and/or transitional costs. When reviewing the utility's request to recover said costs, the Commission may consider mitigation strategies of the utility. Following notice and hearing, the Commission shall determine the amount of any stranded cost which may be recovered from the utilities' customers and the manner in which such recovery shall occur. The Commission recognizes that after the initial hearing process there may be a need to allow for additional hearings for "true-up" purposes.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-20. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-21. Transitional costs

Transitional costs, upon application, after notice and hearing and order of the Commission, shall be entitled to immediate recovery to the extent that such transition costs are incurred as a result of the restructuring of the natural gas service industry. Further the Commission recognizes that small utilities may need to seek recovery of transitional costs earlier in the unbundling process.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-22. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-23. Standards of conduct between utilities and affiliate(s)

Natural gas utilities upstream of the citygate, including those utilities which have customers subject to pipeline tariff agreements downstream of the citygate or aggregation point, must conduct their business to conform to the following standards:

- (1) Natural gas utilities must apply any tariff provision in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.
- (2) Natural gas utilities must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- (3) Except as necessary for physical operational reasons, natural gas utilities may not, through a tariff provision or otherwise, give their affiliates or knowingly give customers of their affiliates preference over shippers or other utility customers in matters relating to any service offered to shippers including, but not limited to: scheduling, balancing, metering, storage, standby service or curtailment policy.

- (4) Unless such disclosure is simultaneously made public, natural gas utilities shall not disclose to their affiliates any information which they receive from, a non-affiliated customer, shipper or supplier, a potential customer, shipper or supplier, any agent of such customer, or potential customer, or shipper, or supplier, or a marketer or other entity seeking to supply gas to a customer or potential customer.
- (5) A natural gas utility's operating employees and the operating employees of its marketing affiliate must function independently of each other, and shall be employed by separate corporate entities to the maximum extent practicable.
- (6) Natural gas utilities and their affiliates shall keep separate books of accounts and records.
- (7) Natural gas utilities shall establish a complaint procedure. In the event the natural gas utility and the complainant are unable to resolve a complaint, the complainant may address the complaint to the Commission.
- (8) With respect to any transaction or agreement relating in any way to gas sales, supply, transmission, storage, distribution or marketing, a natural gas utility shall conduct all such transactions with any of its affiliates on an arm's length basis.
- (9) The Commission shall resolve affiliate transaction disputes or abuses on a case-by-case basis. Any aggrieved party may file a complaint with the Commission alleging the particulars giving rise to the alleged dispute or abuse. The Commission shall consider at a minimum the following issues when hearing a complaint:
- (A) Whether or not the information or data furnished to the affiliate was generally available to other market participants.
 - (B) Whether or not the natural gas utility conducted business in such a manner that actual or expected expenses were shifted from the non-regulated subsidiary to the regulated entity.
 - (C) Whether or not the natural gas utility conducted business in such a manner that actual or expected revenues were shifted from the regulated entity to the non-regulated entity.
 - (D) Whether or not the regulated entity offered terms, condition or rates for the provision of natural gas services to the affiliate that it refused to provide to other customers or whether such provision resulted in the affiliate having an unfair advantage.
- (10) Natural gas utilities must process all similar requests for natural gas services in the same manner and within the same period of time.
- (11) Natural gas utilities shall not provide leads to upstream affiliates and shall refrain from giving any appearance that the natural gas utility speaks on behalf of its affiliate(s). Nor shall the affiliate trade upon, promote or advertise its affiliation or suggest that it receives preferential treatment as a result of its affiliation. The use of a common corporate or parent holding company name shall not be a violation of this provision so long as the regulated utility and the affiliate entities can be distinguished.
- (12) Natural gas utilities, except for billing and collection services and customer service, or by order of the Commission, shall not share their customer list or related customer information with affiliates unless the information is simultaneously shared with non-affiliate entities.
- (13) The natural gas utility shall not communicate with any third party that any advantage may accrue to such third party in the use of the natural gas

utility's upstream services as a result of that third party dealing with the upstream natural gas utility's affiliates unless the information is simultaneously shared with non-affiliated entities.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-24. Sales of services, products, assets between regulated and unregulated affiliates

- (a) **Transactions between a utility and its affiliates.** A utility shall not cross-subsidize the business activities of any affiliate with revenues from a regulated service. A utility cannot recover more than its reasonable fair share of the fully allocated costs for any transaction or shared services.
- (b) **Contemporaneous record requirement.** A utility shall maintain a contemporaneous written record of all individual transactions with a value equal to or over one million dollars with its affiliates, excluding those involving shared services or corporate support services, those transactions governed by tariffs or special contracts and daily scheduling of gas supply. Such records, which shall include at a minimum, the date of the transaction, name of affiliate(s) involved, name of a utility employee knowledgeable about the transaction, and a detailed description of the transaction with appropriate support documentation for review purposes, shall be maintained by the utility for three years.
- (c) **Transfers of assets.** Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract, or as otherwise ordered by the Commission; cost recovery for property transferred from a utility to its affiliate shall be priced at the "higher of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; asset valuation and transfers of property transferred from an affiliate to its utility shall be priced at the "lower of cost or fair market value." No matter the origin of the transaction, all transfers between a utility and an affiliate will be individually scrutinized by the Commission on a case-by-case basis.
- (d) **Sale of products or services.** Except as otherwise required by federal or state statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of products and services provided from the affiliate to the utility shall be priced at the "lower of cost or fair market value." Except as otherwise required by federal statute or regulation, or pursuant to Commission authorized competitive bidding, tariffs, special contract or as otherwise ordered by the Commission; any sale of jurisdictional products and services provided from the utility to the affiliate shall be priced at the "higher of cost or fair market value."
- (e) **Joint purchases.** A utility may make a joint purchase with its affiliates of goods and services involving goods and/or services necessary for utility operations. The utility must ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility's and the affiliate's allocations of such purchases.
- (f) **Tying arrangements prohibited.** Unless otherwise allowed by the Commission through a rule, order or tariff, a utility shall not condition the provision of any product, service, pricing benefit, waivers or alternative terms or conditions upon the purchase of any other good or service from the utility's affiliate.

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98; Amended at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-24.1. Financial transactions by utilities or their affiliate(s)

(a) **Financial transactions.** Financial transactions include, but are not limited to, stock, bond, derivatives, and any financing instrument issuance as well any debt, equity, derivative or related transaction.

(b) **Separate books and records.** A utility shall keep separate books of accounts and records from its affiliates. The Commission may review records relating to any transaction between a utility and an affiliate to ensure compliance with this Subchapter including the records of both the utility and the affiliate relating to that transaction.

(1) In accordance with generally accepted accounting principles, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(2) A utility shall prepare non-GAAP financial statements that are not consolidated with those of its affiliates.

(3) A utility shall have a cost allocation manual or upon Commission request, be able to provide its cost allocation methodology in written form with supporting documentation. Such records shall reflect the transaction and the allocated costs, with supporting documentation, to justify the valuation.

(c) **Limited credit, investment or financing support by a utility.** A utility may share credit, investment, or financing arrangements with its affiliates if it complies with paragraphs (1) and (2) of this Subsection.

(1) The utility shall implement adequate safeguards precluding employees of an affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create opportunities for subsidization of affiliates.

(2) Where an affiliate obtains credit under any arrangement that would include a pledge of any assets in the rate base of the utility or a pledge of cash necessary for utility operations the transactions shall be reviewed by the Commission on a case-by-case basis.

(d) **Cost of financing transactions of any affiliate.** The cost of any financial transactions, in part or in full, or any debt, equity, trading activity, or derivative, of any parent company, holding company or any affiliate, which has a direct or indirect financial or cost impact upon the utility shall be reviewed by the Commission on a case-by-case basis.

[Source: Added at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-25. Standards of conduct for competitive bidders

(a) Any entity shall have the opportunity to competitively bid to provide the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate.

(b) The successful competitive bidder must sign a contract with the utility detailing the terms for providing natural gas services to each citygate or Commission approved aggregation point for which it is the successful bidder, such contract will govern all the terms and conditions of service. The Commission may review all contracts between the utility and the competitive bidder. Competitive bidders must agree to abide by the Commission's standards of conduct. The Commission may arbitrate disputes regarding compliance with the requirements of this Subchapter.

(c) Both the gas utility and any competitive bidder(s) shall not engage in marketing, advertising or public display which is discriminatory, predatory, deceptive or which impedes fair competitive bidding.

(d) The competitive bidder must apply any tariff or contract provision for transportation services which provides for discretion in the application of the provision, in a similar manner to similarly-situated shippers.

(e) The competitive bidder must enforce any tariff or contract provision for transportation services, if there is no discretion stated in the tariff or contract in the application of the provision, in a similar manner to similarly-situated shippers.

(f) The competitive bidder must not give any shipper preference in the provision of transportation services over any other similarly-situated shippers.

(g) The competitive bidder must process requests for transportation services from any shipper in a similar manner and within a similar period of time as it does for any other similarly-situated shipper; and maintain its books of account in such a fashion that transportation services provided to an affiliate can be identified and segregated.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-26. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-27. Remedies and enforcement for violation of the standards of conduct

(a) Pursuant to OAC 165:45-17-29 below, a complaint may be brought to the Commission at any time. The Commission encourages informal resolutions. Whenever a controversy does exist in connection with the interpretation of this Subchapter, the applicability of the requirements set forth herein, or any right or duty imposed thereby; the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

(b) Each violation of this Subchapter shall be considered to be a separate occurrence.

(c) If the Commission determines, after investigation and an evidentiary hearing, that the natural gas utility has violated these affiliate rules, the Commission may assess a fine against the utility as set forth in OAC 165:45-1-6; for contempt and may order such further action as may be fair, just and reasonable under the circumstances of the proceeding.

(d) The Commission may act upon any violation of these standards including but not limited to the following:

(1) Prospective limitation or restriction of the amount, percentage or value of transactions entered into between a utility and any entity that seeks to competitively bid to supply the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate;

(2) Denial of recovery of costs - all or in part - for business transactions between the utility and the affiliate; or

(3) Application of any other remedy available to the Commission, including financial penalties.

(e) **No immunity from state law.** Nothing in this subchapter shall relieve any utility from any duty prescribed by the laws of the State of Oklahoma.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 21 Ok Reg 2095, eff 7-1-04]

165:45-17-28. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-29. Complaints procedure regarding competitive bidding

(a) **Informal complaints.** Any party who is aggrieved by a competitive bidding process is encouraged to seek informal resolution of their complaints before filing a formal complaint with the Commission. Complaints concerning the competitive bidding process may be submitted in writing to the PUD Director, along with all supporting documentation. PUD may assist in negotiations regarding complaints. If no successful agreement can be reached by the parties, any party to the dispute may file an application with the Commission for relief.

(b) **Formal complaints.** Any party aggrieved by a competitive bidding process shall have the right to file a complaint with the Commission, in compliance with OAC 165:5 and this Subchapter, against any competitive bidder, if such party believes it has been:

- (1) Wrongfully denied access to any intrastate or utility owned transmission pipeline;
- (2) Discriminated against with respect to the natural gas services of gas supply, gathering, transmission and storage upstream of the citygate;
- (3) Placed at a competitive disadvantage by virtue of the actions of any competitive bidder, or
- (4) Adversely impacted by violation of the provisions of this Subchapter.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-17-30. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-17-31. Interconnection

(a) In order to facilitate the Commission's policy to encourage new market entrants, upon the effective date of the rules of this Subchapter, each gas utility shall have the duty to provide for the interconnection of the facilities and equipment of any requesting pipeline with such utility's facilities:

- (1) At any technically feasible point with the gas utility's system at or upstream of each citygate or Commission approved aggregation point;
- (2) In a manner that is, at least equal in quality to that provided by the utility to itself or to any affiliate, or any other party to which the utility provides interconnection.

(b) Although the Commission seeks to encourage new market entrants, new market entrants are strongly encouraged to bear the reasonable financial costs associated with interconnections. However, in no circumstances should the bid of the new market entrant be deemed inadequate due to the desire of the entrant to have the utility bear the cost for interconnection. In no event shall the utility seek recovery for the interconnection costs borne by the new market entrant.

(c) The requesting party shall reimburse the utility for all reasonable costs of an interconnection, unless the Commission, after notice and hearing, finds that it is in the best interests of the utilities' consumers for the utility to bear the cost of the interconnection.

(d) The utility may recover from its utility customers the costs involved with providing the interconnection which the Commission has determined, after notice

and hearing, to be economically justified.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 36 Ok Reg 668, eff 7-25-19]

SUBCHAPTER 19. DOWNSTREAM SERVICES

165:45-19-1. Purpose of this Subchapter

The purpose of this Subchapter is to establish an orderly unbundling of natural gas services. Accordingly, this Subchapter anticipates that natural gas services downstream at the retail or merchant level will be provided pursuant to a utility downstream unbundling plan with service to commence by October 1, 1999.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98]

165:45-19-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 2177, eff 7-1-98]

165:45-19-3. Downstream service unbundling plan

(a) No later than September 1, 1998, each Class A utility with 25,000 or more customers shall commence a collaborative process wherein a downstream unbundling plan shall be developed. Interested parties, including, but not limited to, downstream service providers (marketers), the Attorney General, and the Commission's PUD, may participate in the collaborative process. The downstream unbundling plan should include but not be limited to the following requirements:

- (1) The unbundling of all downstream natural gas services for all classes of customers.
- (2) The establishment of an appropriate cost allocation and rate design for the downstream unbundled services.
- (3) Standards of conduct for transactions between the utility and its affiliate.
- (4) Tariffs reflecting all of the natural gas services that will provide open access to the utility's system by entities desiring to provide downstream services, establish interconnection requirements and that will allow end-users a choice to obtain natural gas services from entities other than the utility. Each tariff shall identify the terms and conditions under which such service will be made available to any end-user and the maximum rate which the utility may charge for such service.
- (5) That transportation shall be provided on a firm and interruptible basis to all end-users on a non-discriminatory basis. Therefore, unless otherwise ordered by the Commission, the transportation proposal should:
 - (A) Eliminate volume restrictions.
 - (B) Remove alternate fuel requirements.
 - (C) Permit aggregation, where operationally and administratively feasible, for the purpose of making small consumer transportation viable; including nomination and imbalance provisions suitable for economically serving such customers.
 - (D) Specify under what conditions "returning" customers will be accepted and how they will be charged.
- (6) Storage and balancing shall be provided as a separately priced service for customers interested in using storage and/or balancing services. This may include options keyed to varying conditions and/or time periods, wherein, each will be separately priced.

(7) Standby shall be provided as a separately priced service for transportation customers who have had their capacity or commodity curtailed.

(8) The utilities should clearly define if, when and how additional metering is required to provide additional services. The utility should be ready to demonstrate that the proposed metering requirements are not discriminatory and are truly necessary for operational reasons.

(9) The utility should propose a mechanism for notifying in-state customers of available interstate capacity. The proposal should include creditworthiness standards, bidding criteria and recall rights for such capacity. The aim of the capacity release program should be to provide the greatest contribution to the system's fixed capacity costs, while maintaining reliability for the firm sales customers.

(10) Curtailment plans should be updated in light of Order No. 636. Transportation customers should not be arbitrarily interrupted. The utilities should consider an operational condition that requires an interruption of load and also consider ways of interrupting only customers in those constrained areas. A pro-rata cutback arrangement may be put in place to relieve capacity constraints. If the utility finds that it is economical, it should arrange for the emergency/peak period use of customer owned gas under prearranged conditions and for a prescribed rate of compensation.

(11) Rate schedules should reflect the appropriate costs to provide each of the above services. Rate structure should be supported by work papers and a description of the methodology employed.

(12) Standards to allow customers to aggregate.

(b) To ensure that the public interest is best served by the restructuring of the natural gas industry, the Commission may implement a consumer education program of its own design. The Commission may seek the assistance of those parties directly or indirectly involved.

(c) The foregoing are intended as guidelines for a competitive rate and tariff structure. Utilities may find that one or more aspects of these guidelines are not practical for various reasons. Where this is the case the utilities may request an exemption from complying with that part of the guidelines. In such cases the utility should provide substantial documentation to support an exemption.

(d) Any interested party may by August 1, 1998, file a statement with the Commission, with a copy mailed to the utility and the Attorney General, giving its notice of intent to participate in the collaborative process set forth in subsection (a).

(e) Each collaborative process set forth in subsection (a) shall establish financial performance standards and appropriate consumer protection measures and safeguards.

(f) On or before April 1, 1999, the utility shall file with the Commission an application for approval of the proposed downstream unbundling plan that was developed as a result of the collaborative process set forth in subsection (a). The Commission shall conduct an examination and review of the utility's application. It is intended that the collaborative process continue between the applicant utility, the entity(ies) desiring to provide the downstream service, the Attorney General and any other party granted intervention status.

(g) The Commission shall conduct a public hearing on the utility's application for approval of its downstream unbundling plan and shall issue an order on or before June 1, 1999.

(h) Upon issuance of the Commission order, the utility shall begin implementation of the approved downstream unbundling plan for an in service date of October 1, 1999.

(i) It is recognized that the unbundling of the downstream system of a currently regulated utility may have potential tax implications. It is, therefore, contemplated that this subsection is subject to modification by the legislature or the Commission regarding tax implications, if any, and that the dates set forth herein may be modified by Commission order as appropriate to address tax issues.

(j) The Commission will, from time to time, reconvene the collaborative group(s) formed in response to subsection (a) for the purposes of monitoring the progress of the unbundling implemented pursuant to this Subchapter and refining, as necessary, the terms, conditions, and rates adopted as a result of those collaborative discussions. New parties may join the collaborative group at any time by giving notice of their intent to participate to a collaborative group as it then exists.

(k) The dates, stated herein, may be reestablished by order of the Commission for utilities with less than 25,000 customers.

(l) In lieu of the requirements of this Subchapter, a utility that has not begun implementation of a downstream unbundling plan as of July 1, 2014, shall submit a statement annually, detailing the basis for which implementation has not occurred, to the PUD Director.

[Source: Added at 15 Ok Reg 2177, eff 7-1-98; Amended at 31 Ok Reg 1067, eff 9-12-14; Amended at 36 Ok Reg 668, eff 7-25-19]

SUBCHAPTER 21. HOMELAND SECURITY AND CRITICAL INFRASTRUCTURE

165:45-21-1. Purpose and scope

(a) The purpose of this Subchapter is to require utilities to take all reasonable measures necessary to protect their critical infrastructures from extended interruption of service from all extraordinary events, natural and man-made.

(b) The Commission requires gas utilities to develop, implement, and maintain Homeland Security and Critical Infrastructure Plans according to the industry standards enumerated in sub-section (d) below.

(c) To the extent that a utility seeks to recover costs for security measures outside the scope of a general rate review for the implementation of Homeland Security and/or Critical Infrastructure protections, the utility shall comply with all provisions of this Subchapter.

(d) Each gas utility serving Oklahoma jurisdictional ratepayers is required to follow the most current applicable United States Department of Transportation, Office of Pipeline Safety's "Pipeline Security Information Circular" and "Pipeline Security Contingency Plan Guidance" ("DOT/OPS Guidelines") or equivalent cybersecurity framework, as may be amended from time to time, for use as guidelines for protecting the utility's Critical Infrastructure from extended service interruption.

(e) Each gas utility seeking to recover costs for security measures from Oklahoma jurisdictional ratepayers outside of a general rate review shall develop, implement, and maintain a Critical Infrastructure and Security Plan as further set forth within this Subchapter.

(f) If the utility has implemented a Security Plan or process in accordance with the applicable industry guidelines but is not seeking or receiving cost recovery for security-related costs, the utility shall submit the Certification Letter required by OAC 165:45-21-7(g) and the Plan shall be subject to review pursuant to the

Authorized Participation and Confidentiality provisions of OAC 165:45-21-10 and OAC 165:45-21-11. The utility is not otherwise required to comply with the provisions of this Subchapter.

(g) The Commission retains its jurisdictional and supervisory authority to address the reasonableness and/or prudence of any proposed security cost recovery.

(h) Nothing in this subchapter shall relieve any utility from any duty otherwise prescribed by the laws of the State of Oklahoma or this Commission's rules.

(i) Nothing in this Subchapter is intended to divest the utility of its right to object to any discovery requests from intervenors seeking access to "Highly Sensitive Confidential" materials.

(j) If any provision of this Subchapter is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are declared to be severable.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-21-2. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:45-21-3. Definitions

The following words and terms, when used in this Subchapter 21, shall have the following meaning, unless the context clearly indicates otherwise:

"Annual Report" means the Annual Report submitted by Commission Staff to the Commission beginning December 30, 2005 and by July 1 of each year thereafter, summarizing the results of Staff's review of each utility's Security Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

"Authorized Participant" means those persons authorized by the utility or as may otherwise be authorized by law and/or ordered by the Commission, to view highly sensitive confidential information. Such authorization shall be granted on a case-by-case basis and may extend to the utility, state government officials, persons having been granted intervenor status by the Commission and Commission authorized designees of the parties.

"Certification Letter" means the written certification to the PUD Director made by August 1, 2005 and by March 1 of each subsequent year thereafter, indicating that as of the date of the Certification Letter, the utility has a Plan or that it has updated the Plan and/or previous Plan Update Reports, has a Plan but is not seeking cost recovery or has no Plan in place.

"Critical Infrastructure" means the property of a utility located in the State of Oklahoma, comprised of either physical assets or computer software which, if severely damaged or destroyed, would have a significant impact on the ability of the utility to serve large numbers of customers for an extended period of time, would have a detrimental impact on the reliability or operability of the utility system, or would cause significant risk to public health and safety.

"DOT/OPS Guidelines" means the guidelines, as may be amended from time to time, that are distributed by the United States Department of Transportation, Office of Pipeline Safety: "Pipeline Security Information Circular" and "Pipeline Security Contingency Plan Guidance."

"Highly Sensitive Confidential" means that the information is of such a sensitive nature that its public disclosure could be harmful to the security of a utility's critical infrastructure and as such it may only be viewed by those persons

authorized by the utility or as may otherwise be ordered by the Commission.

"Plan" means a Homeland Security and Critical Infrastructure Plan including any subsequent Plan Update Reports that have been prepared with reference to the DOT/OPS GUIDELINES.

"Plan Update Report" means the written redlined changes made by the utility updating the Plan and/or previous Plan Update Reports. At the utility's option, changes will either be redlined or a history of changes may be maintained.

"Security Cost Rider" means the per billing unit rate mechanism whereby a utility may, upon approval and Order of this Commission, recover the costs of providing security for its Critical Infrastructure as defined under this Subchapter 21.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-21-4. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:45-21-5. Utility Security Plan

- (a) Each gas utility is required to prepare and make available for inspection, a "Homeland Security and Critical Infrastructure Plan" ("Plan") that has been prepared with reference to the applicable DOT/OPS GUIDELINES or equivalent cybersecurity framework and standard as guidance with a defined cybersecurity strategy.
- (b) The Plan shall be marked as "Highly Sensitive Confidential" and designate those facilities that the utility considers to be Critical Infrastructure (physical assets and computer software as defined in OAC 165:45-21-3 above), and shall set forth the utility's measures to secure such facilities from extended service interruption. The Plan shall also include an estimate of the costs necessary to achieve such measures.
- (c) The Plan shall remain on site at the utility's business office in accordance with OAC 165:45-21-7(h) below and shall have the most current version of the redlined Plan Update Report attached to the clean version of the utility's latest Plan. At the utility's option, changes will either be redlined or a history of changes may be maintained.
- (d) The Plan shall list all locations deemed by the utility to be critical, as well as identification of any subsequently increased security measures. All locations and security measures shall be identified by code known only to the utility and designated state government officials and their designees.
- (e) Any subsequent security measures identified in the Plan shall contain an estimate of the cost necessary to implement such measures, a description of the measures necessary to adequately secure each specific location and an estimated schedule for completion of each measure.
- (f) All locations identified by the Plan that require additional security measures shall be prioritized by the utility.
- (g) Beginning December 30, 2005 and on July 1 of each year thereafter, Commission Staff shall submit an Annual Report marked as "Highly Sensitive Confidential" to the Commission, summarizing the results of Staff's review of a utility's Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).
- (h) Beginning December 30, 2005, where the Attorney General elects to submit recommendations to the Commission regarding a utility's Plan, such recommendations shall be marked as "Highly Sensitive Confidential" and shall also

be due by July 1 of each subsequent year thereafter.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-21-6. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:45-21-7. Reporting requirements

- (a) Subsequent to the preparation of the initial Plan prepared under OAC 165:45-21-5(a), each utility shall prepare a Plan Update Report by March 1 of each succeeding year, following the same format as the initial Plan with redlines of all new changes, marked "Highly Sensitive Confidential" and kept on site at the utility's business office.
- (b) Each subsequent Plan Update Report shall update the previous year's report by indicating for each specific coded location, all costs and completion dates (actual and projected) for all current and prior additional security measures claimed under this Subchapter.
- (c) The utility is required to report cybersecurity or infrastructure security events that affect customers immediately to the PUD Director or designee.
- (d) For those security measures previously reported that have not yet been completed, revised estimated costs and estimated completion dates shall be provided.
- (e) The Plan Update Report shall also include (by specific coded location) a description of each proposed security measure that has not been previously reported, the estimated costs for each, as well as the estimated completion date for each measure.
- (f) Costs reflected in the initial Plan and in subsequent Plan Update Reports, whether estimated or actual, shall be identified as either capital or expense costs.
- (g) Beginning August 1, 2005 and by March 1 of every year thereafter, and/or when a change is made, each utility shall submit a Certification Letter to the PUD Director, marked as "Highly Sensitive Confidential," certifying that as of the date of the Certification Letter:
 - (1) The utility does not have a Homeland Security and Critical Infrastructure Plan as contemplated and defined by this Subchapter;
 - (2) The utility does not have a Homeland Security and Critical Infrastructure Plan as contemplated and defined by this Subchapter but has otherwise taken steps to secure its Critical Infrastructure and is not seeking cost recovery under this Subchapter;
 - (3) The utility does have a Plan but is not seeking cost recovery; or
 - (4) The utility has a Plan and/or has prepared its Plan Update Report updating the Plan and/or previous year's Plan Update Report;
 - (A) The redlines contained within the current Plan Update Report encompass in the entirety, all of the changes made to the utility's Plan since the Plan's inception or the previous year's certification; and
 - (B) The Plan and Plan Update Report are available for Commission and/or Attorney General review at the utility's local place of business.
- (h) A utility shall not be required to file its initial Plan or any of its subsequent Plan Update Reports with the Commission. Each utility shall instead, secure and maintain on site, at the utility's local place of business, its initial Plan and all subsequent Plan Update Reports.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-21-8. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:45-21-9. Cost recovery

- (a) Each utility seeking cost recovery of expenditures outside of a general rate review related to securing its Critical Infrastructure shall prepare and make available for inspection, its Plan and any subsequent Plan Update Reports in accordance with this Subchapter.
- (b) A utility shall file an application with the Commission for cost recovery as provided for within this Subchapter. Cost recovery shall be subject to established rate-making principles. Such cost recovery shall only occur to the extent the utility has incurred all or a portion of its actual security-related costs.
- (c) Unless otherwise ordered by the Commission, the utility shall have the burden of proving compliance with all of the provisions of this Subchapter prior to obtaining any cost recovery for security related measures.
- (d) Upon approval and Order of the Commission, a utility shall be allowed to recover a return based on its weighted cost of long-term debt and equity on all capital expenditures made for security measures. The utility shall also be allowed to recover related depreciation expense and ad valorem taxes. Such recoveries shall be based upon similar ratemaking treatment for corresponding cost elements from the utility's most recent general rate case.
- (e) Upon approval and Order of the Commission, a utility shall be allowed to recover expenses typically classified as operations and maintenance expenses for ratemaking purposes. The utility may request inclusion of any such similar costs incurred as long as these costs are directly associated with the security measures taken.
- (f) The total costs incurred under this Subchapter shall be combined for recovery purposes, for consideration by the Commission.
- (g) All costs approved by the Commission for recovery, shall be recovered from the utility's customers through a "Security Cost Rider" based on the projected annual billing units for the utility and shall be subject to annual true-up.
- (h) Unless otherwise ordered by the Commission, a utility shall immediately discontinue recovery of the "Security Cost Rider" when the earlier of the following occurs: natural expiration due to the full recovery provided for in a Rider granted under this Subchapter or forced expiration required pursuant to OAC 165:45-21-9(i) and/or OAC 165:45-21-9(j). Under no circumstances, shall the utility be permitted to double recover Homeland Security and Critical Infrastructure related costs.
- (i) Unless otherwise ordered by the Commission, any utility with a "Security Cost Rider" currently in effect, that files for a general rate change, shall include in the rate case, all security-related costs and those costs shall be accorded standard ratemaking treatment. A utility shall discontinue its "Security Cost Rider" when the change in rates becomes effective upon Final Order in the rate case.
- (j) Unless otherwise ordered by the Commission, all "Security Cost Riders" approved by the Commission, shall expire five years from the initial date of the "Security Cost Rider's" implementation.
- (k) Upon the filing of a cost recovery request by a utility, Commission Staff, the state Attorney General's office (based upon that entity's statutory authority) and all other Authorized Participants shall review the cost recovery proposal submitted by

the utility and file testimony in accordance with:

- (1) Any applicable protective orders issued by the Commission in the security-related cost recovery cause;
- (2) OAC 165:45-21-11 (below);
- (3) The Commission's Rules of Practice (OAC 165:5); and
- (4) Any other protective measures or requirements prescribed by law or the Commission.

(l) Testimony of Commission Staff, the state Attorney General and all other Authorized Participants, shall detail each of the parties' respective recommendations and any objections to the utility's Plan and the utility's request for cost recovery related to the Plan. Also in accordance with the Commission's Rules of Practice, Commission Staff, the state Attorney General and all other Authorized Participants shall provide copies of their respective individual testimonies to one another, with redacted versions of each individual testimony filed with the Commission's Court Clerk.

(m) Upon notice and hearing, the Commission shall issue an Order regarding any requests for security-related cost recovery.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

165:45-21-10. Commission authorized participation

(a) **Commission Staff.** Only those Commission Staff and Staff's designees authorized by the Commission shall participate in a cause before the Commission regarding a utility's Plan, and then shall do so only after meeting all applicable requirements for Commission authorization, which shall be determined on a case-by-case basis. All Commission Staff and Staff's designees authorized to participate in a security cause shall comply with the requirements for protecting information obtained under the "Highly Sensitive Confidential" designation.

(b) **Attorney General.** Only those Attorney General personnel who have formally entered an appearance pursuant to Oklahoma Statute and the Commission's Rules of Practice and that entity's Commission authorized designees shall be granted review of a utility's Plan and/or Plan Update Reports. All Attorney General personnel and their designees authorized to participate in a security cause shall meet all applicable requirements for Commission authorization, to be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(c) **Intervenors.**

(1) For the purposes of this Subchapter, all intervenors, including but not limited to counsel and experts for intervenors, shall be deemed "Authorized Participants" in accordance with OAC 165:45-21-3 above. All Authorized Participants wishing to participate in a security-related cause before the Commission shall meet all applicable requirements for Commission authorization, which shall be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(2) In addition to acquiring "Authorized Participant" status from the Commission, each intervenor and its designees desiring to participate in a cause before the Commission regarding a utility's Plan shall post a bond or other security acceptable to the Commission, in an amount to be determined by the Commission, to protect the utility from harm in the event the Authorized Participant breaches the confidentiality terms established under this Subchapter or as may otherwise be established by the Commission. A

copy of such bond or other security shall be filed with the Commission's Court Clerk. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma Corporation Commission Commissioners and Staff.

(3) Any Authorized Participant found in violation of a Commission issued Protective Order and Proprietary Agreement, shall be liable for contempt penalties pursuant to the penalty provisions found in Article IX, § 19 of the Oklahoma Constitution, Title 17 of the Oklahoma Statutes and the Commission's Rules of Practice at OAC 165:5. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma Corporation Commission Commissioners and Staff.

(4) In addition to the above protections, all Authorized Participants may be required by the Commission to enter into a separate non-disclosure agreement as a pre-requisite to being granted intervention and "Authorized Participant" status.

[Source: Added at 22 Ok Reg 708, eff 7-1-05]

165:45-21-11. Confidentiality

(a) Pursuant to the Commission's jurisdiction granted under Article IX, Section 18 of the Oklahoma Constitution, 51 O.S. (2001) §24A.22 of the Oklahoma Statutes and OAC 165:5, the Commission's Rules of Practice; all un-redacted documents related to a utility's Homeland Security and Critical Infrastructure Plan shall be considered "Highly Sensitive and Confidential" and shall only be admitted into evidence in en camera proceedings.

(b) "Highly Sensitive Confidential" designation and protection shall extend but not be limited to the following: initial Plans (including underlying documents), Plan Update Reports, Certification Letters, Annual Reports made by Commission Staff, recommendations submitted by the Attorney General of the State of Oklahoma and un-redacted documents used in cost recovery proceedings. For all other documents, the "Highly Sensitive Confidential" designation may be granted upon hearing and Final Order of the Commission.

(c) Each utility's Plan and/or Plan Update Report prepared in accordance with this Subchapter, shall be marked "Highly Sensitive Confidential" and shall be kept and maintained on site at the utility's business office in accordance with OAC 165:45-21-7(h), above. Only those individuals on the Staff of the Commission and in the State Attorney General's office and their respective experts who have been authorized by the Commission, shall have access to the Plan and Plan Update Reports prepared by each utility and any related or supporting documentation thereto. All other parties granted authorized intervenor status to a security cause pursuant to OAC 165:45-21-10(c) may also be granted access to the Plan, Plan Update Reports and supporting documentation after notice and hearing.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 36 Ok Reg 668, eff 7-25-19]

SUBCHAPTER 23. DEMAND PROGRAMS

165:45-23-1. Purpose

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementing Demand Programs that may receive cost-recovery treatment from the Commission. The rules in this Subchapter shall apply to Demand Portfolios having program years that begin on January 1, 2017 and

thereafter.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-2. Goals

(a) The goals of Demand Programs are to minimize the long-term cost of utility service, to encourage and enable utility customers to make the most efficient use of energy, and to discourage the inefficient and wasteful use of energy.

(b) The Commission shall set specific savings goals for each utility to achieve Net Source Energy Usage Savings without adversely affecting customer comfort or state economic activity, based on market potential studies, base line studies, gas supply portfolios, risk management plans, or other evidence presented as part of the hearing process for approval of a utility's Demand Programs.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-3o2. Definitions

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

"Administrative Cost" means the expenses incurred in controlling supporting Demand Programs that are not tied to the marketing and delivery of those programs. These expenses include:

- (A) reviewing and selecting Demand Programs in accordance with this section;
- (B) providing regular and special reports to the Commission, including reports of Demand Program savings;
- (C) a utility's costs for an annual review of Demand Programs or true-up proceeding for cost recovery mechanism;
- (D) Supervisory functions performed by Demand Portfolio Manager that are related to supervision of employees and related human resource administration.

"Average customer bill" means the value derived from the sum of all consumer bills in a particular customer sector divided by the number of consumers in that sector; i.e., the arithmetic mean. A utility may use the average customer bills for the customer rate classes rather than the customer sectors if it chooses to do so and clearly identifies the choice.

"Barrier" means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes natural gas user participation in Demand Programs. Barriers may include but are not limited to language, physical or mental disability, access to capital, educational attainment, utility meter type, economic status, property status, or geography.

"Base line" means natural gas use, trend in natural gas use, and description of conditions affecting such uses and trends prior to implementation of a Demand Program designed to affect particular uses and trends. When evaluating energy efficiency measures implemented as a result of non-fuel switching Demand Programs, the base line to be used in savings calculations shall be either the performance standard base line (the minimum efficiency available in the market), or a customized, project specific base line. When evaluating energy efficiency measures implemented as a result of fuel switching or non-prescriptive Demand Programs, the base line to be used in calculations shall be the replaced equipment efficiency.

"California Standard Practice Manual" means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001

edition, produced by the California Energy Commission and the California Public Utility Commission.

"Cost effective" and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers a benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

"Customized opportunity" means an energy efficiency program tailored to an individual natural gas user's needs.

"Deemed savings" means an estimate of natural gas savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

"Demand portfolio" means a collection of energy efficiency programs, or as defined in this subchapter, Demand Programs including fuel switching programs offered or proposed by a natural gas utility; for example, a residential weatherization program and a program to trade tankless water heaters for tank water heaters or a general education program for energy efficiency may be contributors to a demand portfolio.

"Demand portfolio administrator" means the utility employee responsible for supervising the utility's energy efficiency efforts as proposed in compliance with this subchapter.

"Demand Program(s)" means the Energy Efficiency programs offered or proposed by a natural gas utility. Collectively, the Demand Programs make up the company's Demand portfolio.

"Education" means any formal program, training, or activity designed to raise awareness of, and participation in company specific Demand Programs or increase general knowledge concerning energy savings opportunities and efficiency topics. These programs shall include communication efforts designed to reach customers with energy efficiency information through a variety of mediums including but not limited to television, radio, print and web-based media.

"Energy efficiency" means reducing natural gas consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

"Evaluation, measurement, and verification" or "EM&V" means a systematic, objective study conducted periodically to authenticate, assess, and report how well a Demand program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

"EM&V Costs" means the costs associated with performance of studies and activities intended to determine the actual savings and other effects from Demand Programs.

"Free rider" means a program participant who would have implemented the program measure or practice in the absence of the Demand Program. Free riders can be total, in which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after the time the program measure was implemented.

"Fuel switching" means changing from rate regulated natural gas to rate regulated electricity or from rate regulated electricity to rate regulated natural gas for a particular end-use service. It does not include installation of any device that

relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

"Goal" means a target to be achieved by a utility's Demand Portfolio. A goal may be expressed in thousand cubic feet, dekatherms, percentage reduction or limitation, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

"Gross savings" means the values reported by a gas utility after the Demand Program activities have been completed, but prior to the time an independent, third-party evaluation of the savings is performed. As with projected savings estimates, these values may utilize results of prior evaluations and/or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Gross savings can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values.

"Hard-to-reach customers" means:

(A) Residential natural gas users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians;

(B) Commercial natural gas users who rent their business property from persons other than the users' owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial natural gas users who traditionally fail to engage in Demand Programs because of one or more barriers beyond those experienced by average residential or commercial customers in a utility's service area.

"Incentive" means a sum of money a utility may be allowed to recover, in addition to program costs and allowed lost net revenues. Incentives shall be based on the utility's verified savings from the Demand Portfolio for the previous program year and shall be calculated as described in 165:23-45-8.

"Inducement" means anything of value offered by a utility to encourage natural gas users or trade allies to engage in a Demand Program approved pursuant to this subchapter.

"Lost net revenue" means income from the retail sale of natural gas forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales. Lost net revenue shall be calculated using verified savings, shall exclude customer service charge revenues (non-volumetric revenues), and shall exclude revenues collected from riders with annual true-ups.

"Low-income customer" means a residential natural gas user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Plan, as provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs

as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

"Market potential study" means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

"Market transformation" means the strategic process of influencing customer population and trade ally's decision-making that creates lasting change in customer behavior by removing barriers or exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

"Measure" means the equipment, materials, or actions that are installed or used within a Demand Program that results in measurable or verifiable savings; for example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

"Natural gas user" means a real property freeholder or leaseholder at a specific location who consumes natural gas at that location, regardless of whether the consumer receives a gas bill directly from a utility.

"Net benefits" equal the difference between total benefits and total costs as calculated for cost-effectiveness. The economic objective of Demand Resource portfolios is to maximize net benefits. A portfolio is cost-effective if it yields positive net benefits.

"Net savings" means the total change in load that is directly attributable to a Demand Program or the Demand Portfolio. This change in energy and/or demand use shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net Source Energy Usage Savings" means the total change in source energy usage that is directly attributable to a Demand Portfolio. This change in source energy usage will reflect the pre-treatment source energy usage of a device or process less the post-treatment source energy usage of a device or process and shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net-to-gross" means a factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor shall be made up of a variety of factors that create differences between gross and net savings, and commonly consider the effects of free riders and spillover.

"Program" means an organized set of activities or measures directed toward the common purpose of energy efficiency that a utility undertakes or proposes to undertake to reduce future natural gas usage or growth in natural gas usage; for example, a general offer to assist homeowners in weatherizing their homes is a program.

"Program cost" means the expenditures including expenditures paid to a third-party to deliver a program, incurred by a utility to achieve natural gas savings through Demand Programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's Demand Program costs are all Administrative Costs, Education costs, labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other program delivery expenditures incurred by the utility for operation of the Demand Programs, regardless of whether the costs are expensed or capitalized.

"Program implementer" means the person who puts a Demand Program into practical effect.

"Projected incentives" means the amount of estimated annual incentives calculated at the time the Demand Portfolio is submitted to the Commission for initial approval, or subsequent modification, of the Demand Portfolio.

"Projected savings" means the values reported by a natural gas utility prior to the implementation of the Demand Programs. These are typically estimates of savings prepared for Demand Program and/or Demand Portfolio design or planning purposes. These values are based on pre-program or Demand Portfolio estimates of factors such as per-unit savings values, operating hours, Net-to-Gross ratios, installation rates, and savings persistence rates. These values can be indicated as first year, annual energy savings, and/or lifetime energy values. These values can also be indicated as Gross savings and/or Net savings. Projected savings are reflected in the goal reduction as set in this Subchapter.

"Research and development" means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

"Savings" means a reduction in the use of natural gas or rate of growth of natural gas use, as measured in dekatherms or thousand cubic feet.

"Spillover" means the reductions in energy consumption caused by the presence of a Demand Program, beyond the Demand Program-related gross savings of the participants and without financial or technical assistance from the program. Spillover can be applied to participants, consumers directly participating in a Demand Program, and/or non-participants.

"Standard offer" means a Demand Program available to a group of customers or customers generally on the same terms and without customization.

"Trade allies" means contractors, builders, developers, retailers, skilled laborers, service providers, and wholesale distributors who support Demand Programs through sale or installation of goods and services.

"Transportation Customer" means any customer who buys gas on the open market from any provider, and engages a regulated utility's pipeline to transport the gas to the customer's facility.

"Verified savings" means values reported by a natural gas utility after review by an independent third-party evaluator. The third party evaluator shall be chosen by the utility and such costs shall be determined to be a Program cost. These values should reflect all adjustments including corrections for any known data errors and actual installation rates, and should also be adjusted by revised values for known factors such as per-unit savings values, operating hours, savings persistence rates, and net to gross adjustments.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-4. Demand portfolio submission and implementation

(a) All natural gas utilities under rate regulation of the Commission having more than 25,000 meters in the state of Oklahoma shall propose, at least once every three years, and be responsible for the administration and implementation of a Demand Portfolio of Demand Programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before May 1 of the year the programs will be effective. The application shall describe the Demand Portfolio and contain the following information:

- (1) A description of the intent of the DemandPortfolio as a whole;
- (2) A description of the intent of each Demand Program;
- (3) A description and quantification of the target market of each Demand Program, differentiated by customer sectors;
- (4) A base line describing the state of the market that each program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;
- (5) A description of the barriers to investment in energy efficiency in the absence of each Demand Program and the ways each Demand Program will reduce or eliminate these barriers;
- (6) A description of research and public input that contributed to the development of the content of each Demand Program;
- (7) A report of the cost-effectiveness of each Demand Program and the Demand Portfolio, including program and measure-level supporting data which shall include, but not be limited to, cost-effectiveness screening assumptions of gross and net energy savings, participation and/or measure unit numbers, inducement levels, measure cost, and other non-inducement program costs;
- (8) A detailed description of the derivation of the energy, generation, and transmission and distribution avoided costs, retail cost projections, reserve margins, discount rates, and average and peak line loss assumptions used in the cost-effectiveness calculations;
- (9) A description of how each Demand Program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;
- (10) A plan for evaluation, measurement, and verification of performance and results of the Demand Portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate; provided that costs associated with the EM&V plan shall not exceed five percent (5%) of the total three-year Demand Portfolio budget;
- (11) A plan for evaluation of the market effects of each Demand Program or applicable group of programs;
- (12) A plan for evaluation of administration and implementation of each Demand Program or applicable group of programs;
- (13) A plan for ending a Demand Program, if applicable;
- (14) A process for amending a Demand Program;
- (15) An annual budget for each Demand Program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;
- (16) A report on how the Demand Portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;
- (17) A report on how the Demand Portfolio will meet savings goals that may be in place at the time of filing and or that are otherwise proposed in the filing;
- (18) An estimate of the expected savings in natural gas usage, with location information about the source of savings, if savings are not expected to be evenly distributed throughout the utility system;
- (19) A detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment of lost net revenue, and any additional incentives the utility proposes it requires to make the programs workable;

(20) Identification of the Demand Portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number; and

(b) Demand Portfolios shall:

- (1) Contain Demand Programs for all customer sectors;
- (2) Strike a balance among procuring natural gas savings, educating the public, and transforming markets for energy efficiency;
- (3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;
- (4) Contain customized opportunities for energy efficiency among larger customers;
- (5) Not include programs or measures that promote fuel switching, with the exception of:
 - (A) programs or measures that promote renewable technologies such as biomass-derived methane, geothermal, solar and other renewable resources; or
 - (B) in the event after notice and hearing, such programs or measures are shown to promote the goals of the Commission pursuant to this Subchapter and/or otherwise to be in the public interest;
- (6) Have an implementation schedule of no more than three years;
- (7) Address opportunities presented by new construction and renovation;
- (8) Promote comprehensive energy efficiency in buildings; and
- (9) Address programs for low-income customers and hard-to-reach customers to assure proportionate Demand Programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other programs.

(c) Demand portfolios may:

- (1) Include research and development and pilot programs that would lead to effective Demand Programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for Demand Programs and the Commission finds the cost-effectiveness for the Demand Portfolio remains sufficient;
- (2) Encourage utility cooperation in state, regional and national programs that have the potential to save natural gas in Oklahoma;
- (3) Encourage utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance; and
- (4) Encourage utility cooperation in state, regional and national efforts to accelerate the development and improve the enforcement of building energy codes and product efficiency standards.

(d) Natural gas utilities having fewer than 25,000 meters in this state are exempt from filing application requirements in subsections (a) through (c); however, each qualifying natural gas utility shall submit to the director of the Public Utility Division for review, evidence of why it is not economically feasible to file the application requirements in subsections (a) through (c), and shall submit the following as evidence to further the goals of this Subchapter:

- (1) A description of the Demand Programs that are economically feasible to implement; and

- (2) The target market of each Demand Program.
- (e) Transportation customers shall not be subject to Demand Programs and related Program costs implemented pursuant to this Subchapter.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-5. Commission consideration

- (a) In reviewing Demand Portfolios, the Commission will consider:
 - (1) The quality of the Demand Programs in all their elements relative to their program objectives;
 - (2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;
 - (3) The cost-effectiveness for each program and for the Demand Portfolio; individual programs or individual measures for a specific program do not have to be cost-effective if their inclusion is expected to provide for greater comprehensiveness, customer or trade ally participation, or address Hard to Reach Customer participation;
 - (4) The savings goals;
 - (5) The availability of programs to all customers;
 - (6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation and include stakeholder interests;
 - (7) The effect on rates, average customer bills, and total cost of service;
 - (8) The effect on the environment, to the extent of Commission authority; and
 - (9) Other evidence the Commission finds relevant.
- (b) The Commission will endeavor to issue an order within ninety days of the filing of the application.
- (c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.
- (d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis; provided that:
 - (1) Administrative costs shall not exceed ten percent (10%) of program costs;
 - (2) All program costs should not add more than \$1.60 to the residential sector's monthly average customer bill, unless benefits and rationale for exceeding cap can be proven; bill impacts on other classes of customers should be reviewed and adjusted to reflect allocated Demand Program cost recovery; and
 - (3) Tariffs covering rates or riders for Demand Programs shall be updated to be in compliance with this Subchapter or in accordance with OAC 165:45-1-4(b) and (f).
- (e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:
 - (1) The program is not terminated earlier than specified in the program; and

- (2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.
- (f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to, set a hearing before the Commission or an administrative law judge.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-6. Evaluation, measurement, and verification

- (a) Utilities are responsible for timely evaluation, measurement, and verification (EM&V) of their Demand Programs. The EM&V should be conducted by an independent third party evaluator chosen by the utility and cost of such EM&V shall be determined to be a Program Cost.
- (b) The intent of the evaluation, measurement, and verification process is:
- (1) To provide a reliable calculation of the net savings produced by Demand Programs;
 - (2) To assess the effects of Demand Programs on the market for energy efficient products and services; and
 - (3) To assess the effectiveness of the administration and implementation of Demand Programs.
- (c) Utilities shall prepare and maintain a program-tracking database.
- (d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.
- (e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.
- (f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to Demand Programs will be included in the evaluation, measurement, and verification plan.
- (g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

[Source: Added at 26 Ok Reg 1856, eff 6-25-09; Amended at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-7. Reporting

- (a) Each utility shall submit an annual report by May 1 of each year on the performance of Demand Portfolio for the preceding program year and cumulative program performance which shall include the information enumerated in this section.
- (b) The annual report shall be submitted with Verified savings information in order for PUD to evaluate incentives levels to be recovered from consumers. PUD will provide Company with written notification of incentive levels, confirming or identifying disputed amounts with rationale for dispute by September 1. Any undisputed incentives may be included in recovery according to formula rate or other tariff terms. Any disputed incentives amounts will be resolved during the subsequent formula rate filing or other tariff recovery reviews. True-up mechanisms and recovery for all other Demand Program Costs shall be included with formula rate filings or other tariff recovery mechanisms.
- (c) The report shall contain a Demand Portfolio summary reflecting the scale of each program as a part of the Demand Portfolio and will include the following:
- (1) The name of Demand Program listed by customer category;

- (2) The date program was started or date the Demand Program was revised;
- (3) The number of participating customers per Demand Program;
- (4) By Demand Program, approved projected energy savings (in decatherms) as approved;
- (5) The gross energy savings (in decatherms) and performance of each Demand Program;
- (6) The verified energy savings (in decatherms) by Demand Program and methods used to verify;
- (7) For Education programs measurements of outreach efforts, including pre-program and post-program results and copies of evaluations, surveys, focus group results, and other measurement techniques used to gauge the effectiveness of education efforts;
- (8) The levelized cost per decatherm for the Demand Portfolio, Demand Programs, and by customer sector, including all assumptions used to make the calculation;
- (9) The amount of reduced emissions and water consumption experienced by the utility, including all assumptions and calculations details, during the Demand Program period for the current program year;
- (10) The Demand Portfolio funding as a percent of total annual gas revenue;
- (11) The Demand Portfolio Net source energy savings as a percent of total gas annual usage;
- (12) The projected program costs;
 - (A) These costs should be separated into the following categories to allow review of spending:
 - (i) Administrative costs;
 - (ii) Inducements: direct payments and other inducements;
 - (iii) Education and marketing costs;
 - (iv) Program delivery costs; and
 - (v) EM&V costs.
 - (B) Workpapers to allow review and reconciliation of accounting information:
 - (i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;
 - (ii) General Ledger: A copy of, or access to, the general ledger and subledgers; and
 - (iii) Comparative Trial Balances: A schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
- (13) The actual program costs;
 - (A) These costs should be separated into the following categories to allow review of spending:
 - (i) Administrative costs;
 - (ii) Inducements: direct payments and other inducements;
 - (iii) Education and marketing costs;
 - (iv) Program delivery costs; and
 - (v) EM&V costs.
 - (B) Workpapers to allow review and reconciliation of accounting information:
 - (i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;

- (ii) General Ledger: A copy of, or access to, the general ledger and subledgers; and
 - (iii) Comparative Trial Balances: A schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
- (14) Projected incentives - including projected cost effectiveness tests;
 - (15) Actual calculated incentives - including workpapers and working spreadsheets (formulas, calculations, linkages, and assumptions) for updated cost effectiveness tests, in sufficient detail to allow review of cost effectiveness calculations;
 - (16) The utility's annual growth in metered energy for the previous three years, with a calculation of the average growth rate over that entire period by customer class or major customer class segments;
 - (17) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;
 - (18) By Demand Program, provide a summary of spending, including the following:
 - (A) Administrative costs;
 - (B) Inducements, including direct payments and other inducements;
 - (C) Education and marketing costs;
 - (D) Program Delivery Costs; and
 - (E) EM&V costs.
 - (19) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;
 - (20) A detailed description of each Demand Program reflecting the scale of the program as a part of the Demand Portfolio that includes the following:
 - (A) Number of customers served by each Demand Program or program category;
 - (B) Program or program category expenditures;
 - (C) Verified energy and peak demand savings achieved by the Demand Program or program category, when available; and
 - (D) A description of proposed changes in the Demand Program plans.
 - (21) A list of research and development activities included in the Demand Portfolio, their status, and a report on the connection between each activity and effective Demand Program; and
 - (22) Identification of Demand Program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers.
- (d) After receiving the report, the Commission:
- (1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing;
 - (2) Will endeavor to act on the report within ninety days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.
- (e) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in Demand Program administration, delivery or planning.

165:45-23-8. Incentives

(a) Each utility shall be eligible to receive an incentive for successful implementation of their Demand Portfolio if:

- (1) The Demand Portfolio achieves a minimum of 80% of the company's goal ratio (Verified savings divided by Projected savings);
- (2) and the Demand Portfolio achieves a total resource cost test benefit/cost ratio (TRC:B/CR) that is greater than one; and
- (3) No incentive shall be allowed for performance of the Demand Portfolio if the Utility fails to pass all of these threshold measures (OAC 165:45-23-8(a)(1) and (2)).

(b) The Incentive will be calculated as follows:

- (1) A maximum incentive of 15 percent of Net Benefits will be paid for achievement of 100 percent (100%) or greater of the Utility's total annual Net Energy Source savings goal.
 - (A) The goal ratio (Verified savings divided by the Projected savings) must be 80% or greater to receive an incentive.
 - (B) Incentive for savings achieved between 80 and 100 percent of the savings goal will be determined by multiplying the goal ratio by the maximum incentive percentage.
- (2) The Demand Portfolio costs to be included for review of achievement of Demand Portfolio shall include all costs incurred for implementation of Demand Programs including all program costs, education or outreach program costs, Administrative costs, and EM&V costs.
- (3) Costs incurred for the implementation or reporting of the Demand Programs which are not directly incurred for a specific program are to be allocated to all Demand Programs and included as part of the Demand Program costs in determining Demand Portfolio cost effectiveness.

(c) The Incentive will be capped at 15 percent of Demand Portfolio costs inclusive of program delivery costs, education, and/or marketing outreach costs, Administrative costs and EM&V costs.

[Source: Added at 31 Ok Reg 1074, eff 1-1-17]

165:45-23-9. Stakeholder process

(a) Each utility shall have, at a minimum semi-annual stakeholder meetings, one of which is to be held within 30 days of the submittal of the Annual Report, as set forth in 165:45-23-7. Notice of such meetings shall be made at least 30 days prior to the date of the stakeholder meeting.

(b) At each meeting the utilities will present their most current data as to savings goal attainment and budget expenditures at the Demand Portfolio, customer sector and Demand Program level. The utility will highlight any Demand Program changes implemented since the previous meeting and any planned changes that will occur prior to the next meeting.

(c) In the years in which a utility plans to file a Demand Portfolio application as required by OAC 165:45-23-4, the Public Utility Division shall use one of the semi-annual stakeholder meetings to obtain stakeholder feedback on the proposed application.

[Source: Added at 31 Ok Reg 1074, eff 1-1-17]

**APPENDIX A. THIRTY (30) DAY MEDICAL VERIFICATION
CERTIFICATE TO SUSPEND DISCONNECTION FOR LIVE
THREATENING HEALTH CONDITIONS**

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Source: Added at 13 Ok Reg 3259, eff 7-25-96; Revoked and reenacted at 36 Ok Reg 668, eff 7-25-19]

**CHAPTER 50. FUEL, PURCHASED GAS, AND PURCHASED POWER
ADJUSTMENT CLAUSES**

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 151 et seq. and 250 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:50-1-1. Purpose

The General Rules Relating to Fuel, Purchased Gas, and Purchased Power Adjustment Clauses of this Chapter were promulgated in furtherance of 17 O.S. 1971, Section 152, and more specifically, 17 O.S. 1977 Supp., Section 250-64, which provided for the approval, regulation, and effectiveness of "fuel adjustment clauses," which are defined as including fuel, purchased power, and purchased gas adjustment clauses and requires certain filings, authorizes certain hearings, requires certain disclosures, and provides for certain investigations. Pursuant to such statutory authorization and requirements, the Oklahoma Corporation Commission adopted the rules of this Chapter through Cause No. 26134, Order No. 135207, effective November 1, 1977.

165:50-1-2. Definitions

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

"**Act**" means 17 O.S. 1977 Supp. § 250-64 and as it may hereafter be amended.

"**Affiliate,**" "**affiliated person,**" "**corporation,**" "**firm,**" or "**subsidiary**" means any person, subsidiary, firm, or corporation which is controlled by an entity that also controls the utility, or the utility or an entity controlling the utility has directly or indirectly the power to control.

"**Commission**" shall mean or refer to the Oklahoma Corporation Commission.

"**Electric distribution cooperative**" means a cooperative corporation organized and doing business under the Rural Electric Cooperative Act, 18 O.S. 1971, §§ 437-437.30, engaged in the retail distribution of electric energy.

"**Electric generation cooperative**" means a cooperative corporation organized and doing business under the Rural Electric Cooperative Act, 18 O.S. 1971, §§ 437-437.30 engaged in the generation and distribution for resale of electric energy.

"**Emergency sales of gas**" means sales of natural gas made by a public utility or subsidiary thereof to one or more interstate pipelines or other out-of-state customer pursuant to federal law which exempts such transactions from the jurisdiction of the Federal Power Commission.

"Fair field price" means the value attributed to gas produced from wells owned by a public utility, or a subsidiary, or affiliate of a public utility, which shall be the going price paid by the utility, subsidiary, or affiliate to others in the field where such production is located. If the utility, subsidiary, or affiliate is not purchasing gas in such field, then such value shall be the price paid by the utility, subsidiary, or affiliate in the nearest field where conditions are similar. The value to be attributed to residue gas owned by a public utility, or a subsidiary, or affiliate of a public utility, from gas processing plants shall be the going price paid by the utility, subsidiary, or affiliate to others from the same plant. If the utility, subsidiary, or affiliate is not purchasing gas from said plant, then the value shall be the price paid by the utility, subsidiary, or affiliate at the nearest plant where conditions are similar. However, the Commission may require an adjustment of the fair field price when it deems it proper to do so based on information before it.

"Fuel adjustment clause" means any mechanism which allows a public utility or electric generating cooperative to automatically adjust its charges above or below the base amount included in its rates, based upon changes in costs of fuel for generation of electricity, purchased power, or purchased gas, and shall include purchased gas adjustment clauses.

"Heat rate" means a measure of the efficiency of an electric generating station, computed by dividing the total British thermal unit content of the fuel burned by the resulting net kilowatt-hours generated.

"Line loss" means the kilowatt-hours of electricity lost in the operation of an electric transmission or distribution system.

"Public utility" or **"utility"** means any individual, firm, association, partnership, corporation, or any combination thereof, other than a municipal corporation or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity, or transmitting, directly or indirectly, or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public or for wholesale, unless its wholesale rates are regulated by a federal agency.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Purchased gas adjustment clause" means fuel adjustment clause which allows a public utility to automatically adjust its charges above or below the base amount included in its rates, based upon changes in the cost of purchased gas.

"Purchased power adjustment clause" means any mechanism which allows an electric public utility or electric distribution cooperative to adjust its charges above or below the base amount included in its rates based upon changes in costs of wholesale power purchased from others.

"Thousand cubic feet" or **"Mcf"** means that quantity of gas occupying one thousand cubic feet of space at 60 degrees Fahrenheit (60° F) and an absolute pressure as stated in the utility's tariffs.

[Source: Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-1-3. Applicability of rules of practice

Insofar as practicable and except as otherwise specified either in this Chapter or by statute, the Commission's Rules of Practice [OAC 165:5] shall be applicable to all proceedings contemplated by this Chapter.

SUBCHAPTER 3. CONTENTS AND STANDARD PROVISIONS OF ADJUSTMENT CLAUSES

165:50-3-1. Contents of adjustment clauses

This Chapter shall apply in the design of all fuel, purchased gas, and purchased power adjustment clauses:

(1) For the purpose of determining fuel or gas costs, the price paid for the fuel or gas shall be computed at the actual cost of fuel or gas purchased from nonaffiliated persons, firms, and corporations; and the actual cost of the production of fuel owned by the public utility or received from affiliated persons, firms or corporations, and in the case of gas, the fair field price for gas owned by the public utility or received from affiliated persons, firms, or corporations.

(2) The cost of fuel or gas shall be the price paid at the point of delivery into the utility system. In the event the transportation is performed by an affiliated person, firm, or corporation as defined in 165:50-1-2, which is not subject to the regulatory jurisdiction of the Commission, a regulatory agency of another state having jurisdiction, or the Federal Energy Regulatory Commission or successor agency, the charges made for transportation shall be, if allowed at all, only such as the Commission finds fair, just, and reasonable, for purposes of this Chapter. Transportation charges approved by this Commission, a regulatory agency of another state having jurisdiction, or by the Federal Energy Regulatory Commission, or successor agency shall be included for purposes of this Chapter, if allowed by the Commission. In instances where the affiliate's approved transportation charges are adjustable, the Commission may evaluate the reasonableness of the rate paid in terms of the maximum and minimum allowed by the adjustable charges, taking into account all of the terms and conditions of, and the circumstances surrounding, the transportation service being provided. The proposed adjustment charge shall not include the cost of transportation beyond its point of delivery into that portion of the utility system regulated by the Commission unless there is presented to the Commission and the Commission is persuaded by reliable evidence which clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return.

(3) The amount of electric energy produced by hydro-electric generating plants and purchased by the public utility proposing the adjustment charge shall be deducted from the amount of electric energy to which any fuel cost applies.

(4) The actual efficiency or heat rate of electric public utilities shall be utilized and line losses shall be considered only if reliable evidence clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return.

(5) Fuel removed from stockpiles or gas removed from storage shall be taken into consideration on the basis of the last-in first-out method of inventory accounting.

(6) No estimated fuel adjustment shall be allowed.

(7) Each public utility authorized by the Commission to recover the cost of fuel, purchased gas, or purchased power shall adhere to the standard fuel, purchased gas, or purchased power adjustment provisions of this Chapter

unless the Commission determines after an appropriate evidentiary hearing that the public interest is better served by permitting the utility to file a special tariff for the recovery of costs addressed in this Chapter.

[Source: Amended at 12 Ok Reg 2139, eff 7-1-95]

165:50-3-2. Standard fuel and purchased gas adjustment clause provisions

(a) Standard fuel and purchased gas adjustment provisions set forth in (1) and (2) of this subsection are hereby adopted for use, insofar as feasible, by the public utilities subject to the jurisdiction of the Commission.

(1) **Electric.** The method for use in compensating for charges in cost of fuel is as follows:

(A) Each utility generating electricity and having an approved cost of fuel adjustment clause in its tariff, subject to the Commission's jurisdiction, shall compensate for any variations in the average cost of fuel burned at the utility's thermal generating plant(s) above or below the cost of fuel used in each tariff on which the rate was based, by adjusting the charges, either upward or downward per kWh, billed under its tariffs, approved agreements and special contracts by employing a method approved by the Commission in a public hearing process.

(B) The monthly average actual heat content of each fuel burned and thermal efficiency of each generating plant shall be reported in British Thermal Units (BTU) on a monthly basis to PUD. The actual fuel burned and generation for each generating plant shall be reported by fuel type in BTU content, tons, or gallons, as appropriate.

(C) Line losses shall be considered only if reliable evidence clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return. If line losses are allowed by the Commission, the utility will submit a copy of the most recent applicable line loss study. Line losses will be evaluated for reasonableness on a case-by-case basis.

(2) **Gas.**

(A) **Pressure base.** For the purposes of calculations made in this paragraph, all volumes of gas will be adjusted to a pressure base of the pounds per square inch absolute on which the utility's rates are established and in accordance with gas measurement procedures standard in the industry. All reports to the Commission will be at 14.73 p.s.i.a. pressure base, detailing the conversion multipliers used.

(B) **Determination of Mcf and price paid therefore upon initial receipt of gas.** The total Mcf and the dollar amounts paid therefore shall be calculated for each accounting month on the basis of:

(i) The volumes of gas purchased by the utility or an affiliate from nonaffiliated producers, gatherers, processors, pipelines, and transporters, and the price paid for such gas, and

(ii) The volumes valued at the fair field price represented by gas received from wells owned by the utility or an affiliate and residue gas owned by the utility or an affiliate from gas processing plants, which gas is delivered into the utility's

pipeline system, into the pipeline system of an affiliate of the utility, or directly to the utility's customers.

(C) Adjustments to calculations. Adjustments to the total Mcf and dollar amounts as determined pursuant to (B) of this paragraph shall be made for volumes of gas removed by treating or processing facilities and compression facilities located on the downstream side of any initial volume or value determination point. The total Mcf and associated value removed from the gas stream due to such treating, processing, and compression shall be subtracted from the total Mcf and dollar amounts as determined pursuant to (B) of this paragraph.

(D) Gas storage injections and withdrawals. Accurate records shall be kept to determine the total Mcf and associated value of gas injected into or withdrawn from storages. Each utility having gas in underground storage shall report to the Commission on or before the sixtieth (60th) calendar day following the last day of each month the amount and purchased cost of gas in storage as of the last day of the preceding month. This report shall be made on a form as approved by the Commission. Total Mcf and associated value shall be subtracted from the total amounts determined pursuant to (B) of this paragraph for any gas injected into storage during the accounting month for which the average cost of gas is being determined. Total Mcf and associated value for any gas withdrawn from storage during the accounting month for which the cost of gas is being determined shall be determined using the last-in, first-out method of inventory accounting and shall be added to the total amounts determined pursuant to (B) of this paragraph.

(E) Other provisions. Special provisions which are approved by the utility tariffs.

(F) Determination of the weighted average cost per Mcf. The weighted average cost per Mcf for each accounting month shall be calculated by totaling the Mcf and dollar amounts as determined pursuant to the preceding subparagraphs and divided the total dollar amount by the total Mcf.

(G) Application of the average cost of purchased gas. Whenever the average cost of purchased gas, determined as provided in the preceding subsections, is less than the base cost per Mcf as specified in the utility's approved tariff, the applicable rate per Mcf of gas delivered will be reduced by an amount equal to the amount that the utility's average cost of purchased gas is less than the base cost per Mcf as specified in the utility's approved tariff. When the average cost of purchased gas is more than the base cost per Mcf as specified in the utility's approved tariff, the applicable rate per Mcf of gas delivered will be increased by an amount equal to the amount that the utility's average cost of purchased gas is more than the base cost per Mcf as specified in the utility's approved tariff. The purchased gas adjustment to be applied to any bill will be based on the average cost of purchased gas for the latest gas purchase accounting month for which said cost has been determined.

(H) Credits. Any credits, refunds, or allowances on previously purchased gas received by the utility from any supplier shall be

deducted from the cost of gas before computations are made each month.

(I) **Average actual heat content.** Where available, monthly average actual heat content of gas delivered to end users shall be provided in BTUs to PUD during its annual fuel audit of the utility. The information shall be supplied by utility-defined regions, if available.

(b) Variations from the standard provisions set forth in this Section must be sought pursuant to applications for permission to use such clauses to be filed pursuant to 165:50-5-1.

[Source: Amended at 12 Ok Reg 2139, eff 7-1-95; Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-3-3. Standard purchased power adjustment clause provisions; electric cooperatives

(a) A Commission-approved purchased power adjustment provision may be adopted for use by electric distribution cooperatives subject to the jurisdiction of the Commission. The method for use by electric distribution cooperatives in compensating for change in the cost of purchased power is as follows:

(1) Each electric distribution cooperative having an approved purchased power adjustment clause in its tariffs designed to compensate for any variation in the cost of purchased power above or below the base costs upon which the tariffs are based, by adjusting the charges, either upward or downward per kWh, billed under its tariffs, agreements, and special contracts approved by the Commission, shall employ the following formula to compensate for such variation: $P.A. = (A)$, where:

(A) P.A. = Power cost adjustment per kWh to be made, and

(B) A = the amount in cents or fraction thereof by which the average cost of power per kWh paid to suppliers of power by the cooperative exceeds or is less than the cost of power per kWh used in the tariffs as the cost of power on which the rate was based. Any credits, refunds, or allowances on previously purchased power by the cooperative from any suppliers shall be deducted from the cost of purchased power before calculating "A" each month.

(2) The Commission shall include in a purchased power adjustment clause an allowance for line losses if a preponderance of evidence points to the probable conclusion that failure to do so will result in less than a reasonable rate of return for the cooperative. When line losses are included in the purchased power adjustment charge, the following formula shall be used:

$P.A. = A \div (1-B)$, where:

(A) P.A. and A have the same meaning as in the formula in (a)(1) of this Section.

(B) B = The actual percentage of power losses expressed decimally.

(C) This power loss will be computed monthly based on the following formula:

(i) X = The total purchases in the twelve (12) month period ending one (1) month prior to the sales period.

(ii) Y = The total sales for the preceding twelve (12) month period.

(D) Then: $B = (X - Y) \div X$

(3) Each electric distribution cooperative shall submit the following to PUD, and other parties as directed by a Commission Order or tariff, on a monthly basis:

- (A) The purchased power adjustment clause, including the factors enumerated in (2) above;
 - (B) A rolling twelve (12) month average line loss schedule.
- (4) Each electric distribution cooperative shall file annually each calendar year a five (5) year analysis of the line loss by month with the purchased power adjustment clause that coincides with the filing of the annual Rural Utility Service (RUS) Form 7.
- (5) Line losses will be evaluated for reasonableness on a case-by-case basis. Variations from the standard provisions set forth in this Section must be sought pursuant to applications for permission to use such clauses, to be filed pursuant to 165:50-7-1.

[Source: Amended at 12 Ok Reg 2139, eff 7-1-95; Amended at 36 Ok Reg 704, eff 7-25-19]

SUBCHAPTER 5. REQUIREMENTS AND PROCEDURES RELATING TO ADJUSTMENT CLAUSES EMPLOYED BY PUBLIC UTILITIES

165:50-5-1. Authorization for use of adjustment clauses

- (a) If upon application by any public utility, after investigations and public hearing, the Commission finds that the changes in the price of fuels required for the generation of electricity by any electric public utility, the changes in the price of purchased electricity required for distribution by any public utility, or the changes in the price of purchased gas required for distribution by any gas utility portends a likely and substantial threat to the ability of the utility to earn a reasonable rate of return, or are likely to cause the utility to have an excessive rate of return, or are likely to substantially impair the ability of the utility to acquire adequate supplies of fuel or gas, the Commission may approve suitable fuel adjustment clauses to be superimposed upon the existing rate schedules of the public utility. The Commission shall design the fuel adjustment clause to allow the electric or gas public utility to increase or decrease charges to the consumer according to changes in the cost of fuel, purchased power, or purchased gas as compared to the price of such fuels or power as reflected in the base rates.
- (b) Insofar as feasible, the standard fuel and purchased gas adjustment provision adopted pursuant to 165:50-3-2, shall be employed by public utilities subject to the jurisdiction of the Commission. However, each public utility which applies, pursuant to (a) of this Section, for authorization to employ fuel, purchased gas, and/or purchased power adjustment clauses shall be entitled to show that by reason of special circumstances affecting such utility, the standard provisions or portions thereof are not appropriate for use by it; in such case the Commission shall prescribe an appropriate clause for such utility, which clause shall, however, conform to the requirements of 165:50-3-1.
- (c) Notice of hearings held pursuant to (a) of this Section shall be given in the form and manner prescribed by the Commission

[Source: Amended at 10 Ok Reg 2647, eff 6-25-93]

165:50-5-2. Monthly adjustments with respect to any approved fuel adjustment clause

- (a) No proposed monthly fuel adjustment, purchased power adjustment, or purchased gas adjustment by any public utility shall become effective until after the Commission has had an opportunity, as provided in (c) of this Section, to determine that the adjustment is calculated in accordance with the terms and conditions of the

applicable fuel adjustment clause.

(b) Prior to the effectiveness of any monthly fuel, purchased gas, or purchased power adjustment proposed by a public utility, such utility shall file with the Commission, by submitting the following to PUD and other parties as directed by a Commission Order or tariff:

- (1) A statement of the items and costs making up the average cost of fuel per million Btu and associated costs in dollars and cents or fraction thereof.
- (2) A summary of its fuel and gas purchase invoices and its computations of the proposed monthly fuel adjustment or purchased gas adjustment charges.
- (3) A summary of inventory records of fuel and gas going into and taken out of stockpile or storage.
- (4) A report containing the average unit price, the change in the average unit price, the volume purchased, and a brief explanation of such unit cost increase.
- (5) Any other records which PUD may request, including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric public utilities and the actual capacity factor for each generating facility utilized to produce electric power.

(c) The records and computations submitted pursuant to (b) of this Section shall be open to public inspection at the Commission.

(d) PUD or any other affected party shall have five (5) business days after the records and computations prescribed in (b) of this Section have been submitted to request a hearing thereon. If a hearing is not requested, the proposed adjustment charge shall become effective as submitted. In the event PUD or an affected party requests a hearing, and the Commission decides to hold a hearing on the information submitted, it shall notify the public utility within such five (5) business day period, set the matter for a public hearing to commence within thirty (30) calendar days thereafter, and give notice thereof at least three (3) business days prior to the commencement of such hearing by publication in a newspaper of general circulation in the area served by such utility. The issue to be determined at such hearing shall be either or both of the following determinations

- (1) Whether charges or credits made under the fuel adjustment clauses are based upon the actual prices paid for fuel, purchased gas, or purchased power and are properly computed in accordance with the applicable adjustment clause.
- (2) Whether the fuel adjustment clauses should be discontinued, amended, or suspended.

(e) In the event that the Commission determines that it is necessary to set any proposed adjustment charge for hearing, the proposed charge shall nevertheless become effective at the option of the utility following the expiration of the five (5) business day period after its records and computations have been submitted, pending the Commission's finding with respect to such charges. However, in the discretion of the Commission, the effectiveness of the proposed charge may be conditioned upon the submission by the utility with the Commission of an assurance satisfactory to the Commission, which may include a bond with surety of the utility's ability and willingness to refund to its customers any such amounts as the utility may collect from them in excess of the charge approved by the Commission in its finding. If the Commission has not approved, in whole or in part, or denied the proposed charge within seven (7) business days subsequent to the commencement of such hearing, it shall promptly submit a written explanation of its failure to do so to the President Pro Tempore of the Senate, the Speaker of the

House of Representatives, and the Office of the Governor.

[Source: Amended at 10 Ok Reg 2647, eff 6-25-93; Amended at 16 Ok Reg 2260, eff 7-1-99; Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-5-3. Monitoring of fuel adjustment clauses

The Commission shall continually monitor and oversee the application of all fuel adjustment clauses. A general public hearing relating to the fuel, purchased gas, and purchased power adjustment clauses of all public utilities shall be held whenever the Commission deems it necessary, but no less frequently than once every twelve (12) months. The following procedure shall be followed with respect to such hearings:

(1) Upon application by PUD, an order shall be entered setting a hearing date, and notice shall be given in the form and manner prescribed by the Commission in such order.

(2) PUD, or any other person or entity objecting to the operation of a utility's fuel, purchased gas, or purchased power adjustment clause, shall, at or before such general hearing, file with the Commission a complaint in writing setting forth the reasons for such objection. Thereafter, a separate proceeding involving such utility shall be conducted, in accordance with the Commission's Rules of Practice [OAC 165:5].

(A) If no complaint is filed before or at such general hearing with respect to the operation of the fuel, purchased gas, or purchased power adjustment clauses of a utility, no further proceedings shall be had thereon.

(B) If a complaint is filed, the Commission shall at the general hearing set a date for a further hearing with respect to each utility against which a complaint has been filed. The issues to be determined at such further hearing shall be one or more of the following determinations:

(i) Whether the charges or credits are based upon the actual prices paid for fuel, purchased power, or purchased gas.

(ii) Whether the charges or credits are properly computed in accordance with the applicable fuel adjustment clause.

(iii) Whether the fuel adjustment clause should be amended, discontinued, or suspended because of a change in circumstances since the fuel adjustment clause was approved.

(3) If the Commission finds that the charges or credits are not based upon the actual prices paid for fuel, purchased gas, or purchased power or are not properly computed in accordance with the applicable adjustment clause, it shall recompute the charges or credits and shall direct the public utility to take such action as may be required to insure that the charges or credits properly reflect the actual prices paid for fuel, purchased gas, or purchased power and are properly computed in accordance with the applicable adjustment clause for the applicable period.

[Source: Amended at 10 Ok Reg 2647, eff 6-25-93; Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-5-4. Disclosure in customer bills

Each public utility subject to a fuel adjustment clause shall separately disclose in its customer bills the per unit cost of its fuel, purchased power, or purchased gas adjustment. Upon request by any individual consumer, such utility

shall also disclose for the month for which the request is received:

- (1) The actual amount of the adjustment in dollars and cents.
- (2) The per unit rate and amount thereof in dollars and cents of fuel, purchased power, or purchased gas included in its basic rate.

165:50-5-5. Report of fuel adjustment clauses by the electric generation cooperatives

(a) Electric generation cooperatives which determine to utilize a fuel adjustment clause shall report such fuel adjustment clause to the Commission. Such cooperatives shall file monthly with PUD and other parties as directed by Commission Order or tariff by submitting the following:

- (1) A report of adjustments charged or credited to its wholesale electric customers on its current monthly billing.
- (2) A statement of the items and costs making up the average cost of fuel per million Btu and associated costs in dollars and cents or fraction thereof.
- (3) A summary of its fuel and gas purchase invoices and its computation of the proposed monthly fuel adjustment charges.
- (4) A summary of inventory records of fuel going into and taken out of stockpile or storage.
- (5) A report containing the average unit price, the change in the average unit price, the volume purchased, and a brief explanation of any change in such unit cost.
- (6) Any other records pertaining to fuel adjustment charges deemed necessary by the Commission including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric generating cooperatives and the actual capacity factor for each generating facility utilized to produce electric power.

(b) The records and computations provided for in this Chapter shall be open to public inspection at the office of the Commission.

[Source: Amended at 16 Ok Reg 2260, eff 7-1-99; Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-5-6. Inapplicability of certain rules to electric distribution cooperatives

Sections 165:50-3-1, 165:50-3-2, and 165:50-5-1 through 165:50-5-5 in this Chapter shall be inapplicable to electric distribution cooperatives, except as provided in this Chapter.

[Source: Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-5-7. Periodic rate investigations

The rates charged to their customers by public utilities and electric distribution cooperatives which utilize fuel, purchased gas, or purchased power adjustment clauses shall be periodically investigated by the Commission in order to determine whether such rates are just and reasonable. In conducting such investigations, the following procedures shall be followed:

- (1) Except in those cases described in (3) of this Section, such proceedings by the Commission shall be commenced by application made by the Commission staff or by order of the Commission.
- (2) Such proceedings shall include public hearings.
- (3) A general rate proceeding instituted by a public utility or cooperative shall be deemed to constitute a rate investigation hereunder.

(4) In such rate investigations or proceedings, income, expenses and investments of affiliated persons, subsidiaries, firms, or corporations and emergency and off-system sales of electricity or gas shall be given appropriate consideration by the Commission in determining the financial requirements of the utility or cooperative.

[Source: Amended at 10 Ok Reg 2647, eff 6-25-93; Amended at 12 Ok Reg 2139, eff 7-1-95]

SUBCHAPTER 7. PURCHASED POWER ADJUSTMENT CLAUSES FOR ELECTRIC DISTRIBUTION COOPERATIVES

165:50-7-1. Approval of purchased power adjustment clauses

(a) No purchased power adjustment clause of any kind shall apply nor be used in computing bills for retail electric service which has not been first approved by the Commission.

(b) If the Commission finds that the changed price of purchased wholesale power required for distribution by any electric distribution cooperative threatens the ability of the cooperative to earn a reasonable rate of return, the Commission may, after investigation and public hearing, approve a suitable purchased power adjustment clause to be superimposed upon the existing retail electric rate schedule of the cooperative and designed only to recapture such increased cost of wholesale power.

(c) The Commission shall design the purchased power adjustment clause to allow the electric distribution cooperative to increase or decrease its charges for retail electric service as provided in its approved electric rates only for the changes in the cost of purchased power when the price of such purchased power differs from the price which is reflected in its basic approved retail rates. It shall include in a purchased power adjustment clause an allowance for line losses if a preponderance of evidence points to the probable conclusion that failure to do so will result in less than a reasonable rate of return for the cooperative.

165:50-7-2. Monitoring of application of adjustment clauses

Whenever the Commission approves a purchased power adjustment clause pursuant to 165:50-3-3 and 165:50-7-1, the clause shall apply to all similar distribution cooperatives affected by such increased cost. In addition, the Commission shall continually monitor and oversee the application of the adjustment clauses. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every twelve (12) months.

The following procedure shall be followed with respect to such hearings:

(1) Upon application by the Commission staff, an order shall be entered setting a hearing date and notice thereof shall be given in the form and manner prescribed by the Commission in such order.

(2) The Commission staff, or any other person or entity objecting to the operation of an electric distribution cooperative's purchased power adjustment clause, shall, at or before such general hearing, file with the Commission a complaint in writing setting forth the reasons for such objection. Thereafter, an appropriate proceeding involving such electric distribution cooperative shall be conducted, in accordance with the Commission's Rules of Practice [OAC 165:5].

(A) If no complaint is filed before or at such general hearing with respect to the operation of the purchased power adjustment clause of an electric distribution cooperative, no further proceeding shall

be had thereon.

(B) If a complaint is filed, the Commission shall at the general hearing set an appropriate time for the complaint to be heard, and the issues to be determined at such hearing shall be one or more of the following determinations:

(i) Whether the charges or credits made under the adjustment clauses are based upon the actual prices paid for purchased power.

(ii) Whether the charges or credits are properly computed in accordance with the applicable adjustment clause.

(iii) Whether that portion representing fuel adjustment charges made by an electric generation cooperative are fair, equitable, and properly computed.

(iv) Whether the purchased power adjustment clause should be amended, suspended, or discontinued because of a change in circumstances since the purchased power adjustment clause was approved.

(3) If the Commission finds that the charges or credits are not based upon the actual prices paid for purchased power or are not properly computed in accordance with the applicable adjustment clause, it shall re-compute the charges or credits and shall direct the electric distribution cooperative to take such action as may be required to insure that the charges or credits properly reflect the actual price paid for purchased power and are properly computed in accordance with the applicable adjustment clause for the applicable period.

[Source: Amended at 12 Ok Reg 2139, eff 7-1-95; Amended at 36 Ok Reg 704, eff 7-25-19]

165:50-7-3. Disclosure of per unit rate in consumer's bill

Each electric distribution cooperative applying a purchased power adjustment charge in its bills shall separately disclose the per unit rate of the purchased power adjustment charge. Upon request by any individual consumer, such cooperative shall also disclose for the month for which the request is received:

- (1) The dollars and cents of the purchased power adjustment charge.
- (2) The base cost of purchased power included in the retail rate.

165:50-7-4. Applications through a common representative

Nothing in this Chapter shall prevent similarly situated electric distribution cooperatives from making, or the Commission from accepting, filings and applications as shall be required simultaneously and through a common representative.

CHAPTER 55. TELECOMMUNICATIONS SERVICES

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 131 et seq., 137, and 139.101 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-1. Purpose; short title

(a) This Chapter establishes the Oklahoma Corporation Commission Rules and Regulations Governing and Regulating the Operations of Telecommunications

Service Providers and Telecommunications in Oklahoma which may be cited by the short title as the Oklahoma Telecommunications Rules.

(b) This Chapter is intended to define good business practices under normal conditions, assure adequate service and prevent unfair charges to the customers and/or end-users and protect the telecommunications service provider from unreasonable demands.

(c) This Chapter is further intended to allow Oklahoma consumers to receive timely benefits from lawful market-driven price and service competition among interexchange carriers ("IXCs") and telecommunications service providers in the long distance and local exchange markets by applying such regulatory requirements as are necessary to assure public access to long distance and local exchange services under tariff provisions and Terms of Service which are not unjustly discriminatory and to preclude unjust and unreasonable rates or charges in such markets. It is also intended that if an IXC provides local exchange service, the local exchange portion of its business shall be subject to the rules and regulations prescribed in this Chapter for telecommunications service providers.

(d) Notwithstanding the provisions of OAC 165:55-1-12, nothing in this Chapter is intended to supersede the Commission's extant orders regarding intraLATA toll competition or imputation. In the event future Commission orders modify the scope of such competition or imputation, such orders shall be controlling.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2661, eff 7-1-99; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX § 18 *et seq.* of the Constitution of the State of Oklahoma, enactments of the Oklahoma Legislature, and federal law has the authority and responsibility to supervise, regulate, and control the Oklahoma businesses of telecommunications service providers and interexchange telecommunications carriers in Oklahoma which are subject to regulation of the Commission. In addition, the Commission has the authority to designate eligible telecommunications carriers, to grant certificates of convenience and necessity to data-only providers and to enact rules and regulations in connection therewith. No person or corporation not otherwise a telecommunications service provider within the meaning of this Chapter shall be deemed such solely because of the manufacture, distribution, installation, or maintenance of end-user premises communication equipment and accessories.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-1-3. Application of rules

This Chapter shall apply to every telecommunications service provider, data-only provider, and IXC in Oklahoma subject to the jurisdiction of the Commission. This Chapter shall apply to a Telephone Cooperative Corporation only to the extent specifically authorized by 18 O.S. § 438.1 *et seq.* This Chapter shall not apply to the interexchange portion of an IXC's business, except as set forth in OAC 165:55-1-8. This Chapter shall not apply to the non-regulated services offered by a data-only provider, except as specified in OAC 165:55-3-1.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. These definitions shall be supplemented by the definitions contained in 17 O.S. § 139.102. To the extent there is a conflict between a definition contained in 17 O.S. § 139.102 and a definition in this Section, the definition in this Section shall be applicable to this Chapter:

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"Authorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-13-12.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or **"Channel"** means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or **"Customer class"** means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"CSD" means the Consumer Service Division of the Public Utility Division of the Oklahoma Corporation Commission.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Data-only provider" means a company exclusively providing non-voice services, to include Special Universal Services as defined at 17 O.S. § 139.102(39), which, pursuant to OAC 165:55-3-1, has obtained a Certificate of Convenience and Necessity.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible Telecommunications Carrier" ("ETC") means a common carrier designated by the Commission pursuant to OAC 165:55-23-2 and 47 U.S.C.

§§ 254 and 214(e). ETC also means a Lifeline Broadband Provider designated by the Federal Communications Commission.

"End-user" means the customer to whom a telephone number is assigned.

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Filed" means to present a document to and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for Internet service that is in addition to the access connection charge.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company or telecommunications carrier.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. § 251), as amended, the Federal

Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing service, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" or "Non-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any interstate services offered FCC tariffs or rules, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services that are not regulated by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Rates" means all charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

- (i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,
- (ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submit" means to present a document to the Director of the Public Utility Division.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be

treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, or OAC 165:59, as amended from time to time, for which an ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or "Company" means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a TSP or IXC elects to post, in a searchable format, on a publicly availability website.

"Tribal Land" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), Indian allotments; Hawaiian Home Lands-areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et.seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in 47 CFR § 54.412.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wireless Provider" means provider of radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

"Zone" means a service territory described as such by an incumbent LEC.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 17 Ok Reg 306, eff 11-2-99 (emergency); Amended at 17 Ok Reg 1043, eff 5-11-00; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 31 Ok Reg 1082, eff 9-12-14; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 33 Ok Reg 647, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-1-5. Interpretation of rules

The words contained in this Chapter shall be given their ordinary and customary meanings, with technical terms and words being construed as generally understood within the telecommunications industry, except where otherwise expressly provided. Where the rules of this Chapter establish service standards or objectives, substantial compliance will be deemed in compliance with this Chapter. Where the rules of this Chapter impose an absolute obligation upon the telecommunications service provider or IXC, strict compliance is required.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to the telecommunications service provider, IXC, data-only provider, an end-user, consumer or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter upon application of any interested person filed in accordance with the Commission's Rules of Practice, OAC 165:5. The Commission may grant temporary relief pending hearing.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-1-7. Exceptions or variances

If a telecommunications service provider receives an exception or variance from this Chapter in its tariffs or terms and conditions of service, such exception or variance shall be clearly shown on such tariffs or terms and conditions of service, sufficient to plainly bring to the Commission's attention the exact nature of the said exception or variance. Any exception or variance not so marked or identified in such tariff or terms and conditions of service shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the variance shall indicate the number of the pertinent Commission order.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-1-8. Supremacy

(a) Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter.

(b) The interexchange portion of an IXC's business shall continue to operate under the regulatory requirements and procedures prescribed by their respective certification orders and OAC 165:55-1-1, 165:55-1-3, 165:55-1-4, 165:55-1-5, 165:55-1-6, 165:55-1-11, 165:55-1-15, 165:55-1-16, 165:55-3-1, 165:55-3-2, 165:55-3-3, 165:55-3-22, 165:55-3-23, 165:55-5-3, 165:55-5-10, 165:55-5-10.2, 165:55-5-10.4 165:55-5-11, 165:55-5-13, 165:55-5-14, 165:55-5-20, 165:55-5-34, 165:55-5-35, 165:55-9-2.1, 165:55-15-1, 165:55-15-5, 165:55-19-1, 165:55-19-3, and 165:55-21-1.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-1-9. Rules conform to law

This Chapter shall be construed to conform with the Constitution and laws of Oklahoma.

165:55-1-10. Controversy over rules

Whenever a controversy exists in connection with the interpretation of the rules of this Chapter or their applicability, or any right or duty imposed thereby, the Commission, upon application of any interested person and after notice and hearing, will enter such order thereon as it may deem appropriate.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-1-11. Severability

This Chapter will not relieve in any way a telecommunications carrier or end-user from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable. This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person. The Commission may make exceptions to this Chapter for good cause shown.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 17 Ok Reg 19, eff 9-27-99 (emergency); Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-1-12. Conflict with Commission order

This Chapter shall not alter or amend any order of the Commission directed to a telecommunications service provider, except where the provisions thereof are in direct conflict with this Chapter, in which case this Chapter shall supersede the provisions of any such order to the extent of conflict only.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-1-13. Conflict with filed tariffs

All tariffs and terms and conditions of service heretofore filed or submitted by a telecommunications service provider and approved or deemed approved by the Commission are not revoked, altered or amended by this Chapter, except to the extent they are in direct conflict with any provision of this Chapter, in which event such tariffs and terms and conditions of service are superseded by this Chapter to the extent of conflict only.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-1-14. Tariff conformance [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Revoked at 16 Ok Reg 2261, eff 7-1-99]

165:55-1-15. Exclusions

The term "telecommunications service provider" as used in this Chapter shall not include IXCs, which shall be regulated as provided for by OAC 165:55-1-8.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-1-16. Universal service

Consistent with 17 O.S. § 139.107, all Contributing providers, as defined at 17 O.S. § 139.102, operating within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund. Further, each Contributing provider, whether subject to the jurisdiction of the Commission or not, shall annually provide contact information to the OUSF Administrator for the purpose of correspondence regarding contributions to the OUSF. Compliance with this requirement can be accomplished by the submission of an annual report, submission of an affirmation that the Contributing provider filed the FCC Form 499, or submission of full contact information for the Contributing provider.

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:55-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person, firm, association, corporation or cooperative shall furnish telecommunications service to any end-user or customer in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Requirement for Certificate of Convenience and Necessity prior to receiving funding from the Oklahoma Universal Service Fund.** Any provider, excluding OneNet, requesting funding from the Oklahoma Universal Service Fund for the provision of Special Universal Services shall first obtain a Certificate of Convenience and Necessity from the Commission.

(c) **Application for Certificate of Convenience and Necessity.** Every provider of telecommunications services making application to the Commission for a Certificate of Convenience and Necessity in accordance with 17 O.S. § 131 *et seq.* shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a certificate to provide telecommunications service in the State of

Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and five (5) copies of the application for Certificate of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(d) Application requirements for Certificate of Convenience and Necessity. An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant. The Commission reserves the right to deny or dismiss, without prejudice, any application found not to be in compliance with this subchapter. If an applicant is unable to produce any information required in this subsection, the applicant must provide a statement explaining why the information is not included.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service or provide Special Universal Services to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1) (A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A description of any facilities that will be used to provide services in Oklahoma, and whether applicant intends to add additional facilities that will be used to provide services in Oklahoma.

(D) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant is a data-only provider or is seeking a CCN exclusively in order to seek reimbursement from the OUSF under 17 O.S. § 139.109.1(B)(4) for the provision of Special Universal Services, or, if not, that prior to commencing to provide local exchange service the applicant will notify each Public Safety Answering Point ("PSAP") within their service area that they will be providing service within the area served by the PSAP, and provide each PSAP with contact information in case there are issues with the completion of calls by the customers of the Applicant. The attachment shall also state that the Applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the E911/911 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within thirty (30) days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner required by the Commission, notice of the intended action, and, if the change impacts the availability or operation of E911 service, must also provide notice to any E911/911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, are not currently under investigation or involved in any pending or concluded investigations or litigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation related to the operation of a regulated industry, if that is the case;

(x) A statement that the applicant, or its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers and senior management, have not been fined, found guilty, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation related to the operation of a regulated industry, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(xii) A statement as to whether applicant currently seeks state or federal universal service funding of any kind for services provided in the state(s) in which applicant is currently authorized to provide service, and whether

applicant intends to seek Oklahoma Universal Service Fund funding in Oklahoma.

- (2) The attachments to the application shall include the following:
- (A) Copies of the applicable Articles of Incorporation, Articles of Organization, and/or partnership agreement, and/or Joint Venture agreement and, where they exist, by-laws or operating agreement of the applicant for a Certificate of Convenience and Necessity and any entity or individual owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.
 - (B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma, and evidence that applicant is in good standing with the Oklahoma Secretary of State.
 - (C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider, data-only provider, or IXC, i.e. a "d/b/a".
 - (D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection (h) of this Section has been obtained, if applicable.
 - (E) Documentation indicating the applicant's organizational structure and ownership such as:
 - (i) For corporations, limited liability companies, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.
 - (ii) A sole proprietor, as well as a limited liability company, shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.
 - (F) A brief description of its history of providing the requested telecommunications service, Special Universal Services, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.
 - (G) A description of the applicant's experience in providing telecommunications services or Special Universal Services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address, and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for CSD regarding complaints involving the telecommunications service provider, IXC or data-only provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

- (i) The applicant is authorized to operate;
- (ii) Authorization to operate is pending;
- (iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,
- (iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification shall be in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3. A company may elect to post Terms of Service on a publicly available website, subsequent to the approval of their initial tariffs.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates, individuals or investors holding more than five (5) percent ownership, and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service or Special Universal Services to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) An affirmation that the Applicant will maintain a record of complaints in a manner consistent with OAC 165:55-3-23.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications service provider to obtain written authorization from an end-user to switch telecommunications

service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(T) A description of applicant's parameters for determining creditworthiness if applicant intends to perform credit checks prior to providing service to a potential end-user.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) Agreements in accordance with OAC 165:55-17-7, if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such agreement(s) become available. Protective relief may be sought pursuant to 51 O.S. § 24A.22.

(e) Requirements applicable to CCN requests exclusively for purposes related to 17 O.S. § 139.109.1(B)(4). An applicant for a CCN for the limited purpose of qualifying as an eligible provider, as that term is defined at 17 O.S. § 139.102(11), in order to be eligible to seek reimbursement from the OUSF for the provision of Special Universal Services as provided at 17 O.S. § 139.109.1(B)(4) shall submit an application consistent with the requirements of this subsection.

(1) All applications for a CCN pursuant to this subsection shall include the information specified at OAC 165:55-3-1(d)(1)(A), 165:55-3-1(d)(1)(B), 165:55-3-1(d)(1)(D)(i), 165:55-3-1(d)(1)(D)(ii), 165:55-3-1(d)(1)(D)(iv), 165:55-3-1(d)(1)(D)(v), 165:55-3-1(d)(1)(D)(vii), 165:55-3-1(d)(1)(D)(ix), 165:55-3-1(d)(1)(D)(x), 165:55-3-1(d)(1)(D)(xi), 165:55-3-1(d)(1)(D)(xii), 165:55-3-1(d)(2)(A), 165:55-3-1(d)(2)(B), 165:55-3-1(d)(2)(C), 165:55-3-1(d)(2)(E), 165:55-3-1(d)(2)(F), 165:55-3-1(d)(2)(G), 165:55-3-1(d)(2)(H), 165:55-3-1(d)(2)(I), 165:55-3-1(d)(2)(J), 165:55-3-1(d)(2)(K), and 165:55-3-1(d)(2)(P).

(2) The application shall also contain the following information:

(A) A full description of any investigations of the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers or senior management in conjunction with participation in any local, state or federal universal service fund or subsidy program.

(B) A full description of any investigations of the applicant, its owners (individuals and/or entities) or investors holding more than five (5) percent ownership, or companies, or officers or senior management officers, owners, senior management, investors or affiliates for potential violations of laws, rules or regulations related to the operation of an entity within a regulated industry.

(C) For each investigation described in (A) and/or (B) provide an indication of the disposition of any ongoing investigations and, if concluded, the investigating agency's findings.

(D) A listing of all affiliates, subsidiaries, or partnerships that participate or collaborate in any manner with the applicant in providing and/or administering any services supported by a local, state or federal universal service fund or subsidy program.

(E) An affirmative statement that the applicant understands and agrees that any request for CCN authority beyond the limited purpose of qualifying for reimbursement from the OUSF for the

provision of Special Universal Services under 17 O.S. § 139.109.1(B)(4) would require an application for authority under OAC 165:55-3-1(C).

(F) An informational tariff describing the services to be offered, any limitations on the availability of those services within Oklahoma, and general terms and conditions.

(f) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

(g) **Approval requirement.** No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing, if any, as directed by the Commission or unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma.

(h) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To ensure the protection of the applicant's end-users, the applicant that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars (\$1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(i) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

(j) Prior to providing service in Oklahoma, the Applicant shall jointly test interoperability with the 911/E911 PSAPs in their service area and provide verification of interoperability to the Commission and the PSAP. If testing is not applicable to the services for which CCN authority has been requested, a statement

to that effect will be included in the CCN application.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity

Applicants seeking a Certificate of Convenience and Necessity shall meet all notice requirements as set forth in this Section.

(1) Requirements for filing an Application of a Certificate of Convenience and Necessity. An Application of a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

(A) The Attorney General of the State of Oklahoma;

(B) The Director of the Public Utility Division of the Oklahoma Corporation Commission;

(i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Oklahoma Corporation Commission Court Clerk's Office and shall be delivered to the Director of the Public Utility Division in electronic copy form only.

(ii) The Director of the Public Utility Division shall place the Application of Certificate of Convenience and Necessity on the Commission's website, <http://www.occeweb.com>, within five (5) business days of receipt.

(C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.

(D) The ILEC in the proposed service territory.

(E) Sections (C) and (D) of this subsection shall not apply to applications for a certificate of convenience and necessity filed exclusively for the limited purpose of receiving reimbursement from the OUSF for the provision of Special Universal Services in accordance with 17 O.S. § 139.109.1(B)(4).

(2) Publication of a Notice of Application of a Certificate of Convenience and Necessity. The Notice required by 17 O.S. § 132 shall be published as follows:

(A) In a newspaper of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in each service territory affected.

(B) Publication shall be at the expense of the applicant.

(C) A "Proof of Publication" document shall be filed with the Oklahoma Corporation Commission Court Clerk's Office within fifteen (15) days of the last publication date.

(3) Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.

(A) When an objection is made in a cause of an Application of a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing at the Oklahoma Corporation Commission Court Clerk's office requesting a date for a hearing on

the merits of the application.

(B) Within ten business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

- (i) The Attorney General of the State of Oklahoma;
- (ii) The Director of the Public Utility Division of the Oklahoma Corporation Commission; and
- (iii) Any Interveners, including the person or entity filing the objection.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-3-3. Approval of initial tariffs

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:55-3-1, a telecommunications service provider, or IXC shall file an application requesting approval of its initial tariffs, unless filed pursuant to OAC 165:55-3-1(d)(2)(L), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter. Notice of such filings shall comply with OAC 165:55-5-11(d).

(b) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by Commission.

(c) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(d) With the application requesting approval of a complete set of proposed initial tariffs, the telecommunications service provider, or IXC, shall file proof that the third-party surety bond, surety bond or letter of credit required in OAC 165:55-3-1(h) has been obtained, if applicable.

(e) This subsection does not apply to providers with a Certificate of Convenience and Necessity limited to authority to receive reimbursement for the provision of Special Universal Services in accordance with 17 O.S. § 139.109.1(B)(4). Such entities will provide informational tariffs in accordance with OAC 165:55-3-1(e)(2)(F).

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

PART 3. GENERAL REQUIREMENTS FOR RECORDS AND REPORTS

165:55-3-10. Who shall file [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Revoked at 16 Ok Reg 2261, eff 7-1-99]

165:55-3-11. Accounting system

(a) The Uniform System of Accounts of the FCC prescribed for Class A and Class B telephone companies, or other system of accounts acceptable to the Commission, may be adopted by a telecommunications service provider.

(b) Regardless of the system of accounts adopted by a telecommunications service provider pursuant to subsection (a), in a general rate proceeding, the Commission Staff may request the production of data and reports in a format other than as kept pursuant to the designated system of accounts. Disputes related to this Section may

be submitted to the Commission for resolution.

(c) No change in, or departure from, the system utilized by the telecommunications service provider will be permitted except upon order of the Commission made after notice and hearing.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

PART 5. RECORD REQUIREMENTS

165:55-3-20. Location of records

All records, including tariffs, required by this Chapter shall, at the option of the telecommunications service provider, be kept at the general office of each telecommunications service provider or on a publicly available website and shall be made available to the Commission or its authorized representative at any reasonable time upon request.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-3-21. Retention of records

All records required by this Chapter shall be preserved for two (2) years, except for an ETC's records confirming subscriber's eligibility for purposes of the State and/or Federal Lifeline programs as well as the records confirming household eligibility for State and/or Federal Lifeline support. Records confirming subscriber and household eligibility for purposes of initial or annual recertification for State or Federal Lifeline programs shall be kept for three (3) years.

[Source: Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Each telecommunications service provider and IXC shall provide to the Director of the Public Utility Division an annual report, in a format developed by the Director of the Public Utility Division, no later than April 1 of the year following the reporting year. Proposed revisions to the Annual Report format will be posted to the OCC website at least ninety (90) days prior to their effective date. All carriers will be notified of the posting via e-mail, based on addresses supplied by carriers. Any carrier that objects to the proposed revisions to the Annual Report format may file an Application with the Commission requesting relief from the applicability of the format changes. The filing of an Application will suspend the applicability of the proposed format revisions until an Order is issued by the Commission. Unless an Order revising the Annual Report format is entered at least 90 days prior to the April 1 filing deadline, carriers will not be required to file an Annual Report in the revised format until the following year.

(b) **Confidentiality of annual report.** All non-publicly available information included in the annual report or an ETC's FCC Form 481 or FCC Form 555 will be considered confidential by the OCC.

(c) **Proof of third-party surety bond, surety bond or irrevocable letter of credit.** Where applicable, not later than May 1 of each year, each telecommunications service provider and IXC which does not have at least one million dollars (\$1,000,000) net book value invested in telecommunications plant and/or telecommunications facilities located in the State of Oklahoma, shall provide annually, to the Director of the Public Utility Division, proof of the continuing existence and sufficiency of the required third-party surety bond, surety bond or irrevocable letter of credit providing coverage at a level of at least one

hundred and ten percent (110%) of customer deposits. Such proof shall be in a format developed by the Director of the Public Utility Division and approved by the Commission.

(d) **Exchange maps.** Each telecommunications service provider shall provide the Director of the Public Utility Division two (2) copies of updated exchange maps when the boundaries of an exchange(s) are changed. The maps and descriptions shall be in sufficient detail to permit the location of exchange boundaries on the ground, and be consistent with the format set forth in this subsection.

(1) Each exchange map provided after the effective date of this Chapter shall conform to the following:

(A) One exchange service area per sheet.

(B) Each map shall be on eight and one-half by eleven inches (8.5" x 11") (or larger sheet which folds down to eight and one-half by eleven inches (8.5" x 11")), twenty pounds (20 lbs.) or heavier, white paper.

(C) Each township and range will be specified along the side of the map and, at a minimum, each corner section will be numbered.

(D) The outline of the exchange service area will be a heavy black line with an "E" every one inch (1") or two inches (2") along the boundary.

(E) The name of adjacent incumbent LEC exchanges will be indicated on the exchange map to identify their relative location.

(2) When said boundary map changes involve more than one telephone exchange and more than one incumbent LEC, the changes involved shall be coordinated between the incumbent LECs concerned and a "Joint Application" submitted. After an order is issued by the Commission the incumbent LECs shall submit revised exchange maps containing the revised territory, the new certificate number, the cause number, the order number, and the date of the order approving the change. A copy of each current exchange map shall be made available for review to any interested person upon reasonable notice containing:

(A) Application number.

(B) Maps showing the changes in contrasting colors.

(C) Metes and bounds of changes.

(D) Proposed orders (one for each exchange) with complete metes and bounds of the revised exchange(s).

(e) **Competitive LEC service territories maps.** Each competitive LEC shall either identify the LEC exchanges of their service territory or maintain up-to-date maps showing its service territory. The maps and descriptions shall be in sufficient detail to establish the location of incumbent LEC exchange boundaries on the ground. Each map provided shall conform to the format set out in OAC 165:55-3-22(c)(1). Two (2) copies of each map shall be provided to the Director of the Public Utility Division.

(f) **Contracts and agreements.** Upon request by the Director of the Public Utility Division, a TSP or IXC shall provide a copy of a contract entered into by the TSP or IXC for regulated services.

(g) **Contact names.** Each telecommunications service provider and IXC shall notify, in writing, the Director of the Public Utility Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and CSD issues. If the below information is unavailable, the telecommunications service provider or IXC may seek a waiver from the PUD Director by making a

request in writing.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues;
- (F) Billing inquiries;
- (G) Regulatory matters;
- (H) Oklahoma Universal Service Fund (and Monthly Payout, Fee Assessment, Requests for Funding, if different);
- (I) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (J) Primary emergency;
- (K) Afterhours emergency;
- (L) Annual reporting;
- (M) Attorney for regulatory matters; and
- (N) Community Liaison.

(h) Other information. Each telecommunications service provider and IXC shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17; Amended at 36 Ok Reg 709, eff 7-25-19]

165:55-3-23. Complaints report

Each telecommunications service provider and IXC shall maintain customer complaints that have been received by the company. These should be maintained for a period of no less than two (2) years.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

PART 7. REPORTING REQUIREMENTS

165:55-3-30. Report attestation

All reports required by this Chapter to be submitted to the Commission shall be attested to by an officer or manager of the telecommunications service provider under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the telecommunications service provider's operation.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-3-31. Due dates of reports [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Revoked at 29 Ok Reg 1549, eff 7-12-12]

SUBCHAPTER 5. RATES AND TARIFFS

PART 1. TARIFF FILING

165:55-5-1. Tariffs and/or Terms of Service required

(a) Except as provided in this Subchapter, a telecommunications service provider or IXC shall charge for the provisioning of regulated telecommunications services to its end-users only the rates and charges contained in its tariffs on file with and approved by the Commission or Terms of Service. No deviation from a tariff or Terms of Service shall be permitted, except as permitted by OAC 165:55-5-10.3 or unless otherwise authorized by the Commission. The provisions of each telecommunications service provider's or IXC's filed tariff and/or Terms of Service are binding upon the telecommunications service provider, IXC and the end-user as to the rates and charges for service and the terms and conditions of service.

Notwithstanding the foregoing and OAC 165:55-3-3, neither a telecommunications service provider nor an IXC shall be required to file a written tariff with the Commission for any service except payphone access services, E911/911 access services, or switched access services.

(b) A telecommunications service provider or an IXC which has a written tariff on file with the Commission may withdraw the tariff, except for payphone access services, E911/911 services, or switched access services if the telecommunications service provider or IXC:

- (1) provides written notice to the Director of Public Utility Division and the Attorney General, that it is withdrawing the tariff,
- (2) posts the Terms of Service, and
- (3) provides the Commission with the web page information where the language is posted.

(c) The Commission maintains the same authority to review the Terms of Service, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10.

(d) All tariff revisions shall be deemed approved by the Commission on the day following the day the tariff revision is submitted to the Commission. Revisions to the Terms of Service on a telecommunications service provider's or IXC's website will become effective on the day following the day the revision is posted on the website, or as otherwise indicated on the website.

(e) A data-only provider, with a CCN granted exclusively for the purpose of seeking reimbursement from the OUSF under 17 O.S. § 139.109.1(B)(4), shall maintain an informational tariff with current terms, conditions and rates applicable to the Special Universal Services it provides. Any modifications to the data-only provider's terms, conditions or rates, shall be submitted to the Director of Public Utility Division prior to the effective date of such modifications.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-5-2. Contents of tariffs

Except as provided in OAC 165:55-5-1, every telecommunications service provider shall file with the Commission its tariffs containing detailed schedules of its rates and charges for all intrastate regulated telecommunications services. The tariffs shall be in sufficient detail and shall be accompanied by such explanatory material, so as to permit determination of the applicability of the tariff. For standard

services, the tariff should be structured to permit determination of the exact charges from the tariffs alone. Services, whose rates and charges are determined on an individual case basis, need not indicate the exact charges in the tariff. Related provisions, such as the circumstances under which services are available, classes of service offered, and line extension policy, will be set out in the tariff or by reference to other filed tariffs. Unless provided otherwise in this Chapter, no tariff shall be effective except by order of the Commission or otherwise pursuant to the laws of the State of Oklahoma.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-3. Terms and conditions of service [REVOKED]

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-4. Exchanges served by a competitive LEC

Each competitive LEC shall file and maintain an up-to-date listing of the service territory to which the competitive LEC provides services. Such competitive LEC listings shall be revised in accordance with the requirements of this Subchapter.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

PART 3. APPROVAL AND NOTICE REQUIREMENTS

165:55-5-10. Tariff approval and revisions to tariffs

(a) Except as provided in OAC 165:55-5-1, no new or revised tariff shall be effective without Commission order after notice and hearing, if any, as directed by the Commission unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma. Tariffs filed under this section will be deemed lawful and effective thirty (30) days after filing unless an objection is filed in advance of the thirtieth day that a hearing is required.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) New or revised tariffs describing a regulated service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter, including but not limited to, subsection (b)(2) of this section or by the laws of the State of Oklahoma.

(2) No new or revised tariff describing a switched access service, E911/911 service, or payphone access service, shall become effective without Commission order after notice and hearing, if any, as directed by the Commission.

(3) A packaged service may include any combination of basic local services, regulated services and non-regulated services. A packaged service shall be treated as a single optional service by the Commission. A packaged service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter or by the laws of the State of Oklahoma.

(4) Any tariffed service utilizing ICB pricing, or amendment thereto, shall become effective without Commission order according to the terms of the agreement with the customer and/or the provider's tariffs.

(c) To the extent that this Chapter allows the submission of new or revised tariffs, new or revised tariffs shall have an effective date on or after the day following the

day the submission is delivered to the Director of the Public Utility Division, subject to the following conditions:

- (1) The submission delivered to the Public Utility Division shall include a cover letter, one (1) mark-up copy of the new or revised tariff pages in legislative format, and one (1) final copy of the new or revised tariff pages.
- (2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages.
- (3) A new or revised tariff submitted to the Commission shall comply with the notice requirements of OAC 165:55-5-11. A copy of the notice shall accompany the submission. The submission shall clearly identify the date of notice and the method used to provide notice.
- (4) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(d) The Public Utility Division may, after an informal investigation, file an application with the Commission seeking to revoke or modify any tariff. After notice and hearing, the Commission may issue an order prospectively revoking or modifying any tariff for good cause.

(e) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(f) The Commission shall protect against anti-competitive behavior and the abuse of monopoly power by rejecting, revoking or modifying tariffs that are predatory, anti-competitive or discriminatory. In its review, the Commission may consider the incremental cost of the service, the potential impact on competition, the potential impact on end-users generally, and such other factors as the Commission may deem necessary. The Commission maintains the same authority to review the Terms of Service that are posted on the publicly available website, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10. This retention of authority shall not be interpreted to mean that the Commission has approved the Terms of Service.

(g) Unless otherwise ordered by the Commission, all proposed rates must cover the long-run incremental cost of the service, including imputation where ordered by the Commission.

(h) For purposes of this Section, the Commission shall allow an ILEC or CLEC that serves less than seventy-five thousand (75,000) access lines as of July 1, 1997, at the option of the company, to adopt the cost studies approved by the Commission for an ILEC or CLEC that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the FCC.

(i) Nothing in these rules is intended to modify, affect or nullify the responsibilities of the Commission or providers of telecommunications services as required by state or federal antitrust laws or the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2067, eff 12-8-98 (emergency); Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 26 Ok Reg 1127, eff 7-1-09; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-5-10.1. Competitive services [REVOKED]

[Source: Added at 14 Ok Reg 2847, eff 7-15-97; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 26 Ok Reg 1127, eff 7-1-09; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-10.2. Promotional offerings

(a) Telecommunications service providers or IXC's may offer Promotional rates and/or terms and conditions of service for any purpose. Promotional offerings are not intended to replace any obligation of a TSP or IXC to submit tariffs or to post the Terms of Service.

(b) TSPs and IXC's must maintain a log of all current promotional offerings and shall provide the log to the Commission upon request.

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 26 Ok Reg 1127, eff 7-1-09; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-10.3. Customer-specific contracts under ICB pricing

(a) Telecommunications service providers or IXC's may enter into customer-specific contracts for business services provided that the pricing is not predatory.

(b) At the direction of the Commission, the Director of the Public Utility Division shall periodically select a sample of ICBs for review. If a review of any ICB reveals that said ICB is not fair, just, reasonable, not priced at or above LRIC, or not in the public interest, the Commission may issue an order to revoke the TSP's or IXC's ability to enter into ICBs until further order of the Commission.

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 26 Ok Reg 1127, eff 7-1-09; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-10.4. Name changes and/or trade name additions and/or address changes

Tariff revisions to reflect a change to the name and/or change, deletion or addition of a trade name under which the telecommunications service provider or IXC will be doing business in the State of Oklahoma, and/or change of address shall become effective, without Commission order, the date of filing such tariffs, provided the filing contains the attestation required by subparagraph (5) of this Section. The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:

- (1) An amended Certificate of Incorporation effecting a change of name pursuant to 18 O.S. § 1076, 1077 or 1031;
- (2) A Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140;
- (3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.1;
- (4) A Transfer of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.2; and,
- (5) An attestation that the tariffs are identical, except for the name change or change, addition or deletion of a trade name, to the existing tariffs of the telecommunications service provider or IXC.

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02]

165:55-5-11. Type of notices

(a) **Notice.** Except with respect to tariffs filed pursuant to OAC 165:55-5-10(b) or where the Commission, by order, directs otherwise, any notice of hearing on an application for approval or amendment of rates or charges for service shall be published once a week for two consecutive weeks in a newspaper(s) of general

circulation within the territory served by the telecommunications service provider.

(b) Notice of tariff revisions and new service offerings by telecommunications service providers. Telecommunications service providers shall serve proposed tariff revisions for switched access, payphone access, or E911/911 services on the Office of the Attorney General at the time of their filing with the Commission, and shall provide a copy of their proposed tariff revisions pursuant to OAC 165:55-5-10 to each IXC and telecommunications service provider that has previously requested in writing to receive such filings. Notice of tariff revisions to E911/911 services shall also be provided to the governing body of each E911/911 Public Safety Answering Point operating in the service territory of the TSP.

(c) Notice requirements. All entities seeking to interconnect with the ILEC, including CLECs and Wireless providers, shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of the State of Oklahoma and each E911 Public Safety Answering Point within the territory of the service area affected by the proposed Agreement. Each governmental entity operating an E911 Public Safety Answering Point that wishes to receive notice of interconnection agreement approvals shall register its contact persons with the Commission.

(d) Notice of proposed initial tariff. All entities seeking approval of an initial tariff shall serve the file-stamped Application by mail, electronic mail, or personal service to the Oklahoma Attorney General and the Director of the Public Utility Division.

(e) End-user notice of rate increase. Prior to or concurrent with the effective date of any increased rate to an end-user, each telecommunications service provider or IXC shall provide notice to the Director of the Public Utility Division, the Office of the Attorney General and the affected end-users of the rate increase. The notice shall be provided by any of the following:

- (1) Prominent display on the end-user's bill;
- (2) Direct mailing;
- (3) Prominent display on an insert in the end-user's bill; or
- (4) Any other method approved by the Director of the Public Utility Division.

(f) Notice of rate increase to the OCC and Attorney General. The notice required by Subsection (d) above to be given to the Director of the Public Utility Division and the Office of the Attorney General shall be given by any of the following:

- (1) Direct mailing or email;
- (2) Through a website posting of all customer notifications and Terms of Service changes; or
- (3) Identification on the website posting of the effective date of the Terms of Service.

(g) End-user notice of service offering restrictions/limitations. Any restrictions/limitations imposed for "non-voice" minutes of use beyond a maximum identified in the provider's tariff shall be noticed under the following conditions:

- (1) Written notice of the restriction/limitation and clear and concise explanation of when the penalty is imposed will be given to the end-user(s) prior to or concurrent with the initial bill for the service offering which contains the restriction/limitation. The notice will advise the end-users of the exact restriction/limitation and the penalty assessed.
- (2) The notice shall be provided by any of the following:
 - (A) Prominent display on the end-user's bill;

- (B) Direct mailing;
- (C) Fulfillment and/or welcome packages;
- (D) Prominent display on an insert in the end-user's bill; or
- (E) Any other method approved by the Director of the Public Utility Division.

(h) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 17 Ok Reg 19, eff 9-27-99 (emergency); Amended at 17 Ok Reg 2332, eff 7-1-00; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-5-12. Reclassification of exchange [REVOKED]

[Source: Revoked at 30 Ok Reg 1565, eff 7-11-13]

165:55-5-12.1. Flow through of net reductions/increases in access charges. [REVOKED]

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Revoked at 26 Ok Reg 1127, eff 7-1-09]

165:55-5-13. Suspension of tariff or Terms of Service

The Commission Staff, the Office of the Attorney General, or any aggrieved party may file an application to suspend or set aside prospectively any tariff provision or Terms of Service that violates any Commission rule or law or that is not in the public interest.

[Source: Added at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 17 Ok Reg 306, eff 11-2-99 (emergency); Amended at 17 Ok Reg 1043, eff 5-11-00; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-14. Objections

(a) Any person may file an objection to a proposed tariff or proposed tariff revision or Terms of Service or proposed Terms of Service amendment within thirty (30) days after the proposed tariff or proposed tariff revision is filed or Terms of Service are posted on the telecommunication service provider's or IXC's publicly available website.

(b) Any such objection shall comply with the requirements of OAC 165:5-9-2 and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting person shall promptly serve its objections on the IXC or telecommunications service provider that filed the proposed changes, new service offering, or revised Terms of Service; and upon the Director of the Public Utility Division and the Attorney General.

[Source: Added at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 17 Ok Reg 306, eff 11-2-99 (emergency); Amended at 17 Ok Reg 1043, eff 5-11-00; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

PART 5. TARIFF STRUCTURE AND COMPOSITION

165:55-5-20. Requirements as to size, form and identification of tariffs

(a) Except as provided for in OAC 165:55-5-1, when applying for, or after receiving, a Certificate of Convenience and Necessity for authority to operate as a telecommunications service provider or IXC in the State of Oklahoma, the telecommunications service provider or IXC shall file with the Commission an original and five (5) copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its telecommunications services. It shall also file an original and five (5) copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of the pages being revised, a statement describing each change, its effect, if any, and a statement as to the impact on rates of the change by customer class, if any. The telecommunications service provider shall also file a copy of the current tariff page with changes superimposed thereon. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, the Commission shall require that notice be given to the affected customer class.

(b) All tariffs shall be in loose-leaf form of a size eight and one-half by eleven inches (8 1/2" x 11"), in 10 point or larger type and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the telecommunications service provider, including all trade names under which the telecommunications service provider is providing telecommunications service in the State of Oklahoma, and the location of its principal office. Incumbent LEC local exchange tariff map sheets reflecting the physical bounds of the exchange may be on larger sheets, when required for the purposes of clarity and legibility.

(c) Each rate tariff must clearly state the territory, city, county, or exchange wherein said tariff is applicable.

(d) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show the Cause Number wherein the tariff was approved by the Commission and, where applicable, the Order Number for such approval. Each sheet shall show an effective date, a revision number, section number or title, sheet number, name of the telecommunications service provider, along with all trade names used in the State of Oklahoma, and the name of the tariff, each in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-21. Composition of filed or submitted tariffs

The tariff shall contain sections setting forth:

- (1) A preliminary statement containing a brief description of the tariff's application.
- (2) A list of the exchanges or description of service territories in which service is provided.
- (3) The rate schedules.
- (4) The service rules and regulations.
- (5) Title sheet.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-22. Tariff filings in response to Commission orders

Tariff filings for switched access, E911/911 services, or payphone access services made in response to an order issued by the Commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the cause number, date of the order, a list of tariff sheets filed, and any other necessary information. Said tariff sheets shall comply with all other provisions of this Chapter and shall include only changes ordered. The effective date and/or wording of said tariffs shall comply with the provisions of the order. Each tariff sheet shall include the cause and order number(s) and the effective date(s).

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-23. Symbols for changes

(a) Each proposed filed or submitted tariff sheet shall contain notations indicating each change made on these sheets. Notations (referred to as tariff symbols) to be used are:

- (1) (AT) means added to text.
- (2) (C) means a correction.
- (3) (CP) means change in practice.
- (4) (CR) means change in rate.
- (5) (CT) means change in text.
- (6) (DR) means discontinued rate.
- (7) (FC) means a change in format lettering or numbering.
- (8) (MT) means moved text.
- (9) (NR) means new rate.
- (10) (RT) means removal of text.

(b) In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line which clearly shows the exact number of lines being changed.

[Source: Amended at 29 Ok Reg 1549, eff 7-12-12]

PART 7. MISCELLANEOUS TARIFF AND/OR TERMS OF SERVICE REQUIREMENTS

165:55-5-30. Accessibility of tariffs and/or Terms of Service

Each telecommunications service provider shall make available to the public all of its tariffs currently on file with the Commission and/or all Terms of Service. All telecommunications service providers shall also provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-31. Rejection

Any tariff filed with the Commission and found not to be in compliance with this Chapter shall be so marked and returned to the telecommunications service provider with a brief explanation of the reasons for rejection.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-5-32. Change by other regulatory authorities

Tariffs and/or Terms of Service which reflect changes in rates or regulations set by other regulatory authorities shall reference the source of authorization for such change.

[Source: Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-33. Custom or individual services

With respect to all custom work, a telecommunications service provider, upon rendering a written estimation of charges for such services to an end-user or applicant for telephone service, will not deviate from that agreement for thirty (30) days. Verbal estimates shall be reduced to writing and furnished to the end-user or applicant for telephone service when requested.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-5-34. Data and information on proposed tariff revisions

(a) Except as otherwise provided for in OAC 165:55-5-35, when filing proposed tariff revisions for switched access service, E911/911 service or payphone access service, as provided in OAC 165:55-5-10(b)(2) at least twenty (20) days prior to the effective date of the filing, each IXC and telecommunications service provider shall deliver to the Public Utility Division Staff and Office of the Attorney General:

(1) A copy of the Notice required by OAC 165:55-5-11(d) that will be sent to the end-users affected by any increased rate or Notice required by OAC 165:55-5-11(f) that will be sent to the end-users affected by the restriction/limitation(s);

(2) A telecommunications service provider offering packages of bundled services containing both regulated and non-regulated services, or both intrastate and interstate services shall, at the time of filing or submitting the bundled packages to the Public Utility Division, provide the methodology used to separate revenues in order to identify jurisdictional revenues to be assessed for funding state regulatory fees and assessments

(3) The rationale for the proposed tariffs.

(b) Consistent with OAC 165:55-5-20(a), a copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application, and shall be included in the copy sent to the Attorney General, but need not be included with copies of the tariff revision sent to the service list.

(c) The information addressed in paragraphs (2) and (3) in subsection (a) of this Section will be accepted, but not required to be provided, from IXCs.

(d) The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s). Each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(e) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

[Source: Added at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-35. Confidential information

(a) With the exception of information and data related to the dollar and percentage impacts of the proposed change(s) on end-user rates and the rationale for the

proposed tariffs, all information and data required by OAC 165:55-5-34(a), OAC 165:55-5-10.2, and OAC 165:55-5-10.3 to be delivered to the Public Utility Division Staff concurrent with the filing of a proposed tariff revision or notification of a promotional offering and any additional financial or cost data or data that is identifiable to a specific customer requested by the Public Utility Division Staff, shall be deemed confidential records or trade secrets of the telecommunications service provider and IXC under the Oklahoma Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless successfully challenged.

(b) All confidential information and data submitted to the Public Utility Division Staff under subsection (a) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:55-5-35."

(c) For each tariff filing submitted by a telecommunications service provider or IXC in accordance with OAC 165:55-5-10(b), OAC 165:55-5-10.2, or OAC 165:55-5-10.3, the same confidential information and data provided to the Public Utility Division Staff shall also be provided to the Office of the Attorney General upon the signing of a Proprietary Agreement by the Attorney General or its representative.

(d) All confidential information and data provided to the Office of the Attorney General under subsection (c) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:55-5-35."

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-5-36. Returned Check Charge [REVOKED]

[Source: Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Revoked at 32 Ok Reg 828, eff 8-27-15]

PART 9. RELIEF FROM RATE BASE/RATE OF RETURN REGULATION [REVOKED]

165:55-5-50. Relief from rate base/rate of return regulation [REVOKED]

[Source: Added at 14 Ok Reg 2847, eff 7-15-97; Amended at 16 Ok Reg 2261, eff 7-15-99; Amended at 17 Ok Reg 306, eff 11-2-99 (emergency); Amended at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

PART 11. OKLAHOMA PLAN [REVOKED]

165:55-5-64. Implementation of Oklahoma Plan [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-65. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-66. Pricing [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Amended at 26 Ok Reg 1127, eff 7-1-09; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-67. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-68. Notice requirements [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-69. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-70. Packaging [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 26 Ok Reg 1127, eff 7-1-09; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-71. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-72. Reporting [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Amended at 26 Ok Reg 1127, eff 7-1-09; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-73. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-74. Service standards [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-75. [REVOKED]

[Source: Reserved at 17 Ok Reg 306, eff 11-2-99 (emergency); Reserved at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-5-76. Enforcement of the Oklahoma Plan [REVOKED]

[Source: Added at 17 Ok Reg 306, eff 11-2-99 (emergency); Added at 17 Ok Reg 1043, eff 5-11-00; Revoked at 29 Ok Reg 1549, eff 7-12-12]

SUBCHAPTER 7. DIRECTORIES, TELEPHONE NUMBERS, AND CUSTOMER-PROVIDED EQUIPMENT

165:55-7-1. Telephone directories

(a) **Provision of directory to end-users; frequency.** Each telecommunications service provider shall provide in conjunction with the provisioning of local exchange service, or make arrangements to provide to its end-users an alphabetical telephone directory for each service territory, exchange or group of exchanges. Telecommunications service providers may furnish white page directories in a variety of electronic formats, including CD-Rom, via the internet, or as printed directories. Such directory shall be issued at intervals consistent with satisfactory service, which, in the absence of unusual circumstances, will be at least once each

year. If any alternative format of a white page directory is to be provided in place of a printed paper directory, impacted customers are to be furnished with notification that the telecommunications service provider will no longer provide a printed directory at least ninety (90) calendar days prior to the date the printed directory will no longer be made available. The notification to impacted customers shall, at a minimum, include notice by bill insert. A directory for an exchange or calling area may be issued.

(b) **Listing in directory.** Each telecommunications service provider shall provide its end-users in conjunction with the provisioning of local exchange service, without charge, one listing in the white page directory issued pursuant to this Chapter and inclusion in a database used to provide directory assistance for the end-user's geographic area.

(c) **Provision of directory.** Unless the Commission directs otherwise, a telecommunications service provider that issues a printed paper directory shall furnish each customer, at the customer service address, one (1) directory under current tariffs, unless the customer and the telecommunications service provider that issues a directory, regardless of format, agree this requirement can be fulfilled in an alternative manner. Each telecommunications service provider shall make available its directory to telecommunications service providers for distribution to their end-users.

(d) **Contents of directory.** The directory provided to end-users pursuant to this Section shall contain the following information:

(1) Minimum requirements. Each telecommunications service provider shall assure that its end-users receive a directory which includes the following information:

- (A) The name of the exchange or area covered and the date of issue prominently displayed;
- (B) Emergency numbers;
- (C) Instructions to access directory assistance;
- (D) Instructions to access repair service;
- (E) Instructions for placing long distance and local calls;
- (F) Instructions for obtaining an itemization of the end-user's current monthly statement;
- (G) Instructions to access Telecommunication Relay Service; and
- (H) A notice prominently displayed which shall state: "This directory contains important information about your rights as a telephone end-user described at (Here the telecommunications service provider will insert a clear reference to the location at which the notice shall appear)". Said notice shall be prominently displayed within the directory.

(2) A statement shall be submitted to CSD for approval, at least thirty (30) days prior to being submitted for publication or inclusion in a directory or distributed as a mailing or otherwise. Unless notified to the contrary by CSD within fifteen (15) days after submission, the statement shall be considered approved. Once approved by CSD, the statement need not be resubmitted to CSD for further approval, unless and until this Chapter is changed by the Commission to require additional data. The statement shall at least describe or include:

- (A) Billing procedures.
- (B) Customer payment requirements and procedures.
- (C) Deposit and guarantee requirements.

(D) Conditions of termination, discontinuance, and reconnection of service.

(E) Procedures for handling inquiries.

(F) A procedure whereby an end-user may avoid discontinuance of service during a period of absence.

(G) The telephone number and address of all offices of CSD.

(H) The statement that the telecommunications service provider is regulated by the Commission.

(I) Notification that the end-user may request an adjustment if service is interrupted for periods in excess of twenty-four (24) hours.

(3) Additional information. The directory shall contain additional information concerning a telecommunications service provider, as requested by a telecommunications service provider, to the same extent that the directory provider includes similar information for itself or its affiliates offering local exchange service within the geographic area covered by the directory based on rates, terms and conditions that are just, reasonable and nondiscriminatory.

(e) **Liability for errors.** The liability of the telecommunications service provider for an error or omission in its telephone directory, or for an error or omission on intercept service, shall not exceed the amount of actual damage suffered, and in no event shall its liability exceed an amount equal to local exchange service charged to the end-user for the listed service for the period during which the directory containing the error or omission is the last published directory of the exchange.

(f) **Access to publishing information.** Upon request, a telecommunications service provider shall provide directory listings gathered in its capacity as a provider of local exchange service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, and to any person upon request for the purpose of publishing directories.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 26 Ok Reg 1127, eff 7-1-09; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17; Amended at 36 Ok Reg 709, eff 7-25-19]

165:55-7-2. Telephone numbers and changes

(a) A telephone number shall be deemed a national resource and is not the property of either the telecommunications service provider or the end-user. Initial telephone numbers for end-users establishing a local exchange service account shall be assigned by the telecommunications service provider then serving the end-user. Local exchange service end-users shall not be required to change telephone numbers solely due to a change in telecommunications service providers. The telecommunications service provider may change the number assigned to a customer upon reasonable notice but only in order to give better service and not as an accommodation to another customer. Changes in telephone numbering plans may be made upon reasonable notice, in order to meet the needs of expansion or better service. Unless changed by the number portability requirements or the numbering administration guidelines established by the FCC, a customer who supersedes an account in order to obtain the telephone number of a previous customer will accept all liabilities for that account. The superseding customer will then retain the telephone number until the account is superseded or the superseding customer has no further use of it for service purposes. Any unresolved dispute arising between end-users or between an end-user and a telecommunications

service provider over use of a telephone number may be mediated by CSD.

(b) Whenever an end-user's number is changed on the initiative of the telecommunications service provider after the directory has been issued, the telecommunications service provider shall at no charge to the end-user intercept all calls to the former number and give the calling party the new number. Such intercept service shall be provided until the next directory is published, if the central office equipment permits and the number is not in service or the end-user agrees otherwise. Such numbers have last priority for reassignment. In the event the change in an end-user's telephone number is necessitated by action of the telecommunications service provider providing intercept service, the telecommunications service provider serving the end-user shall be exempt from any charges for intercept service

(c) Whenever the end-user's number is changed by reason of change of location or service to the end-user, or at their request, intercept service will be provided for a reasonable time (of at least thirty (30) days) if central office equipment permits and the number is not in service.

(d) In the event of error in the listed number of any end-user in the telecommunications service provider's directory, the telecommunications service provider shall, at no charge to the end-user, intercept all calls to the listed number until the next directory is published provided central office equipment permits and the number has not been assigned to another end-user, or make other reasonable arrangements. In such case, and in the case of an error in or omission of the name listing of an end-user, the correct listing and number shall be available through directory assistance. If the directory listing error is caused by the telecommunications service provider providing intercept service, the telecommunications service provider serving the end-user shall be exempt from any charges for intercept service.

(e) In areas equipped with E911 emergency service, whenever the end-user's number is changed by reason of change of location or service to the end-user or there is a change in service provider with or without a change to the end-user's number, the telecommunications service provider shall report such changes to the appropriate E911 emergency number database within two (2) business days, or as required by agreement with appropriate E911 agencies within the state, after completion of service orders. In the event of an error report, the telecommunications service provider shall correct the error within two (2) business days, unless the agreement with the appropriate E911 agency allows otherwise. This subsection shall not apply to telecommunications service providers who provide data service only.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-7-2.1. 211 Services

(a) **Scope and purpose.** This Section applies to the assignment, provision, and termination of 211 service. Through this Section, the Commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life-endangering, but still represent a serious but less urgent threat to basic human needs and individual's health or welfare.

(b) **Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless the context indicates otherwise:

- (1) **"Alliance of Information and Referral Systems (AIRS)"** means a professional organization whose mission is to unite and serve the field and to advance the profession of information and referral as a vital means of bringing people and services together. AIRS has developed national quality standards and methods of evaluating information and referral services.
- (2) **"211 Call Center"** means a free 24-hour telephone information and referral service for a specified geographical area or region that connects people in need with health and human service agencies and programs that can provide assistance.
- (3) **"Community resource"** means a for-profit or nonprofit resource that provides health or human services in a designated geographic area.
- (4) **"Information and referral service"** means a free service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers and/or to supply descriptive information about the agencies or organizations which offer services.
- (5) **"211 service"** means a telecommunications service provided by a telecommunications service provider to a 211 Call Center through which the end-user of a public phone system has the ability to access information and referral services.

(c) **Requirements of a 211 Call Center.** An entity desiring to be a 211 Call Center shall meet the following requirements:

- (1) Ensure 24-hour, seven day a week operations.
- (2) Ascribe to the AIRS standards for information and referral and have a plan in place to become accredited by AIRS.
- (3) Serve the area or region designated by the 211 Call Center in consultation with telecommunications service provider.
- (4) Agree to provide information and referral service consistent with the national standards set out by the AIRS and this Section.
- (5) Agree to use the 211 service exclusively for the distribution of information and referral, and not use the service for commercial advertisements.
- (6) Provide information and referral service to a caller without charging a fee on either a per-call or per-use basis.

(d) **Provision of 211 service to a 211 Call Center.** Upon request, a telecommunications service provider shall provide 211 service within a specific geographic area or region to an entity which has self certified that it meets the requirements as set out in subsection (c) above; has been certified by the statewide 211 Advisory Committee as the 211 Call Center for that geographic area or region; and has provided maps or other identifying information to the Commission sufficient to identify the area it will serve. In the event that two or more entities request 211 service as the 211 Call Center for the same geographic area or region, the statewide 211 Advisory Committee shall resolve the dispute.

(e) **Fee.** The telecommunications service provider shall charge the 211 Call Center tariffed rates for tariffed services.

[Source: Added at 20 Ok Reg 2301, eff 7-15-03]

165:55-7-3. Trouble caused by customer-provided equipment (CPE) or inside wiring

The customer will be liable for charges incurred as a result of a premises visit by the telecommunications service provider for a trouble report caused by

nonregulated customer provided equipment or inside wiring. The customer shall be advised of the potential for charges prior to the premises visit if the customer reports the trouble. If the telecommunications service provider finds the trouble through routine checks of its system, the customer will be notified of the charges before any work is done by the telecommunications service provider. The customer shall not be charged for a premises visit if the customer reports the trouble before the visit and is not advised before the visit of the potential for charges relating to the proposed visit by the telecommunications service provider.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-7-4. Availability of rules and tariffs

A telecommunications service provider shall maintain and make available for public inspection a copy of this Chapter and a printed copy of its tariffs. Conspicuous signs shall be posted at its office(s) in the State of Oklahoma indicating that this tariff information is available for public inspection. Further, information will be maintained and made available to the public upon request indicating the websites at which the TSP's posted Terms of Service are available. Any telecommunications service provider that does not maintain an office in the State of Oklahoma shall, upon request by an end-user, provide a copy of this Chapter, or any relevant portion thereof, and the requested printed tariff(s) to such end-user, free of charge.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-1. Billing period

(a) All TSPs and IXC's shall comply with the Truth-in-Billing Rules 47 C.F.R. § 64.2401.

(b) All end-users who are customers as of July 1, 2012, shall receive their bills via the United States Mail, unless the end-user opts to receive a bill through different means, such as electronically via the internet. Customers who begin service with a provider after July 1, 2012, may be provided an electronic bill unless they opt to receive a bill through the United States Mail. In no event shall there be a charge for providing a bill through the United States Mail. Whatever the method of delivery, bills shall comply with OAC 165:55-9-2.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-9-2. Content of bills

(a) Telecommunications service provider's and IXC's bills should comply with the Federal Truth-in-Billing standard. 47 C.F.R. § 64.2401.

(b) Disclosure of inquiry contacts.

(1) Telecommunications service providers and IXC's shall prominently display on each bill, a toll-free number or numbers by which end-users may inquire or dispute any charges on the bill. Where the end-user does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the telecommunications service provider and IXC may comply with this requirement by providing the disclosure

information on the bill, an e-mail, or web site address. Each telecommunications service provider and IXC must make a business address available upon request from an end-user.

(2) A telecommunications service provider and IXC may list a toll-free number for itself, a clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the end-user's account and is fully authorized to resolve the end-user's complaints on the service provider's behalf.

(3) A telecommunications service provider and IXC shall also provide a phone number for CSD.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-9-2.1. Bills rendered by a billing agent

(a) A telecommunications service provider or an IXC shall not act as a billing agent for an IXC, reseller or another telecommunications service provider, unless the telecommunications service provider or IXC fully discloses on the bill the toll-free number of the certificated entity for whom the bill is being rendered or, if the billing agent has been given authority to make adjustments to the customer's bill, its toll-free number.

(b) A telecommunications service provider or IXC shall not utilize the services of a billing agent unless the telecommunications service provider or IXC requires that the billing agent follow the procedures set forth in in this Subchapter.

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-9-3. Due date and penalty

Unless otherwise authorized by the Commission, bills shall be payable immediately upon receipt and past due fifteen (15) days after the date of the telecommunications service provider mailing or after any deferred payment date previously established either by oral or written agreement between an end-user and the telecommunications service provider. The date after which the bill is past due shall be stated on the bill. If the bill is not paid when past due, the telecommunications service provider may apply late payment charges of 1.5% unless otherwise approved on any unpaid balance for regulated telecommunications services as provided in its filed, approved tariffs. Payment shall not be considered late if it is received by the due date at an authorized office.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 21 Ok Reg 2101, eff 7-1-04]

165:55-9-4. Request for payments other than normal billings

The telecommunications service provider shall issue a bill for any additional charges other than those charges normally billed on the regular billing cycle. The telecommunications service provider shall not issue a notice of disconnection prior to five days after providing notice/issuance of a bill for additional charges. Additional billings could include but are not limited to:

- (1) New or additional deposits.
- (2) High toll charges.
- (3) Other advance payments.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-9-5. Billing disputes

(a) In the event of a dispute between an end-user and a telecommunications service provider, the telecommunications service provider shall make such investigation as is required by the particular case, and report the results thereof to the end-user. A TSP shall not make any attempt to collect disputed amounts or disconnect service over the disputed portion of a bill for sixty (60) calendar days from the date the dispute is received.

(b) In the event the dispute is not resolved, the telecommunications service provider shall inform the end-user that the end-user may utilize the complaint procedures of CSD. The information to be provided to consumers shall be:

- (1) The street address of CSD, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 580, Oklahoma City, OK 73105.
- (2) The mailing address of the Consumer Services Division, which is P.O. Box 52000, Oklahoma City, OK 73152-2000.
- (3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.
- (4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding State holidays.

(c) When a complaint has been made with CSD, the telecommunications service provider shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by CSD. The end-user shall be required to pay the undisputed part of the bill, and if not paid, the telecommunications service provider may discontinue service.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-9-6. Refunds for service interruptions

Whenever service to any customer is inoperative, other than by reason of negligence, or willful act of the customer, or causes beyond the control of the telecommunications service provider, and remains inoperative for more than twenty-four (24) consecutive hours after being reported by the customer or having been found to be interrupted by the telecommunications service provider, the telecommunications service provider shall refund upon request of the customer the prorated part of that month's local exchange service charges and any regulated equipment charges for the period of days during which the telephone service was not provided. The refund may be accomplished by an identified credit, on the next bill for telephone service. The maximum credit during a single billing period shall not exceed the amount of local exchange service charges. There shall be no diminution of allowed message units where billing is on a message unit basis or for toll charges. The telecommunications service provider shall have no other liability for service interruptions.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99]

165:55-9-8. Customer preferences

The terms and conditions of Subchapter 9 may be changed, modified, revised, supplemented or deleted upon written agreement between a business end-user and the telecommunications service provider or IXC. This Section shall not apply to residential end-users.

PART 3. CREDIT REQUIREMENTS

165:55-9-10. Establishment of credit for residential applicants and customers

- (a) Each telecommunications service provider may require a residential applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the end-user from complying with the telecommunications service provider's policy(ies) regarding the prompt payment of bills.
- (b) For purposes of this Section, "applicant" is to be defined as a person who applies for service for the first time or reapplies at a new or existing location after a previous discontinuance of service; "customer" is defined as someone who is currently receiving service.
- (c) Subject to this Chapter, a residential applicant shall not be required to pay a deposit:

(1) If it can be verified that the residential applicant has been an end-user of any telecommunications service provider in the State of Oklahoma for the same type of service within the last two years and is not currently delinquent in payment of any such telecommunications service provider account provided however, a telecommunications service provider may elect to require a deposit if, during the last twelve (12) consecutive months, the residential applicant: (1) was delinquent in the payment of a telecommunications service provider account on more than two (2) occasions; (2) presented a dishonored check for payment of a telecommunications service account; or, (3) had service disconnected due to nonpayment of a telecommunications service account.

(2) If the residential applicant furnishes, in writing, a satisfactory guarantee to secure the payment of bills for the telecommunications service requested.

(A) Unless otherwise agreed to by the guarantor, the guarantee shall be for the amount of deposit the telecommunications service provider would normally require on the applicant's account. The amount of guarantee shall be clearly indicated on any documents or letters of guarantee signed by the guarantor.

(B) Upon written request by the customer, after a period of four (4) consecutive months during which time the average amount of toll charges is shown to have decreased by fifty percent (50%) or more:

(i) The telecommunications service provider shall re-evaluate the amount of the guarantee in order to determine if the original guarantee amount continues to be consistent with the guidelines set forth in this Section.

(ii) The amount of the letter of guarantee shall be reduced to an amount which is consistent with the guidelines set forth in Section 165:55-9-14.

(C) When the end-user has paid bills for telecommunications service for twelve (12) consecutive residential billings without having service disconnected for nonpayment of bills and without having more than two (2) occasions in which a bill was delinquent, did not present a dishonored check for payment of a telecommunications service account, and is not delinquent in the payment of current telecommunications service bills, the

telecommunications service provider shall void and return, to the guarantor, any documents or letters of guarantee placed with the telecommunications service provider.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98]

165:55-9-11. Establishment of credit for business service

In the case of business service, if the credit of an applicant for telecommunications service has not been established to the satisfaction of the telecommunications service provider, the applicant may be required to make a deposit.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

**165:55-9-12. New or additional collateral from existing customers
[REVOKED]**

[Source: Revoked at 10 Ok Reg 2649, eff 6-25-93]

165:55-9-13. Reestablishment of credit

Any applicant who previously has been an end-user of a telecommunications service provider and whose service has been suspended or disconnected for nonpayment of bills shall be required, before service is rendered by that TSP, to pay all amounts due the telecommunications service provider for regulated telecommunications services or execute a deferred payment agreement, if offered, in accordance with OAC 165:55-11-3(d), and reestablish credit as provided in OAC 165:55-9-10 through OAC 165:55-9-14 or apply for a less than basic local exchange service, if offered in an approved tariff.

[Source: Amended at 10 Ok Reg 2649, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99]

165:55-9-14. Deposits and interest

(a) Each telecommunications service provider shall prepare and submit a plan containing the criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each telecommunications service provider's tariffs.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except for (b), (c), (d), and e(1).

(b) No telecommunications service provider shall require a deposit of a residential end-user who has received the same or similar type of classification of service for twelve (12) consecutive months and to whom service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment of a telecommunications service account dishonored. The twelve (12) months service period shall have been within eighteen (18) months prior to the application for new service. The telecommunications service provider's plan may establish other relevant criteria which will qualify the end-user for nonpayment of a deposit.

(c) The amount of the deposit shall not exceed an amount equal to two (2) months local exchange charges and/or two (2) months toll charges determined by actual or anticipated usage. Where local exchange charges are billed in advance, the deposit shall include only one (1) month's such charges. The telecommunications service provider's plan may allow customers to pay deposits in installments. Upon request, the telecommunications service provider shall provide a written explanation of the

deposit calculation. The explanation shall separately state the amount of the deposit which is related to local exchange service and the amount related to toll service.

(1) Upon written request by the customer, after a period of four (4) consecutive months during which time the average amount of toll charges is shown to have decreased by fifty percent (50%) or more, the telecommunications service provider shall re-evaluate the amount of the deposit in order to determine if the original deposit amount continues to be consistent with the guidelines set forth in this Section.

(2) The amount of the deposit shall be reduced to an amount which is consistent with the deposit guidelines set forth in this Section.

(3) Any excess amount of the deposit resulting from the reduction required in paragraph (2) of this subsection shall be refunded to the customer.

(d) A present end-user may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the end-user has had service disconnected during the last twelve (12) months pursuant to OAC 165:55-11-2 or has presented a check to the telecommunications service provider that was subsequently dishonored.

(e) Interest on cash deposits shall be paid by each telecommunications service provider at no less than the rate calculated as follows:

(1) For all consumers deposits returned more than thirty (30) days after receipt of the deposit, the interest rate shall be established the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in paragraphs (e)(1) results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(3) The Director of the Public Utility Division shall calculate the interest rate(s) pursuant to paragraphs (e)(1) of this Section, and shall provide notice to the telecommunications service providers via mail, e-mail or posting on the OCC's website by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e), otherwise the current interest rate(s) will remain in effect.

(f) If a refund of the deposit is made within thirty (30) days of receipt of the deposit, no interest payment is required. If the telecommunications service provider retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(g) The telecommunications service provider shall provide payment of accrued interest for all end-users annually by negotiable instrument or by credit against current billing.

(h) The deposit shall cease to draw interest on the date it is returned or credited to the end-user's account.

(i) In determining the amount of any deposit permitted by this Chapter, no charges for estimated telephone directory advertising may be used.

(j) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of services. The balance, if any, shall be

returned to the end-user within thirty (30) days after settlement of the consumer's account, either in person or by mailing it to the end-user's last known address.

(k) If service is not connected, or after disconnection of service, the telecommunications service provider shall promptly and automatically refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one (1) premise to another within the area of the telecommunications service provider shall not be deemed a disconnection within the meaning of this Part, and no additional deposit may be required unless otherwise permitted by this Subchapter.

(l) The telecommunications service provider shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check that is subsequently dishonored. If the end-user does not meet these refund criteria, the deposit and interest may be retained in accordance with subsection (d) of this Section.

(m) The telecommunications service provider may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.

(n) The telecommunications service provider shall keep records to show:

- (1) The name, account number, and address of each depositor.
- (2) The amount and date of the deposit.
- (3) Each transaction concerning the deposit.

(o) The telecommunications service provider shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(p) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.

(q) Upon the sale or transfer of any telecommunications service provider or operating units thereof, the seller shall file, with the application of transfer, a verified list of the information in subsection (n) of this Section, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(r) The deposit made by the end-user with the telecommunications service provider at the time of application for telephone service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

[Source: Amended at 10 Ok Reg 2649, eff 6-25-93; Amended at 11 Ok Reg 3749, eff 7-11-94; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-9-15. Records of deposits [REVOKED]

[Source: Revoked at 10 Ok Reg 2649, eff 6-25-93]

165:55-9-16. Refund of deposits [REVOKED]

[Source: Revoked at 10 Ok Reg 2649, eff 6-25-93]

SUBCHAPTER 11. SERVICE DENIAL, SUSPENSION AND DISCONNECTION

PART 1. NOTICE REQUIREMENTS

165:55-11-1. Denial or termination of service without notice

A telecommunications service provider may refuse service or terminate existing service to an end-user without notice for tampering with the telecommunications service provider's equipment, or misuse or abuse thereof in order to avoid payment of lawful charges or use thereof in such manner as to create danger to life or property of the telecommunications service provider or other end-users.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-11-2. Denial or termination of service after notice

(a) A telecommunications service provider may refuse service or terminate existing service to an end-user pursuant to the suspension and disconnect procedure provided in Part 3 of this Subchapter for any of the following reasons:

- (1) Nonpayment of a bill for regulated telecommunications services within the period prescribed by this Chapter.
- (2) Failure to make a security deposit as set forth in this Chapter.
- (3) Violation of or noncompliance with any provision of law, or of this Chapter, or of the tariffs or terms and conditions of service of the telecommunications service provider filed with and approved by the Commission.
- (4) Refusal to permit the telecommunications service provider reasonable access to its telecommunications facilities for recovery, maintenance, and inspection thereof.
- (5) Interconnection of a device, line, or channel to telecommunications service provider facilities or equipment contrary to the telecommunications service provider's terms and conditions of service on file with and approved by the Commission.
- (6) Use of telephone service in such manner as to interfere with reasonable service to other end-users.

(b) The telecommunications service provider shall provide documentation to the end-user upon request, indicating the reason(s) that service is being withheld.

(c) Upon an end-user's request to terminate local exchange service, the end-user's local exchange telecommunications service provider shall inform such end-user of the end-user's responsibility to contact the end-user's IXC regarding continuance or termination of such service from the IXC.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01]

165:55-11-3. Responsibility for accounts

(a) A telecommunications service provider shall not be required to provide service to an applicant or end-user who has not paid for prior telephone service rendered by a telecommunications service provider in the same or different location, and furnished to the same person or legal entity.

(b) A telecommunications service provider shall not be required to furnish or continue furnishing service when applied for in the name of another person or legal

entity, or a fictitious name or other member of the same household, for the purpose of avoiding payment of an unpaid obligation for telephone service previously furnished.

(c) Customers shall not be held responsible for the nonpayment of another customer's bill unless the customer superseded the service or was a co-applicant or guarantor for the service or shared the service of the nonpaid account.

(d) The telecommunications service provider shall be required to extend a payment arrangement to an applicant for a prior bill, unless the applicant has not fulfilled prior payment arrangements within the past twelve (12) months.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-11-4. Insufficient reasons for denial or suspension or disconnection of service

(a) A telecommunications service provider may not refuse service or suspend existing service or disconnect existing service by reason of nonpayment for telephone service by a previous occupant at the premises for which service is sought, or by reason of nonpayment of any amount back-billed due to misapplication of rates provided the applicant enters into a deferred payment plan. The telecommunications service provider shall not disconnect or suspend service without issuing a bill to the end-user for the amount due to the telecommunications service provider in accordance with OAC 165:55-9-4.

(b) Residential service cannot be suspended or disconnected for failure to pay a bill for a business service.

(c) Business service cannot be suspended or disconnected for failure to pay a bill for a residential service.

(d) Service may not be withheld from an end-user whose name was fraudulently used to obtain service at another location without the end-user's permission or knowledge.

(e) The telecommunications service provider shall not deny service to an end-user for nonpayment of an amount past due for more than three (3) years, if the company cannot substantiate the charges with a copy of the end-user's bill.

(f) Service shall not be suspended or discontinued to a current end-user in good standing who accepts an additional household member owing a previous bill to the telecommunications service provider, unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the end-user at a different or same location.

(g) No telecommunications service provider shall provide billing and collection for any provider of intrastate telecommunications services who does not have proper authority to operate in the State of Oklahoma.

(h) Local exchange service shall not be denied or terminated for nonpayment of not-regulated services or disputed charges in accordance with OAC 165:55-9-5, OAC 165:55-11-6, or OAC 165:55-19-3.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-11-5. Suspended accounts

A telecommunications service provider may require each end-user whose service has been suspended for nonpayment of bills, to pay all amounts due the telecommunications service provider for regulated services or execute a deferred payment agreement, if offered, in accordance with OAC 165:55-11-3(d), before

service is restored.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-11-6. Service disputes

(a) In case of controversy arising out of the refusal of a telecommunications service provider to extend service or out of its efforts to disconnect existing service, either party or the Commission staff may make application to the Commission for relief pursuant to OAC 165:55-1-7, OAC 165:55-1-10. If there is an unresolved dispute pending with the Commission concerning a bill and the end-user pays the undisputed portion of that bill, disconnection procedures shall be held in abeyance until the dispute is resolved.

(b) If service is denied or terminated pursuant to this Subchapter, the telecommunications service provider shall advise the end-user of end-user's right to contact CSD and shall provide the end-user with CSD's address and the telephone number.

(c) The telecommunications service provider or the end-user may seek assistance from the Commission to review records of the telecommunications service provider and the end-user concerning the end-user's complaint.

(d) After the Commission has notified the telecommunications service provider of a complaint or inquiry from the end-user regarding the end-user's account, the telecommunications service provider shall coordinate communication with the Commission Staff regarding the complaint. The Commission Staff shall be the intermediary between the telecommunications service provider and the end-user until the resolution of the problem has been completed.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-11-7. Written correspondence

(a) Any written correspondence or notices to the end-user by the telecommunications service provider or IXC relating to billing disputes or complaints, which are not otherwise provided for in this Chapter, shall meet the following criteria:

(1) The correspondence shall be sent to the end-user via the method of delivery chosen by the end-user as provided for in OAC 165:55-9-1 or as otherwise agreed by the end-user and telecommunications service provider. This would include paper, electronic, or other delivery methods.

(2) The correspondence shall clearly state that it is from the telecommunications service provider or IXC.

(3) The correspondence shall clearly state any applicable deadlines within which the end-user must take the appropriate action.

(4) The correspondence shall clearly state that if the end-user is unable to resolve any disputes with the telecommunications service provider or IXC regarding the subject of the correspondence, the end-user may contact CSD at the address and telephone numbers stated on the correspondence.

(b) Written correspondence shall be considered delivered three (3) business days after the correspondence has been mailed, or if written correspondence is provided electronically to end-user, delivery shall be deemed to occur the same date as sent, unless the electronic notice is returned as undeliverable.

[Source: Added at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-11-8. Notice of suspension of service [REVOKED]

[Source: Added at 16 Ok Reg 2261, eff 7-1-99; Revoked at 18 Ok Reg 2415, eff 7-1-01]

PART 3. SUSPENSION AND DISCONNECTION PROCEDURES

165:55-11-10. Suspension or disconnection for nonpayment or failure to make security deposit

(a) When service to an end-user is to be disconnected for nonpayment of a bill for telephone service after service has been suspended or failure to make a security deposit after a reasonable time, the TSP shall give at least ten (10) days from the date of notice to the end-user of the TSP's intent to discontinue service. Said notice shall be given by the TSP as follows:

- (1) mailed or delivered to the end-user's billing address;
- (2) electronically via the internet to the email address provided by the end-user; or
- (3) telephonically to the end-user's assigned telephone number or other number provided by the end-user;

(b) If the mailed notice is returned from that address as undeliverable, the notice may be delivered to the premises at which the service was rendered. Mailed notice will be deemed given to the end-user three (3) business days after mailing by the TSP.

(c) If electronic notice is returned from the email address as undeliverable, the TSP shall give notice to the end-user using an alternative method as listed above. If the electronic notice is not returned, notice shall be deemed given to the end-user on the date the email was sent.

(d) If telephonic notice is not confirmed to have reached the end-user's telephone number, the TSP shall give notice to the end-user using an alternative method as listed above. If confirmation of telephonic notice is obtained by the TSP, notice shall be deemed given to the end-user on the date the telephonic notice is confirmed as given.

(e) Unless a dangerous condition exists or the end-user requests disconnection, a TSP may suspend or disconnect service only on the date specified in the notice or within thirty (30) days thereafter, during regular business hours, so long as the suspension or disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 26 Ok Reg 1127, eff 7-1-09]

165:55-11-11. Suspension or disconnection for reasons other than nonpayment

(a) Unless otherwise provided in this Chapter, service to an end-user may be suspended or disconnected only upon order of the Commission, upon application and after notice and hearing. Prior to the merit hearing, the Commission may order suspension or disconnection of service for good cause with or without notice to the end-user.

(b) End-users that communicate with the TSP's employee(s) in any manner that is reasonably expected to frighten, abuse, torment, or harass such employee(s) or engage in actions reasonably construed as threat(s) against the TSP's physical assets are subject to immediate disconnection, without notice. A TSP that disconnects an end-user's service under this section will:

- (1) provide written or verbal notice to CSD of the disconnect action prior to the actual disconnect;
 - (2) within three (3) business days of the actual disconnect, provide a written description of the circumstances leading to the disconnect action; and
 - (3) give the customer written notice, which will include an address and telephone number, for CSD.
- (c) CSD may, after an informal inquiry and review of the written description of the circumstances leading to the disconnect action, direct the TSP to restore services to the affected end-user and/or file an application with the Commission requesting a finding of contempt and the imposition of a fine or other penalty against a TSP that unreasonably suspends or disconnects an end-user pursuant to subsection (b) of this section.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 26 Ok Reg 1127, eff 7-1-09; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-11-12. Notice of Disconnection and Notice of Suspension

- (a) A notice of disconnection or suspension shall contain the following information:
- (1) The words "NOTICE OF DISCONNECTION" or "NOTICE OF SUSPENSION" or words with the same meaning, in print type larger than the print type of the notice text.
 - (2) The name and address and the telephone number of the end-user.
 - (3) A statement of the reason for the proposed disconnection or suspension of service.
 - (4) The date on or after which service will be disconnected or suspended unless appropriate action is taken.
 - (5) The telephone number in bold print of the telecommunications service provider where the end-user may make an inquiry.
 - (6) The approved charges and procedure for reconnection or approved charges and procedure to avoid suspension.
 - (7) A statement that the end-user must contact the telecommunications service provider regarding the disconnection or suspension, prior to contacting CSD.
 - (8) The address and telephone number of CSD, in print size which is smaller than the print size used for the telecommunications service provider's telephone number.
 - (9) The services that are being disconnected or suspended, whether local and/or toll, and if the service to be disconnected or suspended is local service, a statement that the end-user must also contact their IXC if such end-user wishes to terminate such service in order to avoid incurring additional charges for such service.
 - (10) Notice of suspension of service relating to past-due amounts shall inform the end-user that the total amount due may include charges for non-deniable and/or not regulated services which would not cause interruption of local service. The notice must indicate a toll-free telephone number of a service center where questions can be referred and payment arrangements made.
- (b) The following additional information shall be in the notice unless said information can be obtained in the telephone directory and the notice refers the end-user to the location in the directory where the information can be obtained:
- (1) A statement of how an end-user may avoid the disconnection of service or suspension of service, including a statement that the end-user must notify

the telecommunications service provider on the day of payment as to the place and method of such payment when the bill is paid at a place other than the office of the telecommunications service provider.

(2) A statement that informs the end-user where payments may be made or how to obtain a listing of authorized payment agencies.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-11-12.1. Emergency service following suspension

Regardless of the reason for suspension of service, if the end-user is served by a central office capable of providing emergency service following suspension, the telecommunications service provider shall also provide access to 911 or E911 service, where available, for a period of at least thirty (30) days.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-11-13. Reconnection

(a) Where service to any end-user has been refused or disconnected as authorized by 165:55-11-11, the telecommunications service provider shall not be required to connect or reconnect service except by order of the Commission and, if so ordered, only upon the terms and conditions specified in the order.

(b) When service to any end-user has been suspended or disconnected pursuant to this Subchapter, upon reconnection, the telecommunications service provider shall be authorized to make a reconnection charge prescribed in its approved tariffs or Terms of Service.

(c) Except in those instances where an order of the Commission is required prior to reconnection, once the reason for suspension or disconnection has been remedied, the telecommunications service provider shall restore service as soon as practical.

[Source: Amended at 12 Ok Reg 2143, eff 7-1-95; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-11-14. Multi-State customers

The terms and conditions of Subchapter 11 may be changed, modified, revised, supplemented or deleted upon written agreement between a business end-user and the telecommunications service provider or IXC. This Section shall not apply to residential end-users.

[Source: Added at 26 Ok Reg 1127, eff 7-1-09; Amended at 29 Ok Reg 1549, eff 7-12-12]

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 1. NEW AND UNFILLED APPLICATIONS FOR SERVICE

165:55-13-1. Service objectives; service period

A telecommunications service provider shall install service consistent with the service objectives within the TSP's tariff or Terms of Service. Service orders should be filled as quickly as practicable, but within no longer than thirty (30) days unless unavoidable delays are experienced.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-2. Unfilled applications

Priority in filling unfilled applications will be given to furnishing service essential to public health and service, after which priority will be given to furnishing residential service to premises not otherwise served. The telecommunications service provider will prepare and shall submit the plan to the Commission upon request.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

PART 3. SERVICE STANDARDS

165:55-13-10. Minimum service standards

A telecommunications service provider shall meet service standards within the terms and conditions of service stated within the TSP's tariff or Terms of Service.

[Source: Amended at 11 Ok Reg 2585, eff 6-13-94; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-10.1. Calling areas

(a) Wide Area Calling Plans ("WACPs") and Extended Area Service ("EAS") arrangements established as of the effective date of this Section, and any modifications thereafter approved by the Commission, shall be the standard level of service provided by all incumbent LECs providing service within said WACPs and EAS arrangements, unless the end-user elects otherwise pursuant to subsection (b) of this Section.

(b) An incumbent LEC may offer a calling scope which is different than an established WACP or EAS arrangement as an optional service, after notice and hearing, provided however, that end-users shall be deemed to have elected to receive the entire EAS or WACP area until such time as the end-user makes an affirmative election of a different calling scope.

(c)

In the event the competitive LEC provides an optional toll service that is consistent with an EAS or WACP calling scope, the competitive LEC shall be required to pay any contribution associated with minutes of use as established by the Commission in Order No. 399040, issued in Cause Nos. PUD 950000117 and PUD 950000119.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-13-11. Maximum number of parties on one line [REVOKED]

[Source: Revoked at 13 Ok Reg 2437, eff 7-1-96]

165:55-13-12. Extension of facilities

(a) Each incumbent LEC serving fewer than seventy-five thousand access lines is designated as a Carrier of Last Resort for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996.

(b) A Carrier of Last Resort will extend its distribution plant to furnish permanent service to any applicant located within one-quarter (1/4) mile of its existing facilities without requiring a construction charge, provided that the amount of plant to be constructed does not exceed that amount deemed necessary to serve the end-user's location. When an end-user requests services requiring an excessive quantity of facilities which will have extremely little potential for reuse, should that end-

user move or otherwise discontinue service, a construction charge based on the cost of the facilities would apply.

(c) A Carrier of Last Resort shall extend its distribution plant to applicants in an area located more than one-quarter (1/4) mile from its existing facilities under the following conditions:

(1) New extensions or reinforcement of existing line facilities required for furnishing access lines associated with the service offered by a Carrier of Last Resort shall be constructed under the following conditions, when application is by an individual end-user or a developer for service of a permanent nature:

(A) An allowance of a one-quarter (1/4) mile, route measurement, per applicant will be made for such extensions without the application of a construction charge.

(B) Where construction is required in excess of the allowance stated in subparagraph (b)(1)(A) of this Section, applicants for service may be required to pay a construction charge for all reasonable costs in excess of the free allowance.

(C) A Carrier of Last Resort may make, at its option, an extension of its facilities above the free limit upon receipt of a lesser payment, or no payment, when the gross anticipated revenue from the extension will provide a Carrier of Last Resort with adequate return upon its investment pursuant to a formula approved by the Commission or contained in its approved terms and conditions of service.

(D) Additional charges may be applicable where natural or other barriers are encountered which require undue circuitous routing or abnormal costs to be incurred by a Carrier of Last Resort.

(E) When a Carrier of Last Resort requires a charge for the extension of facilities into an area more than one-quarter (1/4) mile from its existing facilities, the end-user(s) may apply to be provided telecommunications services by a Carrier of Last Resort providing service an adjacent certified area, if the Commission so orders. This subparagraph shall be limited to situations where a Carrier of Last Resort will not provide service to an area located within its service territory without the payment of construction charges.

(2) Nothing in this Chapter shall prohibit any RUS borrower from making extensions in compliance with RUS rules or terms and conditions contained in any loan documents.

(d) In the event the Carrier of Last Resort is denied access to a premises or property by the owner or lessee, and is asked at a later date to fulfill the Carrier of Last Resort obligation with regard to that premises or property, the Carrier of Last Resort may request a Motion for Waiver of OAC 165:55-13-12 if the costs associated with fulfillment of the Carrier of Last Resort obligation are deemed excessive by the Carrier of Last Resort.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-12.1. New Developments

A TSP may require a developer desiring an extension to a prospective real estate subdivision to post a surety bond or make a cash deposit or bank letter of credit (at the option of the developer) equal to the estimated total costs of the

extension before the construction of the extension is commenced. Total cost of construction shall not include drops to individual users off the telephone distribution facilities. At least annually, for a period of five (5) years, the TSP shall give the developer a credit equal to the percentage which the number of installations made in said twelve (12) months period bears to seventy-five percent (75%) of the total number of installations contemplated by the developer and the TSP for the completed subdivision. The credit referred to in this Chapter, in the case of deposit, shall be returned to the developer annually; with respect to a surety bond posted by the developer, the credit shall be in the form of an annual reduction of the face amount of the surety bond posted. Upon the developer receiving the applicable credit for each installation as set forth in this Chapter, the TSP shall release or cause to be released the obligation of the developer and the surety, if a surety bond was posted; provided, however, if within five (5) years from the date of the surety bond or cash deposit, the proposed development area has not been developed in a sufficient amount for the developer to receive credit for the total cost of extension to the development as agreed upon, then the developer shall be obligated to pay the TSP the total construction costs reduced by all credits previously allowed. In the event that said amount is not paid within sixty (60) days of the date due and a surety bond has been posted, the TSP may declare a default and shall have the right to call upon the surety for payment of the remaining unpaid amount due. In the event of dispute over the circumstances requiring the posting of a surety bond or cash deposit, and/or the reasonableness of the face amount of such bond or cash deposit, a TSP or the developer may apply to the Commission for an appropriate order resolving the dispute.

[Source: Added at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-13-13. Network development schedules [REVOKED]

[Source: Added at 11 Ok Reg 2585, eff 6-13-94; Amended at 13 Ok Reg 2437, eff 7-1-96; Revoked at 16 Ok Reg 2261, eff 7-1-99]

165:55-13-14. Lifeline program [REVOKED]

[Source: Added at 11 Ok Reg 2585, eff 6-13-94; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 19 Ok Reg 1985, eff 7-1-02; Revoked at 32 Ok Reg 828, eff 8-27-15]

165:55-13-14.1. Tribal Land Link-up program

(a) Each telecommunications service provider who has been designated as an ETC and is receiving high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file tariffs or post Terms of Service which offer a Tribal Land Link-up assistance program. This program shall offer:

- (1) For an eligible resident living on Tribal land, a reduction consistent with 47 CFR § 54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.
- (2) A deferred payment schedule consistent with 47 CFR § 54.413(a)(2) may be offered to the subscriber. The charge assessed for initiating service shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

(b) A qualifying low-income end-user living on Tribal land may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section.

(c) A telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Tribal land Link-up assistance was provided previously.

(d) An eligible telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall publicize the availability of Link-up support throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Tribal land Link-up shall be the same as the criteria established for Lifeline in accord with 47 C.F.R. § 54.409.

[Source: Added at 19 Ok Reg 1985, eff 7-1-02; Amended at 31 Ok Reg 1082, eff 9-12-14; Amended at 34 Ok Reg 989, eff 9-11-17]

PART 5. SERVICE QUALITY STANDARDS

165:55-13-20. Responsibility for adequate and safe service

(a) A telecommunications service provider is responsible for providing adequate and efficient telephone service to every end-user served by it.

(b) A telecommunications service provider that uses its own local exchange facilities to provide service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its lines, equipment, and facilities in a good state of repair.

(c) The recommendations contained in the 2014 Edition of the National Electrical Code (NEC) and the 2012 Edition of the National Electrical Safety Code (NESC) are hereby adopted as the minimum standards governing the installation, construction, and maintenance of communication lines. The recommendations contained in the 2014 NEC will apply on a prospective basis effective September 1, 2017. Local and municipal electrical codes shall not apply to the installation of telecommunications facilities.

(d) The dominant criteria for these standards is voice grade service quality.

(e) All telecommunications service providers, that install temporary drops and temporary cables as interim facilities to ensure service to customers pending permanent placement of those facilities, are required to:

(1) Permanently remove, bury, or install drops and temporary cables as soon as practical, but in no circumstances shall that time exceed ninety (90) days without notification and justification being provided to CSD prior to expiration of the ninety (90) day period.

(2) Keep records of all temporary drops and temporary cables in each of its exchanges and provide the records to the Commission upon request.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 14 Ok Reg 2847, eff 7-15-97; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-13-21. Incorporated national standards [REVOKED]

[Source: Amended at 10 Ok Reg 2655, eff 6-25-93; Revoked at 13 Ok Reg 2437, eff 7-1-96]

165:55-13-22. Emergencies

(a) All telecommunications service providers shall make adequate provision for emergencies in order to prevent interruption of continuous telecommunications service throughout the area it serves.

(b) Central office(s) shall have an emergency power source, either on the premises or available on short notice.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

165:55-13-23. Adequacy of service

The telecommunications service provider shall ensure that there is a sufficient operating force and, where appropriate, sufficient equipment to serve its end-users.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-24. Adequacy of equipment

A telecommunications service provider shall, where appropriate, install sufficient equipment and ensure that there are sufficient personnel to handle the average busy hour, busy season traffic.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-25. Response to customer complaint inquiries

A telecommunications service provider and IXC shall respond to the Commission upon written or electronic inquiry from the Commission within the following time periods:

(1) Inquiries regarding disconnection, suspension or termination of local service - within one (1) business day of receipt of inquiry from the Commission.

(2) Inquiries other than for disconnection, suspension or termination of local service - within three (3) business days of receipt of inquiry from the Commission.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01]

165:55-13-26. Customer access to provider [REVOKED]

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Revoked at 32 Ok Reg 828, eff 8-27-15]

PART 7. TRANSMISSION OBJECTIVES

165:55-13-30. Accepted transmission design factors [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Revoked at 32 Ok Reg 828, eff 8-27-15]

165:55-13-31. Access lines [REVOKED]

[Source: Revoked at 29 Ok Reg 1549, eff 7-12-12]

PART 9. LOCATION OF DEMARCATION POINTS AND NETWORK INTERFACES

165:55-13-40. Location of demarcation points and network interfaces

(a) **Simple residence and business locations.** The normal demarcation point for simple residence and business locations will be the network interface. The network

interface normally will be located on the exterior of a building, or inside the building if the interface device can not be provided on the exterior of the building.

(b) **Other buildings.** The normal demarcation point for regulated services offered by any telecommunications service provider in buildings commenced after June 30, 1992, will be at or near the point of minimum penetration. The point of minimum penetration is the location where the telecommunications service provider's regulated facilities enter the building, subject to an agreement to the contrary. The actual demarcation point in new buildings shall be located as close to the point of minimum penetration as appropriate environmental protection and space requirements allow. The telecommunications service provider will normally terminate its regulated services by placing an FCC approved network interface at the demarcation point.

(c) **Campuses.** The normal demarcation point for regulated services offered by telecommunications service providers in campuses commenced after June 30, 1992, will be in one of the buildings on the campus at or near the point of minimum penetration. The point of minimum penetration is the location where the telecommunications service provider's regulated facilities enter the building. The actual demarcation point in the building shall be located as close to the point of minimum penetration as appropriate environmental protection and space requirements allow. Telecommunications service providers will normally terminate their regulated services by placing an FCC-approved network interface at the demarcation point.

(d) **Apartment building.** The demarcation point for residential service in residential apartment buildings or high-rise apartment buildings may be placed at each individual living unit or at a central location within each building if adequate security is available.

(e) **Other demarcation points.** The point(s) of demarcation may be at a location(s) different than set forth in this Section if mutually agreed between the end-user and the telecommunications service provider.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96]

PART 11. INTERRUPTIONS OF SERVICE

165:55-13-50. Service standards; sufficient operating and maintenance force

A telecommunications service provider shall maintain an operating and maintenance force sufficient to meet service objectives and minimum standards for restoration of service after interruption as follows:

- (1) Provisions will be made to receive customer trouble reports at all times, twenty-four (24) hours per day.
- (2) Provision will be made to correct interruptions of service to persons and agencies required to respond to emergencies involving human life and safety at all times, consistent with the bona fide needs of the end-user and the availability and safety of telecommunications service provider personnel.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-51. Records of trouble reports

Each telecommunications service provider and IXC shall make a full and prompt investigation of every trouble report made to it by its end-users, either directly or through the Commission.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12]

165:55-13-52. Notice of service interruptions

(a) The Commission shall be notified as soon as possible, through the Director of the Public Utility Division and the Commission's Public Information Officer, of interruptions in telecommunications services which affect the entire system; a major division thereof; or which, in the judgment of the telecommunications service provider, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile or by electronic methods, twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

- (1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;
- (2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,
- (3) A conclusory contact detailing the results and completion of the restoration of service.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-13-53. Restoration of service plan

Each telecommunications service provider shall have a written restoration of service plan (Plan) and submit the Plan to the Commission upon request.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 29 Ok Reg 1549, eff 7-12-12]

SUBCHAPTER 15. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated telecommunications services providers or IXCs to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction. Any related relief, including but not limited to new Certificates of Convenience and Necessity or tariffs, shall be filed as separate causes.

(b) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and Necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide local and/or interexchange telecommunications services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a telecommunication service provider or IXC. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

(1) The name of the acquiring entity and the acquired entity.

(2) Identification of the acquired assets.

(3) The anticipated completion date and the effective date (if different) of the transaction.

(4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").

(5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.

(6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.

(7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and CSD and will be primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers

(E) Tariff issues; and,

(F) Receiving Notices related to causes docketed at the Commission.

(8) An affidavit that states that the surviving entity possesses the financial ability to provide telecommunications services in the State of Oklahoma.

(9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.

(10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.

(11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(13) A statement of the approximate number of Oklahoma customers.

(14) In addition, this Section shall not apply to transactions between affiliates that have an Oklahoma Certificate of Convenience and Necessity. If the transaction is going to modify the company name on the customer's bill, forty-five (45) days advance notice must be provided to affected

customers.

(f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.

(g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Commission shall act on a notification within forty-five (45) days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within forty-five (45) days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, if necessary, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-15-2. Major stock acquisitions [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Revoked at 15 Ok Reg 3054, eff 7-15-98]

165:55-15-3. Sale of equipment [REVOKED]

[Source: Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 18 Ok Reg 2415, eff 7-1-01; Revoked at 29 Ok Reg 1549, eff 7-12-12]

165:55-15-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 3054, eff 7-15-98]

165:55-15-5. Cessation of business in Oklahoma

- (a) At least thirty (30) days before the effective date of the cessation of the provisioning of telecommunications service(s) in the State of Oklahoma, a telecommunications service provider or IXC shall file an original and five (5) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of such filing to the Attorney General of the State of Oklahoma.
- (b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:
- (1) The contact person who will be responsible for concluding all outstanding business with the Commission and customers;
 - (2) A statement regarding the amount of any outstanding customer deposits and the date refund checks will be sent to customers; and,
 - (3) The date of withdrawal.
- (c) Notice of discontinuance shall be provided at least thirty (30) days prior to the date that service will cease by regular mail to all of the customers of the telecommunications service provider or IXC. The form and method of notice shall be approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.
- (d) Notice of discontinuance will be sent at least thirty (30) days prior to the date service will cease, by certified mail, to any E911/911 Database Management Service Provider within the exchanges served by the applicant. Notice shall include:
- (1) The exact date the applicant will cease to do business in Oklahoma.
 - (2) A statement that until the date applicant ceases to do business in Oklahoma, the applicant will continue to submit transactions to the E911/911 Database Management Service Provider for transferring and keeping up-to-date customer's information.
 - (3) A statement that the applicant will unlock or release all E911/911 records effective with its termination date, thereby enabling the migration of existing E911/911 records with a telephone number ported by the customer to a different telecommunications service provider.
- (e) Unless provided otherwise in this Chapter, no application for withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.
- (f) The Commission Staff may file an application to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The request may be in the form of a letter to the Director of the Public Utility Division. The letter will conform to OAC 165:55-15-5 (b) and (c).

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 19 Ok Reg 1985, eff 7-1-02; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-15-5.1. Withdrawal of competitive services

(a) Upon at least thirty (30) days advance notice to the Director of the Public Utility Division, an ILEC serving more than 75,000 customers on January 1, 2015 may withdraw any service that has been deemed competitive by the Commission as of January 1, 2014.

(b) Notice of discontinuance shall be sent at least thirty (30) days prior to the date that service will cease by regular mail to all of the affected customers of the telecommunications service provider. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

[Source: Amended at 32 Ok Reg 828, eff 8-27-15]

SUBCHAPTER 17. FACILITATION OF LOCAL EXCHANGE COMPETITION

165:55-17-1. Rules governing local exchange competition

The provisioning of local exchange service by any telecommunications service provider subject to the jurisdiction of the Oklahoma Corporation Commission, shall be subject to all requirements of 47 U.S.C. §251 *et seq.* and OAC 165:55.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-17-2. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-3. Designation of service territory

(a) The Commission shall determine whether a telecommunications service provider's service territory is in the public interest at the time the competitive LEC seeks certification or proposes changes to its service territory. In determining whether the proposed service territory meets the public interest, the Commission shall consider factors, including but not limited to, the existence and location of the competitive LEC's facilities, the number of potential customers to be served and the potential impact on universal service.

(b) No service territory shall be changed except by Order of the Commission after such notice and hearing, if any, as directed by the Commission. Applications for change to an existing service territory shall be accompanied by revised tariff pages or an initial tariff reflecting the proposed new service territory.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-17-4. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-5. Obligations of telecommunications service providers to facilitate competition

(a) **General duty of telecommunications service providers.** Each telecommunications service provider has the duty:

- (1) To interconnect directly with or indirectly with the facilities and equipment of other telecommunications service providers; and,

(2) Not to install network features, functions, or capabilities that do not comply with established guidelines and standards.

(b) **Obligations of all telecommunications service providers.** Each telecommunications service provider furnishing local exchange services has the following duties:

(1) **Resale.** The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) **Number portability.** The duty to provide, to the extent technically feasible, number portability in accordance with requirements established by the FCC.

(3) **Dialing parity.** The duty to provide dialing parity to competing providers of local exchange and long distance telecommunications services, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings, with no unreasonable dialing delays.

(4) **Access to rights of way.** The duty to afford access to the poles, ducts, conduits, and rights-of-way of such telecommunication service provider to competing providers of telecommunications services on rates, terms and conditions that are consistent with existing laws, regulations and contract rights.

(5) **Reciprocal compensation.** The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications services.

(c) **Additional obligations of incumbent LECs.** In addition to the obligations described in OAC 165:55-17-5(b), each incumbent LEC and any competitive LEC that is treated as an incumbent LEC pursuant to 47 U.S.C. § 251(h), has the following duties:

(1) **Negotiations.** The duty to negotiate in good faith the particular terms and conditions of agreements to fulfill the duties described in this Section. The requesting telecommunications service provider also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) **Interconnection.** The duty to provide, for the facilities and equipment of any requesting telecommunications service provider, interconnection with the incumbent LEC's network as follows:

(A) For the transmission and routing of telephone exchange service and access service;

(B) At any technically feasible point within the incumbent LEC's network;

(C) That is at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection; and,

(D) On rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and requirements of this Section.

(3) **Unbundled access.** The duty to provide, to any requesting telecommunications service provider for the provision of telecommunications services, nondiscriminatory access to network elements required by OAC 165:55-17-11 on an unbundled basis and at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and

conditions of the agreement and requirements of this Chapter. An incumbent LEC shall provide such unbundled network elements in a manner that allows requesting telecommunications service providers to combine such elements in order to provide such telecommunications services.

(4) **Resale.** The duty to provide resale as follows:

(A) To offer for resale at wholesale rates any telecommunications service that the incumbent LEC provides at retail to subscribers who are not telecommunications service providers; and,

(B) Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services, except that telecommunications service providers may resell local exchange service only to the same class of customers to which the incumbent LEC sells such services.

(5) **Notice of changes.** The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using the incumbent LEC's facilities or networks, as well as of any other changes that would affect the interoperability of such facilities and networks.

(6) **Collocation.** The duty to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the incumbent LEC, except that the incumbent LEC may provide for virtual collocation if the incumbent LEC demonstrates that physical collocation is not practical for technical reasons or because of actual space limitations.

(d) **Exemptions for rural telephone companies.** OAC 165:55-17-5(c) shall not apply to a rural telephone company until:

(1) Such company has received a bona fide request for interconnection, services, or network elements, and,

(2) The Commission determines that such request is not unduly burdensome, is technically feasible, and is consistent with established universal service principles.

(A) **Termination of exemption.** In order to terminate the exemption of a rural telephone company, the following must occur:

(i) The telecommunications service provider making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the Commission.

(ii) The Commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under this subsection.

(B) **Limitation on exemption.** The exemption provided by this subsection shall not apply to a request under OAC 165:55-17-5(c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company begins providing video programming after February 8, 1996.

(e) **Suspensions and modifications for rural telephone companies.** An incumbent LEC with fewer than two percent (2%) of the end-user lines installed in

the aggregate within the United States may apply to the Commission for suspension or modification of any requirement of OAC 165:55-17-5(b) or OAC 165:55-17-5(c) applicable to network facilities specified in such application. The Commission will grant such application to the extent that, and for such duration as, the Commission determines that such suspension or modification:

(1) Is necessary to:

(A) Avoid a significant adverse economic impact on users of telecommunications services generally;

(B) Avoid imposing a requirement that is unduly economically burdensome; or,

(C) Avoid imposing a requirement that is technically infeasible; and,

(2) Is consistent with the public interest, convenience and necessity.

(f) Time for Commission review. The Commission will issue an Order regarding any application:

(1) For termination of an exemption, pursuant to OAC 165:55-17-5(d), within one hundred twenty (120) days after the Commission receives notice of the request:

(A) The Commission shall terminate the exemption if the request is:

(i) Not unduly economically burdensome;

(ii) Is technically feasible; and,

(iii) Is consistent with established universal service principles.

(B) Upon termination of the exemption, the Commission will establish an implementation schedule for compliance with the request.

(2) For a suspension or modification of OAC 165:55-17-5(b) or OAC 165:55-17-5(c), within one hundred eighty (180) days after receiving such application.

(g) Failure to act on a bona fide request. Any telecommunications service provider that makes a bona fide request for services or network elements to another telecommunications service provider, but fails to begin the necessary steps to introduce competition in the requested exchange(s) or zone(s) within twelve (12) months after satisfactory unbundling and/or interconnection agreements have been approved by the Commission, shall be liable for the reasonable expenses incurred by the requested telecommunications service provider.

(h) Each TSP shall have the duty to comply with 47 U.S.C. §251 and §252 and 17 O.S. §139.101 *et seq.*

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-17-6. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-7. Procedures for negotiation, arbitration and approval of agreements

(a) Agreements arrived at through voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to OAC 165:55-17-5, an incumbent LEC may negotiate and enter into a binding agreement with the requesting telecommunications service provider or providers without regard to the standards set forth in OAC 165:55-17-5 (b) and (c). The agreement shall include a detailed schedule of itemized charges for interconnection and each

service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996 (February 8, 1996), shall be filed with the Commission under subsection (e) of this Section.

(b) **Mediation.** Any party negotiating an agreement under this Section may, at any point in the negotiations, ask the Commission to participate in the negotiations and mediate any differences arising in the course of the negotiations. The Public Utility Division shall provide the mediator, unless otherwise directed by the Commission.

(c) **Agreements arrived at through compulsory arbitration.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent LEC receives a request for negotiation under this Section, the incumbent LEC or any other party to the negotiation may seek arbitration at the Commission of any open issues. Nothing in this subsection shall preclude negotiating parties from filing a joint application.

(1) **Responsibilities of the applicant with regard to the Commission.** A party that seeks arbitration from the Commission pursuant to this subsection shall, contemporaneously with the filing of its application, provide the Commission all relevant documentation concerning:

(A) The unresolved issues and the position of each of the parties with respect to those issues; and,

(B) Any other issue discussed and resolved by the parties.

(2) **Responsibility of the applicant with regard to other parties.** A party that seeks arbitration from the Commission pursuant to this subsection shall, provide a copy of the application and any documentation to the other party or parties not later than the day on which the application is filed.

(3) **Opportunity to respond.** A nonpetitioning party to a negotiation under this Section may respond to the other party's petition and provide such additional information as it wishes within twenty-five (25) days after the Commission receives the petition.

(4) **Action by the Commission.** When an application for arbitration is filed, the Commission will utilize the following procedures.

(A) The Commission will limit its consideration of any petition under this subsection, and any response thereto, to the issues set forth in the petition and in the response, if any, filed under paragraph (3) of this subsection.

(B) The Commission may require the petitioning party and the responding party to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or unreasonably fails to respond on a timely basis to any request from the Commission, then the Commission may proceed on the basis of the best information available to it, from whatever source derived.

(C) The Commission will resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (d) of this Section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the telecommunications service provider received the request under this Section.

(5) **Refusal to negotiate.** The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the Commission

in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith.

(d) **Standards for Arbitration.** In resolving by arbitration, under subsection (c) of this Section, any open issues and imposing conditions upon the parties to the agreement, the Commission will:

- (1) Ensure that such resolution and conditions meet the requirements of OAC 165:55-17-5 and applicable FCC requirements;
- (2) Establish rates for interconnection, services, or network elements consistent with OAC 165:55-17-27; and,
- (3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(e) **Approval by the Commission and grounds for rejection.** Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by filing an application with the Commission's Office of the Court Clerk and comply with OAC 165:55-17-13(e). After review of the application, the Commission will approve or reject the agreement, with written findings as to any deficiencies. The Commission will only reject an agreement, or any portion thereof, if it finds that:

- (1) The agreement, adopted by negotiation under subsection (a) of this Section, either:
 - (A) Discriminates against a telecommunications service provider that is not a party to the agreement; or,
 - (B) The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
- (2) The agreement adopted by compulsory arbitration under this Section does not meet the requirements of OAC 165:55-17-5 or the agreement does not meet the standards in OAC 165:55-17-27.
- (3) **Notice requirements.** Applicants seeking approval of an Interconnection Agreement shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of the State of Oklahoma.

(f) **Reservation of authority.** Notwithstanding subsection (e), the Commission, consistent with the requirements of 47 § 253, shall enforce other requirements of State law in its review of an agreement, including requiring compliance with Subchapter 13 of this Chapter.

(g) **Statement of generally available terms.** In conformance with 47 U.S.C. § 252(f), SWBT may prepare and file with the Commission a statement of the terms and conditions that SWBT generally offers within Oklahoma to comply with the requirements of 47 U.S.C. § 251, and the regulations thereunder and the standards applicable under this Section. In the event SWBT files such a statement, the Commission will:

- (1) Approve the statement provided the statement complies with Subchapter 13 of this Chapter, OAC 165:55-17-5 and OAC 165:55-17-27 and is consistent with 47 U.S.C. § 253;
- (2) Complete the Commission's review of SWBT's statement not later than 60 days after the date of such submission, (including any reconsideration thereof), unless SWBT agrees to an extension of the period for such review; or permit such statement to take effect.

(h) **Continued review of SWBT's statement of generally available terms.** In the event the Commission has permitted the statement of SWBT to take effect pursuant to paragraph (2) of subsection (g), the Commission may continue to review said

statement after it is effective and the Commission may approve or disapprove said statement if it does not meet the requirements of paragraph (1) of subsection (g).

(i) **Duty to negotiate not affected.** The submission or approval of a statement under subsection (g) shall not relieve SWBT of its duty to negotiate the terms and conditions of an agreement pursuant to OAC 165:55-17-5.

(j) **Consolidation of proceedings.** Where not inconsistent with the requirements of the Federal Telecommunications Act of 1996, the Commission may, to the extent practical, consolidate proceedings under OAC 165:55-17-5 and OAC 165:55-17-7, in order to reduce administrative burdens on telecommunications service providers, other parties to the proceedings, and the Commission in carrying out its responsibilities under the Telecommunications Act of 1996.

(k) **Availability for public inspection.** The Commission will make a copy of each agreement approved under subsection (e) and each statement approved under subsection (g) available for public inspection and copying within 10 days after the agreement or statement is approved. The Commission will charge the fees set forth in OAC 165:5-3-1 to cover the costs of processing an application and copying.

(l) **Availability to other telecommunications service providers.** A telecommunications service provider shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party, to any other requesting telecommunications service provider; upon the same terms and conditions as those provided in the agreement.

(m) Each TSP shall have the duty to comply with 47 U.S.C. §252 and 17 O.S. §139.101 *et seq.*

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-17-8. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-9. Resale of local telecommunications service

(a) **Elimination of resale restrictions.** Except as provided in this Subchapter, each telecommunications service provider has the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services. Telecommunications services may be resold, either on a stand-alone basis, or as part of a package of services.

(b) **Allowable resale restriction.** A telecommunications service provider that obtains, at wholesale rates, a telecommunications service that is available at retail only to a specified category of end-users may only resell such service to the same category of end-users.

(c) **Incumbent LEC wholesale rates.** Each incumbent LEC has the duty to offer for resale, at wholesale rates, any telecommunications service that the incumbent LEC provides at retail to end-users who are not telecommunications service providers. Wholesale rates of services shall exclude costs attributable to marketing, billing, collection and other costs that will be avoided by the incumbent LEC in providing the service on a wholesale basis.

(d) **Automated Interfaces.** To the extent an incumbent LEC provides itself, its affiliate, or its subsidiary automated interface for purpose of service ordering, maintenance, or repair, it shall make such interfaces available to the extent it protects customer privacy and system integrity, to other telecommunications service providers on rates, terms, and conditions that are just, reasonable and nondiscriminatory. The provision of such interfaces shall not permit access to or

manipulation of the underlying systems themselves.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-10. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-11. Unbundling of incumbent LEC networks

(a) Upon receipt of a bona fide request, each incumbent LEC shall enter into good faith negotiations to unbundle its network elements to the exchange(s) and/or zone(s) specifically requested in the bona fide requests. Said unbundling shall be available at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) Subsection (a) of this Section shall not be applicable to a rural telephone company until such time as the Commission has determined that the bona fide request is not unduly economically burdensome, is technically feasible and is consistent with universal service.

(c) Unbundling issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process in a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-17-12. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-13. Interconnection of networks

(a) Local exchange telecommunications networks shall be interconnected, where technically feasible, so that end-users of any telecommunications service provider can seamlessly send and/or receive calls without any diminution in service quality regardless of the telecommunications service provider selected by the end-user or the called party. Such interconnection shall be made available, when requested by a competing telecommunications service provider, on an unbundled basis equally and on a nondiscriminatory basis.

(b) A telecommunications service provider shall make available any interconnection, service, or network element, provided under an agreement to which it is a party and which has been approved by the Commission pursuant to OAC 165:55-17-7, to any other requesting telecommunications service provider upon the same terms and conditions as those provided in the agreement.

(c) Interconnection issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process provided for in a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

(d) When filing an amendment to an interconnection agreement, the effective date, order number and cause number of the original interconnection agreement or the subsequent amendment that is being modified must be included.

(e) When filing an application for approval of an agreement or an amendment to an existing interconnection agreement, a file-stamped copy will be provided to the Director of the Public Utility Division, the Oklahoma Attorney General, each E911 public safety answering point within the territory of the service area affected by the proposed agreement and any other party to the agreement. The copy to the Director

of the Public Utility Division may be contained on compact disk, formatted in an IBM compatible form using Microsoft Word for Windows, or compatible software.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 20 Ok Reg 2301, eff 7-15-03; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16]

165:55-17-14. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-15. Reciprocal compensation

(a) Local telecommunications traffic shall be terminated on a nondiscriminatory basis for reciprocal compensation. The Commission will not consider the terms and conditions for reciprocal compensation to be just and reasonable unless:

- (1) Such terms and conditions provide for the mutual and reciprocal recovery by each telecommunications service provider of the costs associated with the transport and termination on each telecommunications service provider's network facilities related to traffic that originates on the network facilities of the other telecommunications service provider; and,
- (2) Such terms and conditions determine said costs on the basis of a reasonable approximation of the additional costs of terminating said traffic.

(b) This Section shall not be construed:

- (1) To preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or,
- (2) To require telecommunications service providers to maintain records with respect to the additional costs of said traffic.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-16. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-17. Number portability and dialing parity

(a) **In General.** All telecommunications service providers have the duty to provide number portability in accordance with requirements prescribed by the FCC.

(b) **Additional State Requirements.** To the extent a telecommunications service provider allows an end-user to retain the same telephone number when changing service locations within a wire center, said telecommunications service provider must allow an end-user to retain the same telephone number when changing service locations and telecommunications service providers within a wire center.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-17-18. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-19. Universal service

Universal service is a paramount goal of the Commission's telecommunications policy. The purpose of universal service is to ensure that all end-users have access to basic residential intrastate voice and/or relay service at a reasonable and affordable price.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-20. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-21. Universal service fund

The Oklahoma Universal Service Fund ("OUSF") was established to preserve and advance universal service in Oklahoma. Every entity which provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, for the preservation and advancement of universal service in Oklahoma, in a manner established by the Commission pursuant to OAC 165:59.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 16 Ok Reg 2261, eff 7-1-99]

165:55-17-22. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-23. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-24. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-25. Costing standards

(a) To facilitate the Commission's ability to arbitrate agreements between telecommunications service providers when negotiations have resulted in a party requesting the Commission to arbitrate, the telecommunications service provider owning facilities that are the subject of arbitration shall provide to the Commission the following cost studies, for those services in dispute, no later than one hundred sixty (160) days after the receipt of a request for negotiation:

- (1) Long-run incremental cost ("LRIC") studies and studies identifying a contribution to common costs for interconnection of facilities and network elements; or,
- (2) Marketing, billing, collection and other costs that will be avoided by the telecommunications service provider for any resold services.

(b) To facilitate the Commission's ability to review and approve negotiated agreements between telecommunications service providers, both parties shall provide to the Commission Staff, within ten (10) days following the request, any information, including LRIC studies, necessary to demonstrate that the negotiated agreement does not discriminate against a telecommunications service provider which is not a party to the agreement.

(c) Nothing in this Section precludes a party from requesting production of cost studies during the negotiation process provided for under federal law, nor precludes a party from objecting to such request. Disputes related to such requests or objections may be submitted by either party to the Commission for mediation pursuant to OAC 165:55-17-7.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-17-26. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-27. Pricing and imputation standards

(a) **Interconnection and network element charges.** The Commission will determine just and reasonable prices for network elements and interconnection of facilities and equipment as follows:

- (1) Prices shall be based on the cost, determined without reference to a rate-of-return or other rate-based proceeding, of providing the interconnection or network element, whichever is applicable;
- (2) Prices shall be nondiscriminatory; and,
- (3) Prices may include a reasonable profit.

(b) **Charges for transport and termination of traffic.** The terms and conditions for reciprocal compensation shall be consistent with OAC 165:55-17-15 and 47 U.S.C. §252(d)(2).

(c) **Wholesale prices for telecommunications services.** Incumbent LECs shall provide wholesale rates for all retail telecommunications services sold to end-users on the basis of the retail rates, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by telecommunications service providers in providing the service on a wholesale basis.

(d) **Southwestern Bell Telephone Company imputation.** Southwestern Bell Telephone Company shall charge its affiliates, or impute to itself if using the access for provision of its own services, an amount for access to its telephone service and exchange access that is no less than the amount charged to any unaffiliated IXCs for such service.

(e) **Prohibition of subsidization.** A telecommunications service provider may not use services that are not competitive to subsidize services that are subject to competition. With respect to intrastate services, the Commission may establish any necessary cost allocations, rules, accounting safeguards, and guidelines to ensure that no such subsidization occurs.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-28. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-29. Eligible Telecommunications Carrier [REVOKED]

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Amended at 29 Ok Reg 1549, eff 7-12-12; Revoked at 32 Ok Reg 828, eff 8-27-15]

165:55-17-30. Customer choice

(a) Where choices are available, every customer shall have the right to choose his or her TSP.

(b) Where choices of TSPs are available, a TSP shall not enter into a contract or agreement with any person or entity, including but not limited to; property developers, multi-tenant property owners or managers, homeowners associations, or any agent or representative of such person or entity that would prohibit or restrict an end-user's right to select the carrier of his or her choice. Should a carrier become aware that such a property owner, manager, or agent is prohibiting or restricting an end-user's right to select the carrier of his or her choice, the carrier shall notify the Director of the Public Utility Division for the Commission.

(c) The Public Utility Division may, after an informal investigation, file an application requesting a finding of contempt and the imposition of a fine or other

penalty against a TSP that enters into a contract or agreement that prohibits or restricts an end-user's right to select the carrier of his or her choice.

(d) The investigation and findings of the Public Utility Division shall not be contrary to federal rules regarding customer

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96; Added at 20 Ok Reg 2301, eff 7-15-03; Amended at 26 Ok Reg 1127, eff 7-1-09]

165:55-17-31. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-32. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-33. Verification of compliance prior to providing certain In-Region InterLATA services [REVOKED]

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Revoked at 32 Ok Reg 828, eff 8-27-15]

165:55-17-34. [RESERVED]

[Source: Reserved at 13 Ok Reg 2437, eff 7-1-96]

165:55-17-35. Unauthorized transfer of end-users [REVOKED]

[Source: Added at 13 Ok Reg 2437, eff 7-1-96; Revoked at 15 Ok Reg 3054, eff 7-15-98]

SUBCHAPTER 19. UNLAWFUL PRACTICES

PART 1. SLAMMING

165:55-19-1. Slamming

Slamming is prohibited.

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01]

165:55-19-1.1. Verification of order for telecommunications service

(a) No telecommunications carrier shall submit or execute a change on the behalf of an end-user in the end-user's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Part 1 of this Subchapter.

(1) **Requirement for submission of changes of provider.** No submitting carrier shall submit a change on the behalf of an end-user in the end-user's selection of a provider of telecommunications service prior to obtaining:

(A) Authorization from the end-user, and

(B) Verification of that authorization in accordance with the procedures prescribed in this Section. The submitting carrier shall maintain and preserve records of verification of end-user authorization for a minimum period of two years after obtaining such verification.

(2) **Executing carriers shall not verify changes of provider.** An executing carrier shall not verify the submission of a change in an end-user's selection of a provider of telecommunications service received from a submitting

carrier. For an executing carrier, compliance with the procedures described in Part 1 of this Subchapter shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Exclusion of commercial mobile radio services providers.

Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Section as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Requirement for separate verification for each type of service. Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the end-user for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in Part 1 of this Subchapter.

(c) Requirement for confirmation of change order. No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) **Written authorization.** The telecommunications carrier has obtained the end-user's written authorization in a form that meets the requirements of 165:55-19-1.2; or

(2) **Electronic authorization.** The telecommunications carrier has obtained the end-user's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in (c)(1) of this Section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) **Third-party authorization.** An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g.* the end-user's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier change.

(d) Submission of carrier changes to executing carriers.

(1) Preferred carrier change orders submitted by IXC's or TSP's to an executing carrier other than through an electronic change order processing system must contain the customer name, telephone number to be changed, and a contact name and number for the submitting carrier. Failure of the

submitting carrier to include the above information will relieve the executing carrier from complying with OAC 165:55-19-1.4(a).

(2) Preferred carrier change orders submitted by IXCs or TSPs to executing carriers through an electronic change order processing system must be submitted in the industry recognized standards established by the Alliance for Telecommunications Industry Solution (ATIS) Ordering and Billing Forum (OBF).

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 19 Ok Reg 1985, eff 7-1-02]

165:55-19-1.2. Letter of agency form and content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of an end-user's request to change his or her preferred carrier selection. A letter of agency that does not conform to this Section is invalid for purposes of Part 1 of this Subchapter.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in (e) of this Section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the end-user to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding (b) and (c) of this Section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in (e) of this Section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the end-user is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

- (1) The end-user's billing name and address and each telephone number to be covered by the preferred carrier change order;
- (2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;
- (3) That the end-user designates the named carrier to act as the end-user's agent for the preferred carrier change;
- (4) That the end-user understands that only one telecommunications carrier may be designated as the end-user's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and,
- (5) That the end-user understands that any preferred carrier selection the end-user chooses may involve a charge to the end-user for changing the end-user's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the end-user.

(g) Letters of agency shall not suggest or require that an end-user take some action in order to retain the end-user's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-19-1.3. Carrier liability for slamming

(a) **Carrier liability for charges.** Any submitting telecommunications carrier that fails to comply with the procedures prescribed in Part 1 of this Subchapter shall be liable to the end-user's properly authorized carrier in an amount equal to one-hundred and fifty percent (150%) of all charges paid to the submitting telecommunications carrier by such end-user after such violation, as well as for additional amounts as prescribed in 165:55-19-1.6. The remedies provided in Part 1 of this Subchapter are in addition to any other remedies available by law.

(b) **End-user liability for charges.** Any end-user whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set forth in Part 1 of this Subchapter is liable for charges as follows:

(1) If the end-user has not already paid charges to the unauthorized carrier, the end-user is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first thirty (30) days after the unauthorized change. Upon being informed by an end-user that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the end-user of this thirty (30) day absolution period. Any charges imposed by the unauthorized carrier on the end-user for service provided after this thirty (30) day period shall be paid by the end-user to the authorized carrier at the rates the end-user was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of 165:55-19-1.5(e).

(2) If the end-user has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in 165:55-19-1.2(a), the authorized carrier shall refund or credit to the end-user any amounts determined in accordance with the provisions of 165:55-19-1.6(c).

(3) If the end-user has been absolved of liability as prescribed by this Section, the unauthorized carrier shall also be liable to the end-user for any charge required to return the end-user to his or her properly authorized carrier, if applicable.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-19-1.4. Procedures for resolution of unauthorized changes in preferred carrier

(a) **Notification of alleged unauthorized carrier change.** Executing carriers who are informed of an unauthorized carrier change by an end-user must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) **Referral of complaint.** Any carrier, executing, authorized, or allegedly unauthorized, that is informed by an end-user or an executing carrier of an unauthorized carrier change shall direct that end-user to the Commission for

resolution of the complaint.

(c) **Notification of receipt of complaint.** Upon receipt of an unauthorized carrier change complaint, the Commission will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the end-user's bill pending a determination of whether an unauthorized change, as defined by 165:55-1-4, has occurred, if it has not already done so.

(d) **Proof of verification.** Not more than thirty (30) days after notification of the complaint, or such lesser time as is required by the Commission, the alleged unauthorized carrier shall provide to the Commission a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in 165:55-19-1.4 and 165:55-19-1.5. The Commission will determine whether an unauthorized change, as defined by 165:55-1-4, has occurred using such proof and any evidence supplied by the end-user. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-19-1.5. Absolution procedures where the end-user has not paid charges

(a) **Applicability.** This Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has not paid charges to the allegedly unauthorized carrier for service provided for thirty (30) days, or a portion thereof, after the unauthorized change occurred.

(b) **Removal of charges for the first 30 days.** An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first thirty (30) days after the alleged unauthorized change occurred, as defined by 165:55-1-4, from an end-user's bill upon notification that such unauthorized change is alleged to have occurred.

(c) **Challenging an end-user's allegation of unauthorized charges.** An allegedly unauthorized carrier may challenge an end-user's allegation that an unauthorized change, as defined by 165:55-1-4, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining end-user that:

(1) The complaining end-user must file a complaint with the Commission within thirty (30) days of either:

(A) The date of removal of charges from the complaining end-user's bill in accordance with (b) of this Section or

(B) The date the allegedly unauthorized carrier notifies the complaining end-user of the requirements of this Section, whichever is later; and

(2) A failure to file such a complaint within this thirty (30) day time period will result in the charges removed pursuant to (b) of this Section being reinstated on the end-user's bill and, consequently, the complaining end-user's will only be entitled to remedies for the alleged unauthorized change other than those provided for in 165:55-19-1.3(b)(1). No allegedly unauthorized carrier shall reinstate charges to an end-user's bill pursuant to the provisions of this Section without first providing such end-user with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this Section.

(d) Procedure if thirty (30) days or fewer of unauthorized charges were incurred. If the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:55-1-4, has occurred, CSD shall issue a factual determination stating that the end-user is entitled to absolution from the charges incurred during the first thirty (30) days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the end-user for those charges.

(e) Procedure if more than thirty (30) days of unauthorized charges were incurred. If the end-user has incurred charges for more than thirty (30) days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the end-user for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the end-user for the same services had an unauthorized change, as described in 165:55-1-4, not occurred; or

(2) The amount of the charge may be determined using a fifty percent (50%) Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the end-user for fifty percent (50%) of the rate the unauthorized carrier would have charged the end-user for the services provided. However, the end-user shall have the right to reject use of this fifty percent (50%) proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (e)(1) of this Section.

(f) End-user payments for services provided after the first thirty (30) days. If the unauthorized carrier received payment from the end-user for services provided after the first thirty (30) days after the unauthorized change occurred, the obligations for payments and refunds provided for in this Section shall apply to those payments.

(g) Re-billing. If the Commission determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the end-user for charges incurred.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-19-1.6. Reimbursement procedures where the end-user has paid charges

(a) Applicability. The procedures in this Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has paid charges to an allegedly unauthorized carrier.

(b) Order requirements.

(1) If CSD determines after reasonable investigation that an unauthorized change, as defined by OAC 165:55-1-4, has occurred, it shall issue a factual determination requiring the unauthorized carrier to forward to the authorized carrier the following:

(A) An amount equal to one hundred and fifty percent (150%) of all charges paid by the end-user to the unauthorized carrier; and

(B) Copies of any telephone bills issued from the unauthorized carrier to the end-user.

(2) This factual determination shall be sent to the end-user, the unauthorized carrier, and the authorized carrier.

(c) End-user refund or credit by authorized carrier if payment is received.

Within ten days of receipt of the amount provided for in this Section, the authorized carrier shall provide a refund or credit to the end-user in the amount of fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The end-user has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the end-user, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The authorized carrier shall also send notice to the Commission that it has given a refund or credit to the end-user.

(d) Billing and collection charges. If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) End-user refund or credit by authorized carrier if payment is not received.

If the authorized carrier has not received payment from the unauthorized carrier as required by (c) of this Section, the authorized carrier is not required to provide any refund or credit to the end-user. The authorized carrier must, within forty-five (45) days of receiving a factual determination as described in (b) of this Section, inform the end-user and the Commission if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the end-user of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Reinstatement into programs. Where possible, the properly authorized carrier must reinstate the end-user in any premium program in which that end-user was enrolled prior to the unauthorized change, if the end-user's participation in that program was terminated because of the unauthorized change. If the end-user has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the end-user any premiums to which the end-user would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this Section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the end-user.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-19-1.7. Preferred carrier freezes

(a) A preferred carrier freeze (or freezes) prevents a change in an end-user's preferred carrier selection for intraLATA/intrastate toll, interLATA/interstate toll, interLATA/intrastate toll, and international toll unless the end-user gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this Section. No local exchange carrier shall impose a preferred carrier freeze on local exchange service.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all end-users, regardless of the end-user's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., intraLATA/intrastate toll, interLATA/interstate toll, interLATA/intrastate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

- (A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;
- (B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in 165:55-19-1.4 and 165:55-19-1.5 for changing an end-user's preferred carrier selections; and an explanation that the end-user will be unable to make a change in carrier selection unless he or she lifts the freeze; and
- (C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the end-user's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

- (A) The local exchange carrier has obtained the end-user's written and signed authorization in a form that meets the requirements of (d)(3) of this Section; or
- (B) The local exchange carrier has obtained the end-user's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or
- (C) An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier freeze.

(3) **Written authorization to impose a preferred carrier freeze.** A local exchange carrier may accept an end-user's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this Section is invalid and may not

be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with 165:55-19-1.5(b), (c), and (h) concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The end-user's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for intraLATA/intrastate toll, interLATA/interstate toll service, interLATA/intrastate toll, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the end-user understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the end-user understands that any preferred carrier freeze may involve a charge to the end-user.

(e) **Procedures for lifting preferred carrier freezes.** All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer end-users the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept an end-user's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept an end-user's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the end-user in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the end-user's intent to lift the particular freeze.

[Source: Added at 18 Ok Reg 2415, eff 7-1-01; Amended at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

PART 3. CRAMMING

165:55-19-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 3054, eff 7-15-98]

165:55-19-3. Cramming

(a) Cramming is prohibited.

(b) TSPs and IXC's, after a complaint of cramming by the customer, shall not disconnect or seek payment of the charge(s) pending resolution of the dispute.

(c) The telecommunications service provider or IXC shall be subject to a fine, per day per occurrence, for any violation of this Section, on an intrastate basis. The

amount of the fine shall be determined pursuant to 17 O.S. § 1 et seq., after notice and hearing.

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99]

SUBCHAPTER 21. PAY-PER-CALL SERVICES

165:55-21-1. Prohibition of certain pay-per-call services or interactive programs

Each TSP or IXC is prohibited from violating 17 O.S. § 140.1. et seq.

[Source: Added at 16 Ok Reg 2261, eff 7-1-99]

SUBCHAPTER 22. RESOLUTION DISPUTES

165:55-22-1. Resolution procedures arising under interconnection agreements

(a) **Purpose.** This Subchapter establishes procedures for Commission resolution of disputed issues arising under or pertaining to interconnection agreements approved by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and Subchapter 17 of this Chapter.

(b) **Type of disputed issues.** The dispute resolution procedures set forth in this Subchapter are intended to resolve disputes concerning:

- (1) Proper interpretation of terms and conditions in the interconnection agreement;
- (2) Implementation of activities explicitly provided for, or implicitly contemplated in, the interconnection agreement;
- (3) Enforcement of terms and conditions in such interconnection agreements; and
- (4) Any issue not explicitly addressed in the interconnection agreement that the parties agree to resolve pursuant to this Subchapter; provided the resolution of the issue would facilitate the provisioning of service pursuant to the interconnection agreement.

(c) **Use of this Subchapter.** The procedures described in this Section are not intended to replace the dispute resolution procedures set forth in the Interconnection and Resale Agreements ("Agreements") between the parties. However, the procedures set forth in this Subchapter may be used to resolve disputes arising out of the Agreements.

(d) **Best efforts.** As a prerequisite to utilizing this Subchapter, the parties must be able to demonstrate that they have exhausted the dispute resolution procedures, if any, in accordance with their Agreements.

[Source: Added at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-2. [RESERVED]

[Source: Reserved at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-3. Facilitation

(a) **Informal process.** Facilitation is an informal, voluntary process wherein both parties to the dispute agree to bring the dispute before the Commission and to be bound by the facilitator's decision.

(b) **Facilitation request.** The request for an informal facilitation conference may be made by a joint written request to the Director of the Public Utility Division. The joint written request should include the following from each party:

- (1) The name, address, telephone number and facsimile number of each party to the interconnection agreement and each party's designated representative;
 - (2) A description of the parties' efforts to resolve their differences by negotiation;
 - (3) A list of the narrow issues in dispute, with a cross-reference to the area of the agreement applicable or pertaining to the issues in dispute;
 - (4) Each party's proposed solution to the dispute; and
 - (5) Identification of the agreed upon facilitator.
- (c) **Facilitator.** The facilitator may be:
- (1) Any individual agreed to by the parties, including a Commission employee with knowledge regarding telecommunications; or
 - (2) An individual selected by the Commission in an open meeting from names submitted by the parties.
- (d) **Facilitation conference.** The facilitator shall be responsible for notifying the parties of the time, date, and location of the meeting which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference.
- (e) **Procedure.** The facilitation conference shall be conducted as an informal meeting and will not be transcribed. Only parties to the interconnection agreement may participate as parties to the facilitation conference. Interim relief is not applicable for either party to the dispute. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to one of the formal processes set forth in this Subchapter.
- (f) **Results of the facilitation conference.** The informal facilitation conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. In the event that the parties do not reach an agreement as a result of the informal facilitation conference, the parties agree to have the decision of the Commission appointed facilitator be binding on the parties. The facilitator's decision will be binding on both parties. The decision from the informal facilitation conference shall be rendered within thirty (30) days from the joint written request for facilitator.

[Source: Added at 16 Ok Reg 2832, eff 7-15-99; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-22-4. [RESERVED]

[Source: Reserved at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-5. Formal non-expedited dispute resolution

- (a) **Commencement.** This procedure is a formal proceeding for dispute resolution and will commence when a party ("complainant") files a complaint with the Court Clerk of the Commission and, on the same day, delivers a copy of the complaint either by hand delivery, certified mail, electronic mail or facsimile to the Director of the Public Utility Division, to the other party ("respondent") to the interconnection agreement from which the dispute arises, to the Office of General Counsel, and to the Office of the Attorney General. If facsimile is used, a certificate of service shall be provided.
- (b) **Process.** Unless otherwise ordered by the arbitrator, parties shall file with the Commission Court Clerk's office five (5) copies of pleadings. The complaint shall be in a consistent format approved by the Director of the Public Utility Division

and shall include:

- (1) The name, address, telephone number, facsimile number of each party to the interconnection agreement, and the complainant's designated representative;
- (2) A description of the parties' efforts to resolve their differences by negotiation;
- (3) A detailed list of the precise issues in dispute, with a cross-reference to the area or areas of agreement applicable or pertaining to the issues in dispute; and
- (4) An identification of pertinent background facts and relevant law or rules applicable to each disputed issue.
- (5) The complainant's proposed solution to the dispute.

(c) **Arbitrator.** Upon receipt of a dispute resolution complaint filed under this Section, an arbitrator shall be selected to act for the Commission, unless two or more of the Commissioners choose to hear the complaint *en banc*. The parties shall be notified of the Commission designated arbitrator, or of the Commissioners' decision to act as arbitrator themselves. The arbitrator may be advised on legal and technical issues by members of the Commission Staff. The Commission staff members selected to advise the arbitrator shall be determined by the Director of the Public Utility Division and shall be identified to the parties. Within five (5) days of the selection of the arbitrator being named, any challenge to the appointment shall be brought forth. No parties to the dispute resolution process may have *ex parte* discussions with the arbitrator regarding the complaint, except those persons designated by the Director of the Public Utility Division.

(d) **Response to complaint.** The respondent shall file a response to the complaint within twenty (20) days after the filing of the complaint and shall serve a copy of the response on the complainant, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the contract applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.

(e) **Reply to response to complaint.** The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The reply shall be limited solely to new issues raised in the response to the complaint.

(f) **Notice and hearing.** As soon as possible after his or her selection, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than fifty (50) days after filing of the complaint. The arbitrator shall notify the parties, not less than fifteen (15) days before the hearing of the date, time, and location of the hearing. The hearing shall be held in Oklahoma City unless otherwise ordered by the Commission.

(g) **Transcripts.** The hearing shall be transcribed by a court reporter designated by the arbitrator. Copies of the transcript may be obtained from the designated court reporter at the expense of the requesting party.

(h) **Participation.** Only parties to the interconnection agreement, the Commission Staff, or the Office of the Attorney General, may participate as parties in the dispute

resolution process subject to this Subchapter, unless otherwise ordered by the Commission upon a showing of good cause.

(i) **Authority of the arbitrator.** The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority within the Commission to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this Subchapter.

(j) **Discovery.** Parties may obtain discovery by submitting a discovery request consistent with the Commission's Rules of Practice, OAC 165:5, which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by the Commission rules and as allowed within the discretion of the arbitrator.

(k) **Pre-filed evidence and witness list.** The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing under the following guidelines:

(1) The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all its witnesses and all exhibits that the party intends to offer. The joint issues list shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Confidential information shall be treated in accordance with the Commission's Rules of Practice, OAC 165:5.

(2) Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the complaint. The arbitrator shall judge the credibility of each witness and the weight to be given his or her testimony based upon his or her response to cross-examination. If the arbitrator determines that a witness' responses are evasive or non-responsive to the questions asked, the arbitrator may disregard the witness' testimony on the basis of lack of credibility.

(3) The arbitrator may ask clarifying questions at any point during the proceeding and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.

(4) The arbitrator may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator shall determine the filing deadline and any limitations on the length of such submissions.

(l) **Recommendation.** Timelines and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

(2) Within ten (10) days from the date of the arbitrator's recommendation is issued, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for

the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission *en banc* within ten (10) days of the filing of such appeal, unless the Commission orders otherwise.

(3) With respect to the recommendation by the arbitrator, the Commission *en banc* may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing. The Commission shall enter its order on the complaint no later than one hundred (100) days after the filing of the complaint, unless otherwise agreed to by the parties.

[Source: Added at 16 Ok Reg 2832, eff 7-15-99; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-22-6. [RESERVED]

[Source: Reserved at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-7. Formal expedited dispute resolution

(a) **Need for expedited resolution.** This procedure is a formal proceeding for dispute resolution with an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to OAC 165:55-22-5 apply, except as otherwise specifically set forth in this Section.

(b) **Response to complaint.** The respondent shall file a response to the complaint within five (5) business days after the filing of a complaint and shall serve a copy of the response on the complainant, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The response shall specifically affirm or deny each allegation in the complaint.

(c) **Process.** Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant OAC 165:55-22-5. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in section OAC 165:55-22-5, the complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.

(d) **Notice and hearing.** After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than seventeen (17) days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three (3) days before the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five (5) days of the filing of the response.

(e) **Recommendation.** Timeliness and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The oral recommendation of the arbitrator shall be filed with the Commission within three (3) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the

dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

(2) Within three (3) days from the date of issuance of the arbitrator's recommendation, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission *en banc* within five (5) days of the filing of such an appeal.

(3) With respect to the recommendation by the arbitrator, the Commission *en banc* may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing. The Commission shall enter its order on the complaint no later than one hundred (100) days after the filing of the complaint, unless otherwise agreed to by the parties.

[Source: Added at 16 Ok Reg 2832, eff 7-15-99; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-22-8. [RESERVED]

[Source: Reserved at 16 Ok Reg 2832, eff 7-15-99]

165:55-22-9. Interim relief

(a) **Need for interim relief.** This Section establishes procedures whereby a party who requests dispute resolution pursuant to OAC 165:55-22-5 or OAC 165:55-22-7 may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service or as a means to guarantee that funds are available in a billing dispute.

(b) **Filing a request.** Any request for an interim ruling shall be filed at the same time and in the same cause as the complaint filed pursuant to OAC 165:55-22-5 or OAC 165:55-22-7. The heading of the complaint shall include the phrase "Request for Interim Ruling." The complaint shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A complaint that includes a request for interim ruling shall be verified by affidavit. Such complaint must list the contact person, address, telephone number, and facsimile number for both the complainant and respondent.

(c) **Service.** The complainant shall serve a copy of the complaint and request for an interim ruling on the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division by hand-delivery or facsimile on the same day as the pleading is filed with the Commission.

(d) **Hearing.** Within three (3) business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator selected under this Subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile within one (1) business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.

(e) **Ruling.** Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within twenty-four (24) hours of the close of the hearing and will notify the parties by facsimile of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued by the Commission pursuant to this Subchapter. The interim ruling shall have no precedential impact.

[Source: Added at 16 Ok Reg 2832, eff 7-15-99; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

SUBCHAPTER 23. ELIGIBLE TELECOMMUNICATIONS CARRIERS

PART 1. GENERAL PROVISIONS

165:55-23-1. Requirements

The requirements of this Subchapter pertain to the designation of Eligible Telecommunications Carriers by the Commission or the Federal Communications Commission pursuant to 47 U.S.C. § 214(e) and the provision of Supported Services by Eligible Telecommunications Carriers (hereinafter referred to as "ETCs"). All ETCs shall comply with federal requirements, the requirements of this Subsection, and, if also eligible for participation in the Oklahoma Lifeline Fund, the requirements of OAC 165:59-9-1 *et seq.*

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-2. ETC Designation

(a) No person shall receive federal Lifeline funds for Oklahoma customers or Connect America Funds for investment in Oklahoma without first being designated an Eligible Telecommunications Carrier ("ETC") by the Commission or as otherwise provided in 47 C.F.R. § 54.201 and § 54.202. A person seeking to be designated an ETC by the Commission shall file an Application with the Commission, meeting the requirements of the Commission's Rules of Practice, OAC 165:5, and shall provide the following additional information in support of the Application:

- (1) A description of whether the applicant intends to offer the Supported Services over its own facilities, by resale of another carrier's facilities and/or services, or through a combination of its own facilities and resale of third party facilities and/or services;
- (2) A description of the service area for which ETC designation is sought, to include a list of exchanges;
- (3) A description of the applicant's proposed Supported Services;
- (4) A description of the applicant's plans to advertise the availability of Supported Services within the service area sought;
- (5) A complete description of the terms, conditions and rates applicable to the applicant's offering of Supported Services.
- (6) Submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Except, a common carrier seeking designation as an ETC in order to provide supported services only under 47 C.F.R. Part 54 Subpart E does not need to submit such a five-year plan.

(7) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(8) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(9) For common carriers seeking designation as an ETC for purposes of receiving support only under 47 C.F.R. Part 54 Subpart E, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with 47 C.F.R. Part 54 Subpart E.

(b) Each incumbent LEC is designated as an ETC for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996.

(c) For the purpose of eligibility to receive federal universal service support under 47 U.S.C. § 214(e), an ETC shall, throughout its service territory:

(1) Offer the telecommunications services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another telecommunications service provider's services, including the services offered by another eligible telecommunications service provider; and,

(2) Advertise the availability of such telecommunications services and the charges thereof using media of general distribution.

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15; Added at 33 Ok Reg 645, eff 8-25-16; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-3. Records to be provided to the Commission

(a) **Terms, conditions and rates for Supported Services.** An ETC shall maintain current terms, conditions and rates applicable to its Supported Services in an approved tariff on file with the Commission or pursuant to Terms of Service posted on its website and provided to the Commission. Any modification to an ETC's terms, conditions and rates for Supported Services, shall be submitted to the Director of Public Utility Division prior to the effective date of such modification. Failure to comply with this Section may result in the filing of an application by the Director of the Public Utility Division to revoke the Telecommunication Service Provider's or wireless provider's ETC designation.

(b) **Location of records.** All records including terms, conditions and rates for its Supported Services, required by this Subchapter shall, be kept at the general office of each ETC and shall be made available to the Commission or its designee upon reasonable request. The ETC shall make such records available to the Commission or its designee at reasonable times for examination and inspection at a location designated by the Commission.

(c) **Retention of certification records.** All records, including the Lifeline application form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the ETC has obtained a waiver from the requirement to utilize a third party verification system), shall be preserved for a minimum of three (3)

years.

(d) **Required information to be reviewed.** Each ETC shall obtain information as follows: At the time a prospective Lifeline subscriber signs up for initial service, each ETC shall obtain:

- (1) a legible copy of the subscriber's Lifeline application or service request form showing the customer's name, physical address and proof of eligibility;
- (2) the subscriber's information necessary to demonstrate eligibility under 47 C.F.R. § 54.410; and
- (3) the subscriber's government issued photo identification unless the ETC utilizes a third party verification system that has been approved by the Director of the Public Utility Division.
- (4) Each ETC shall provide annually to the Director of the Public Utility Division a copy of the ETC's FCC Form 555 as filed with Universal Service Administrative Company ("USAC") and the FCC.

(e) **Contact names.** Each ETC shall notify, in writing, the Director of the Public Utility Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and CSD issues.

- (1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).
- (2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers; and,
 - (E) Terms, conditions and rates of Supported Services.

(f) **Other information.** Each ETC shall promptly furnish such other information as the Commission Staff may reasonably request, unless otherwise ordered by the Commission.

(g) **Supported Services.** Each ETC shall provide confirmation that each Lifeline plan of the ETC provides the Supported Services.

(h) **Exchanges.** Each ETC shall retain a listing of all of the exchanges within which the ETC has provided Lifeline Service during the preceding twelve (12) months and the addresses of households who requested service and were denied Lifeline service for reasons other than the household did not meet eligibility requirement.

(i) **Annual report of operations.** No later than May 1 each year, unless otherwise determined by the Commission, each ETC shall provide an annual report of operations for the preceding calendar year, to the Director of the Public Utility Division, in a format approved by the Director of the Public Utility Division. In addition, each ETC shall provide a copy of any annual report required to be filed with any federal regulatory agency(ies). As a component part of the annual report of operations, each ETC shall attach a copy of its Annual Report to Stockholders. All non-publicly available information included in the annual report will be considered confidential by the OCC. On or before July 1, of each year, each ETC shall submit its FCC Form 481 to the Commission, in accordance with FCC regulations.

(j) **Complaints report.** Each ETC shall maintain a record of customer complaints that it has received regarding Supported Services provided by the ETC, consistent with 47 CFR §54.313(a)(4) and 47 CFR §54.422(b)(2).

(k) **Report attestation.** All reports required by this subchapter to be submitted to the Commission shall be attested to by an officer or authorized agent of the ETC.

(l) **Due dates of reports.** All periodic reports required by this Commission must be received on or before the due dates unless otherwise agreed to by the Director of the Public Utility Division.

(m) **Changes affecting Customers or Business Operations.** An ETC proposing changes to operations that affect either customers or business operations in the State, including but not limited to name changes; and additions, modifications or deletions of trade names under which Supported Services will be operated, shall comply with Subchapter 15 of this Chapter.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-4. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-5. Emergency service reporting requirements

In areas equipped with E911 emergency service, when the end-user's number is changed due to a change of location or service to the end-user or there is a change in service provider with or without a change to the end-user's number, the ETC shall report such changes to the appropriate E911 emergency number database within two (2) business days, or as required by agreement with the appropriate E911 agencies within the state, after completion of service orders. In the event of an error report, the ETC shall correct the error within two (2) business days, unless the agreement with the appropriate E911 agency allows otherwise.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-6. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-7. Content of bills

Bills of an ETC shall comply with the Federal Truth in Billing Rules, 47 C.F.R. § 64.2401, for each Supported Service.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-8. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-9. Billing disputes

(a) In the event of a dispute between an end-user and an ETC, the ETC shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the ETC shall inform the end-user that the end-user may utilize the complaint procedures of CSD. The information to be provided to consumers shall be:

- (1) The street address of CSD, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 580, Oklahoma City, OK 73105.

- (2) The mailing address of the Consumer Services Division, which is P.O. Box 52000, Oklahoma City, OK 73152-2000.
 - (3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.
 - (4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding State holidays.
- (c) When a complaint has been made with CSD, the ETC shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by CSD. The end-user shall be required to pay the undisputed part of the bill and, if not paid, the ETC may discontinue service.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-10. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-11. Minimum service standards and Supported Services

- (a) The purpose of this Section is to create a uniform standard governing the minimum components of the Supported Services for all end-users of an ETC. Supported Services shall be offered by each ETC pursuant to OAC 165:55-23-15 and OAC 165:55-23-17.
- (b) If required by the FCC, each ETC shall make available to each end-user subscribing to its Supported Services within its designated service area voice telephony service with the following functionalities:
- (1) voice grade access to the public switched network or its functional equivalent;
 - (2) minutes of use for local service provided at no additional charge to end-users;
 - (3) access to the emergency services provided by local government or other public safety organizations;
 - (4) toll limitation for qualifying low-income consumers.
- (c) In addition to the foregoing voice telephone functionalities applicable to all ETCs, wireless providers shall provide a level of voice service consistent with the minimum service standards detailed at 47 C.F.R. § 54.408(b)(3).
- (d) Any plan that is marketed as an unlimited plan that does not contain unlimited local voice minutes must be approved by the Director of the Public Utility Division. If the Director denies the requested unlimited plan, the ETC may seek approval of the plan by Commission Order, after notice and hearing.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 22 Ok Reg 712, eff 7-1-05; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-12. Lifeline eligibility requirements

- (a) In order to qualify for the federal Lifeline Service Program, an applicant for Lifeline service must meet the qualification requirements of 47 CFR § 54.409 and be certified as eligible consistent with 47 CFR § 54.410. Qualification for the Oklahoma Lifeline Fund program is to be in accordance with OAC 165:59-9-3(b).
- (b) The Lifeline provider shall also advise each end-user customer enrolled in either the State or Federal Lifeline Service program that in order to continue receiving Lifeline service, the end-user customer must provide the ETC with documentary proof of program eligibility annually, in accordance with the recertification

requirements at OAC 165:59-9-5, and that the subscriber has a duty to inform the ETC within thirty (30) calendar days whenever the subscriber ceases to be eligible to receive State or Federal Lifeline service support. The requirement to annually provide documentary proof of program eligibility shall not apply if a Lifeline provider utilizes USAC to conduct its annual recertification, unless such documentation is required by USAC at the time of the annual recertification.

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04; Added at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-13. Service Installation Intervals

Each ETC, shall meet the following service installation requirements for customer requests for Supported Services:

- (1) Each ETC shall provide a Supported Service to a requesting customer in accordance with such request no later than ninety (90) days from the date of the customer's bona fide reasonable request.
- (2) If the ETC determines that it cannot provide Supported Services within that time frame, it may seek a waiver of this requirement from the Commission, and upon notice and, if necessary, hearing, the Commission shall determine if such waiver shall be granted.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-14. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-15. Lifeline program

- (a) Each telecommunications service provider or wireless provider who has been designated as an ETC shall submit tariffs to the Commission or post informational terms, conditions, and rates on the Company's website and provide to the Commission; implementing a program for which qualifying low-income end-users pay reduced charges as a result of the Lifeline support amount described in (e) below.
- (b) If the ETC has toll services, the ETC shall offer toll restriction to all qualifying low-income end-users at the time such end-user subscribes to Lifeline service. If the end-user elects to receive toll restriction, that service shall become part of that end-user's Lifeline service. ETCs may not collect a deposit in order to initiate Lifeline service if the qualifying low-income end-user voluntarily elects toll restriction, where available, from the ETC. If toll restriction is unavailable, or if it is available and the qualifying low-income end-user does not elect toll restriction, the ETC may charge a deposit as detailed in OAC 165:55-9-14.
- (c) Each ETC shall publicize the availability of Lifeline service throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the service.
- (d) Qualifying end-users must meet the eligibility criteria set out in OAC 165:55-23-12.
- (e) For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall not exceed the federal support amount at 47 C.F.R. § 54.403(a)(1) and § 54.403(a)(2) plus, when qualified, the state support amount established by Commission order or by 17 O.S. § 139.105. For an eligible low-income end-user who lives on Tribal Land, the Lifeline support amount shall not exceed the federal support amount at 47 CFR § 54.403(a)(1), § 54.403(a)(2)

and 47 C.F.R. § 54.403(a)(3) plus, when qualified, the state support amount established by Commission order or by 17 O.S. § 139.105.

(f) The ETC shall instruct applicants to the Lifeline program to indicate, at the time of application, in writing, all qualifying programs under which the applicant is eligible for or receives assistance or benefits.

(g) The wireless provider must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the ETC programmed in the phone and clearly identified.

(h) Any wireless handset provided in conjunction with the Lifeline Service must clearly identify the provider of the service.

(i) An ETC may not provide Lifeline Service purely by resale without a Commission order.

(j) An approved Lifeline product may not be modified without submitting the modification to the Director of the Public Utility Division at least fifteen (15) days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the public interest. Unless the ETC receives written notification that its modification is NOT IN THE PUBLIC INTEREST within fifteen (15) days after its submission, the submission is deemed to be in the public interest and may be implemented.

(k) The ETC shall utilize a third party verification system that has been approved by the Director of the Public Utility Division to verify the customer's identity and address, or obtain a waiver from the Director of the Public Utility Division from this requirement.

(l) The ETC must retain a copy of the signed application for Lifeline Service, and any recertification information for three (3) years.

(m) The ETC shall maintain a database sufficient to identify any duplicates among all companies affiliated with the ETC.

(n) Any Lifeline plan offered by a wireless provider must comply with the minimum service standards for voice services detailed at 47 C.F.R. § 54.408.

(o) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a thirty (30) days suspension of an ETC's ability to sign up new customers.

(p) The ETC shall comply with the recordkeeping requirements with respect to records on customer identity and addresses, along with corresponding documentation confirming customer eligibility for either State or Federally supported Lifeline Service, as identified in 17 O.S. § 139.105.

(q) If there is no usage of the wireless provider's handset for thirty (30) days, the ETC shall de-enroll the customer, according to federal guidelines.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-16. Limitations on Marketing of Supported Services by ETCs

(a) All marketing efforts, including outdoor mobile marketing and door to door sales, must clearly identify the ETC by its d/b/a name.

(b) All enrollment in any Lifeline Services from any outdoor mobile location is prohibited unless the following conditions are met:

(1) There are at least two banners identifying the name of the ETC, in print that is readable from at least thirty (30) feet away;

(2) The banners are at least three (3) foot by five (5) foot in size and the identification of the ETC takes up at least fifty percent (50%) of the banner;

- (3) Employees must wear a shirt that has the ETC's d/b/a name permanently affixed to the shirt;
 - (4) The available terms, conditions and rates for the Lifeline product(s) must be prominently posted at the location where the marketing is taking place;
 - (5) The marketer must have permission from either the owner of the property where the marketing is taking place or from the individual responsible for the property;
 - (6) The marketer must have all required city and county licenses necessary for selling a service at that location; and
 - (7) The marketing must be done in a manner that it does not create a traffic hazard or distraction.
 - (8) Marketing may only be done from a tent of at least ten (10) foot x ten (10) foot in size or from an enclosed trailer or panel truck that has the name of the ETC permanently affixed on the truck or trailer in letters that are at least eighteen (18) inches in height. If the tent is clearly marked with the name of the ETC on the top of the tent, the tent markings may be considered as one of the two banners required by paragraph (b)(1) of this Section.
 - (9) The ETC must provide PUD a list of locations by email where mobile marketing is taking place, including the date, time and location, prior to the mobile marketing taking place, in a format prescribed by the Director of the Public Utility Division. The carrier must also notify PUD of any changes to times or cancellations of previously scheduled events, prior to the change or cancellation. In addition, the ETC shall maintain an active phone number the Commission can call to obtain information regarding past marketing events. The information regarding past marketing events shall be retained by the ETC for a minimum of six (6) months.
 - (10) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.
- (c) All enrollment from door to door marketing is prohibited unless the following conditions are met:
- (1) Enrollment forms used for door to door marketing must have clear disclosure that customers will lose any existing landline Lifeline service if they enroll for Lifeline service from the door to door activity;
 - (2) Employees conducting door to door sales must wear a shirt that has the ETC's d/b/a name permanently affixed to the shirt;
 - (3) The customer must be offered a copy of the terms, conditions and rates for the Lifeline product they select;
 - (4) The marketer must have appropriate licenses for door to door sales;
 - (5) The marketer must provide PUD an address range, date and time where door to door marketing will take place, prior to the marketing being initiated.
 - (6) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-17. Link-up program on Tribal Lands

(a) Each ETC providing service on Tribal Land and receiving High Cost Support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file informational tariffs that offer a Link-up assistance program. This program shall offer:

(1) For an eligible resident living on Tribal Land, a reduction consistent with 47 CFR § 54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection by customers initiating non-Lifeline service with the ETC.

(2) A deferred payment schedule consistent with 47 CFR § 54.413(a)(2). The charge assessed for initiating service may include any charges that the ETC customarily assesses to connect end-users, but may not include any security deposit requirements.

(b) A qualifying low-income end-user who resides on Tribal land may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section.

(c) An ETC that is receiving federal High-cost support on Tribal land, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for service billed at a principal place of residence with an address different from the residence address at which the Link-up assistance was provided previously.

(d) An ETC shall publicize the availability of Link-up support throughout its designated service area, in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Link-up shall be the same as the criteria established for Lifeline in accordance with 47 C.F.R. § 54.409.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 31 Ok Reg 1082, eff 9-12-14; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-18. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-19. Responsibility for adequate and safe service

(a) An ETC is responsible for providing adequate and efficient service to every served end-user for which the ETC reports and receives federal or state universal service support.

(b) An ETC that uses its own facilities to provide Supported Service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its equipment and facilities in a good state of repair.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-20. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-21. Emergencies

All ETCs shall make adequate provision for emergencies in order to prevent interruption of Supported Services throughout its designated service area.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-22. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-23. Response to customer complaint inquiries

An ETC shall respond to the Commission upon written or electronic inquiry from the Commission within the following time periods:

- (1) Inquiries regarding disconnection, suspension or termination of Supported Services - within one (1) business day of receipt of inquiry from the Commission.
- (2) Inquiries other than for disconnection, suspension or termination of Supported Services - within three (3) business days of receipt of inquiry from the Commission.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

PART 3. TRANSMISSION OBJECTIVES

165:55-23-50. Service standards; sufficient operating and maintenance force

An ETC shall maintain an operating and maintenance force sufficient to meet service objectives and minimum standards for restoration of service after interruption as follows:

- (1) Provisions will be made to receive customer trouble reports at all times, twenty-four (24) hours per day.
- (2) Provision will be made to correct interruptions of service to persons and agencies required to respond to emergencies involving human life and safety at all times, consistent with the bona fide needs of the end-user and the availability and safety of ETC personnel.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-51. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-52. Records of trouble reports

- (a) Each ETC shall make a full and prompt investigation of every trouble report made to it by its end-users, either directly or through the Commission.
- (b) The ETC shall maintain its network so as to minimize customer trouble reports for Supported Services in an economical manner, but shall not exceed eight (8) reports per one hundred (100) customers per month per service area averaged over a three-month period. An occurrence of a violation of this procedure shall be considered as each day in the month for which the three-month average of trouble reports for that month and the preceding two (2) months exceed this criteria for the service area in question.
- (c) The response of a ETC to customer trouble reports shall be eighty-five percent (85%) of all trouble reports cleared within twenty-four (24) hours.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 30 Ok Reg 1565, eff 7-11-13; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-53. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-54. Notice of service interruptions

- (a) The Commission shall be notified, through the Director of the Public Utility Division and the Commission's Public Information Officer, of all interruptions in Supported Services, which cause a customer to not have access to Supported Services within the designated service area for more than twelve (12) hours; or any

interruption which, in the judgment of the ETC, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile, and email twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

- (1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;
- (2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,
- (3) Concluding information detailing the results and completion of the restoration of service.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15; Amended at 34 Ok Reg 989, eff 9-11-17]

165:55-23-55. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-56. Restoration of service plan

Each ETC shall have a written restoration of service plan (Plan) to be followed during interruptions in Supported Services. The Plan shall be submitted to the Commission upon request.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-23-57. [RESERVED]

[Source: Reserved at 21 Ok Reg 2101, eff 7-1-04]

165:55-23-58. Customer choice

(a) Where choices are available, every customer shall have the right to choose his or her telecommunications service provider, whether wireless or wireline.

(b) An ETC shall not enter into a contract with the owner or manager of multi-tenant dwellings to exclusively provide Supported Services to the exclusion of other telecommunications service providers.

[Source: Added at 21 Ok Reg 2101, eff 7-1-04; Amended at 32 Ok Reg 828, eff 8-27-15]

SUBCHAPTER 25. HOMELAND SECURITY AND CRITICAL INFRASTRUCTURE

165:55-25-1. Purpose and scope

(a) The purpose of this Subchapter is to encourage facilities-based providers (FBPs) to take all reasonable measures necessary to protect their critical infrastructures from extended interruption of service from all extraordinary events, natural and man-made.

(b) The Corporation Commission encourages FBPs to develop, implement, and maintain Homeland Security and Critical Infrastructure Plans according to the industry standards enumerated in subsection (d) below.

(c) To the extent that a FBP seeks cost recovery for the implementation of Homeland Security and/or Critical Infrastructure protections, the FBP shall comply with all provisions of this Subchapter.

(d) Each FBP serving Oklahoma jurisdictional customers is encouraged to follow the most current Network Reliability and Interoperability Council (NRIC) Best Practices (<http://www.atis.org/bestpractices/Search.aspx>) security guidelines and standards and the National Fire Protection Association's ("NFPA") NFPA 1600 - Standard on Disaster/Emergency Management and Business Continuity Programs (<http://www.nfpa.org/assets/files/PDF/NFPA1600.pdf>), as may be amended from time to time, for use as guidelines for protecting the FBP's Critical Infrastructure from extended service interruption.

(e) Each FBP seeking cost recovery for security measures from Oklahoma jurisdictional customers shall develop, implement, and maintain a Critical Infrastructure and Security Plan in accordance with this Subchapter.

(f) If the FBP has implemented a Security Plan or process in accordance with the applicable industry guidelines but is not seeking or receiving cost recovery for security-related costs, the FBP shall submit the Certification Letter required by OAC 165:55-25-7(f) and the Plan shall be subject to review pursuant to the Authorized Participation and Confidentiality provisions of OAC 165:55-25-10 and OAC 165:55-25-11. The FBP is not otherwise required to comply with the provisions of this Subchapter.

(g) The Commission retains its jurisdictional and supervisory authority to address the reasonableness and/or prudence of any proposed security cost recovery.

(h) Nothing in this Subchapter shall relieve any FBP from any duty otherwise prescribed by the laws of the State of Oklahoma or the Commission's rules.

(i) Nothing in this Subchapter is intended to divest the FBP of its right to object to any discovery requests from intervenors seeking access to "Highly Sensitive Confidential" materials.

(j) If any provision of this Subchapter is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are declared to be severable.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 29 Ok Reg 1549, eff 7-12-12; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-25-2. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:55-25-3. Definitions

The following words and terms, when used in this Subchapter 25, shall have the following meaning, unless the context clearly indicates otherwise:

"Annual Report" means the Annual Report submitted by Commission Staff to the Commission by July 1 of each year, summarizing the results of Staff's review of each FBP's Security Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

"Authorized Participant" means those persons authorized by the FBP or as may otherwise be authorized by law and/or ordered by the Commission, to view highly sensitive confidential information. Such authorization shall be granted on a case-by-case basis and may extend to the FBP, state government officials, persons having been granted intervenor status by the Commission and Commission authorized designees of the parties.

"Certification Letter" means the written certification to the Director of the Public Utility Division made by March 1 of each year, indicating that the FBP has updated the Plan and/or previous Plan Update Reports, has a Plan but is not

seeking cost recovery or has no Plan in place.

"Critical Infrastructure" means the property of a FBP located in the State of Oklahoma, comprised of either physical assets or computer software which, if severely damaged or destroyed, would have a significant impact on the ability of the FBP to serve large numbers of customers for an extended period of time, would have a detrimental impact on the reliability or operability of the telecommunications grid, or would cause significant risk to public health and safety.

"FBP" or "Facilities-Based Provider" means all carriers regulated by the Commission, other than wireless Eligible Telecommunications Carriers, that own, operate or otherwise control facilities, network and /or other physical plant used to provide telecommunications to persons in Oklahoma.

"Highly Sensitive Confidential" means that the information is of such a sensitive nature that its public disclosure could be harmful to the security of a FBP's critical infrastructure and as such it may only be viewed by those persons authorized by the FBP or as may otherwise be ordered by the Commission.

"NFPA" means National Fire Protection Association.

"NRIC" means Network Reliability and Interoperability Council.

"Plan" means a Homeland Security and Critical Infrastructure Plan including any subsequent Plan Update Reports that have been prepared with reference to NRIC and/or NFPA guidelines.

"Plan Update Report" means the written redlined changes made by the FBP updating the Plan and/or previous Plan Update Reports. At the FBP's option, changes will either be redlined or a history of changes may be maintained.

"Security Cost Rider" means the per billing unit rate mechanism whereby a FBP may, upon approval and Order of the Commission, recover the costs of providing security for its Critical Infrastructure as defined under this Subchapter 25.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-25-4. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:55-25-5. FBP Security Plan

- (a) Each FBP is encouraged to prepare and make available for inspection, a "Homeland Security and Critical Infrastructure Plan" ("Plan") that has been prepared with reference to the NRIC safety guidelines and standards.
- (b) The Plan shall be marked as "Highly Sensitive Confidential" and designate those facilities that the FBP considers to be Critical Infrastructure (physical assets and computer software as defined in OAC 165:55-25-3 above), and shall set forth the FBP's measures to secure such facilities from extended service interruption. The Plan shall also include an estimate of the costs necessary to achieve such measures.
- (c) The Plan shall remain on site at the FBP's business office in accordance with OAC 165:55-25-7(g) below and shall have the most current version of the redlined Plan Update Report attached to the clean version of the FBP's latest Plan. At the FBP's option, changes will either be redlined or a history of changes may be maintained.
- (d) The Plan shall list all locations deemed by the FBP to be critical as well as identification of any subsequently increased security measures. All locations and security measures shall be identified by code known only to the utility and designated state government officials and their designees.

(e) Any subsequent security measures identified in the Plan shall contain an estimate of the cost necessary to implement such measures, a description of the measures necessary to adequately secure each specific location and an estimated schedule for completion of each measure.

(f) All locations identified by the Plan that require additional security measures shall be prioritized by the FBP.

(g) On July 1 of each year, the Commission Staff shall submit an Annual Report marked as "Highly Sensitive Confidential" to the Commission summarizing the results of Staff's review of each FBP's Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

(h) When the Attorney General elects to submit recommendations to the Commission regarding a FBP's Plan, such recommendations shall be marked as "Highly Sensitive Confidential" and shall also be due by July 1 of each subsequent year thereafter.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-25-6. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:55-25-7. Reporting requirements

(a) Subsequent to the preparation of the initial Plan prepared under OAC 165:55-25-5(a), each FBP shall prepare a Plan Update Report by March 1 of each succeeding year, following the same format as the initial Plan with redlines of all new changes, marked "Highly Sensitive Confidential" and kept on site at the FBP's business office.

(b) Each subsequent Plan Update Report shall update the previous year's report by indicating for each specific coded location, all costs and completion dates (actual and projected) for all current and prior additional security measures claimed under this Subchapter.

(c) For those security measures previously reported that have not yet been completed, revised estimated costs and estimated completion dates shall be provided.

(d) The Plan Update Report shall also include (by specific location) a description of each proposed security measure that has not been previously reported, the estimated costs for each, as well as the estimated completion date for each measure.

(e) Costs reflected in the initial Plan and in subsequent Plan Update Reports, whether estimated or actual, shall be identified as either capital or expense costs.

(f) By March 1 of every year each FBP shall submit a Certification Letter to the Director of the Public Utility Division, marked as "Highly Sensitive Confidential" and certifying that as of the date of the Certification Letter:

(1) The FBP does not have a Homeland Security and Critical Infrastructure Plan as contemplated and defined by this Subchapter;

(2) The FBP does not have a Homeland Security and Critical Infrastructure Plan as contemplated or defined by this Subchapter but has otherwise taken steps to secure its facilities and Critical Infrastructure and is not seeking cost recovery under this Subchapter;

(3) The FBP does have a Plan but is not seeking cost recovery; or

(4) The FBP has prepared its Plan Update Report updating the Plan and/or previous year's Plan Update Report and that the redlines contained within the current Plan Update Report encompass in the entirety, all of the changes made to the FBP's Plan since the Plan's inception or the previous year's

certification and that the Plan is available for Commission and/or Attorney General review at the FBP's local place of business.

(g) A FBP shall not be required to file its initial Plan or any of its subsequent Plan Update Reports with the Commission. Each FBP shall instead, secure and maintain on site, at the FBP's local place of business, its initial Plan and all subsequent Plan Update Reports.

[Source: Added at 22 Ok Reg 708, eff 7-1-05; Amended at 32 Ok Reg 828, eff 8-27-15]

165:55-25-8. [RESERVED]

[Source: Reserved at 22 Ok Reg 708, eff 7-1-05]

165:55-25-9. Cost recovery

(a) Each FBP seeking cost recovery of expenditures related to securing its Critical Infrastructure shall prepare and make available for inspection, its Plan and any subsequent Plan Update Reports in accordance with this Subchapter.

(b) Each FBP shall file an Application with the Commission for cost recovery as provided for within this Subchapter. Such cost recovery shall only occur to the extent the FBP has incurred all or a portion of its actual security-related costs.

(c) Unless otherwise ordered by the Commission, a FBP shall have the burden of proving compliance with all of the provisions of this Subchapter prior to obtaining cost recovery for security related measures.

(d) The total costs incurred under this Subchapter shall be combined for recovery purposes, for consideration by the Commission.

(e) All costs approved by the Commission for recovery, shall be recovered from the FBP's customers through a "Security Cost Rider" based upon the number of access lines for the FBP and shall be subject to annual true-up.

(f) Unless otherwise ordered by the Commission, A FBP shall immediately discontinue recovery of the "Security Cost Rider" when the earlier of the following occurs: natural expiration due to the full recovery provided for in a Rider granted under this Subchapter or forced expiration pursuant to OAC 165:55-25-9(g). Under no circumstances, shall the FBP be permitted to double recover Homeland Security and Critical Infrastructure related costs. Where a "Security Cost Rider" is utilized, Homeland Security and Critical Infrastructure related costs shall not be recoverable through a rate increase pursuant to 17 O.S. §137 et seq. or from the Oklahoma Universal Service Fund ("OUSF") pursuant to 17 O.S. §139.106.

(g) Unless otherwise ordered by the Commission, all "Security Cost Riders" approved by the Commission, shall expire five years from the initial date of the "Security Cost Rider's" implementation.

(h) Upon the filing of a cost recovery request by a FBP, Commission Staff, the state Attorney General's office (based upon that entity's statutory authority) and all other Authorized Participants shall review the cost recovery proposal submitted by the FBP and file testimony in accordance with:

- (1) Any applicable protective orders issued by the Commission in the security-related cost recovery cause;
- (2) OAC 165:55-25-11 (below);
- (3) The Commission's Rules of Practice (OAC 165:5); and
- (4) Any other protective measures or requirements prescribed by law or the Commission.

(i) Testimony of Commission Staff, the state Attorney General and all other Authorized Participants shall detail each of the parties' respective recommendations and any objections to the FBP's Plan and the FBP's request for cost recovery related

to the Plan. Also in accordance with the Commission's Rules of Practice, Commission Staff, the state Attorney General and all other Authorized Participants shall provide copies of their respective individual testimonies to one another, with redacted versions of each individual testimony filed with the Court Clerk at the Commission.

(j) Upon notice and hearing, the Commission shall issue an order regarding any requests for security-related cost recovery.

[Source: Added at 22 Ok Reg 708, eff 7-1-05]

165:55-25-10. Commission authorized participation

(a) **Commission Staff.** Only those Commission Staff and Staff's designees authorized by the Commission shall participate in a cause before the Commission regarding a FBP's Plan, and then shall do so only after meeting all applicable requirements for Commission authorization, which shall be determined on a case-by-case basis. All Commission Staff and Staff's designees authorized to participate in a security cause shall comply with the requirements for protecting information obtained under the "Highly Sensitive Confidential" designation.

(b) **Attorney General.** Only those Attorney General personnel who have formally entered an appearance pursuant to Oklahoma Statute and the Commission's Rules of Practice and that entity's Commission authorized designees shall be granted review of a FBP's Plan and/or Plan Update Reports. All Attorney General designees authorized to participate in a security cause shall meet all applicable requirements for Commission authorization, to be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(c) **Intervenors.**

(1) For the purposes of this Subchapter, all intervenors, including but not limited to counsel and experts for intervenors, shall be deemed "Authorized Participants" in accordance with OAC 165:55-25-3 above. All Authorized Participants wishing to participate in a security-related cause before the Commission shall meet all applicable requirements for Commission authorization, which shall be determined on a case-by-case basis, and shall comply with the protections afforded information obtained under the "Highly Sensitive Confidential" designation.

(2) In addition to acquiring "Authorized Participant" status from the Commission, each intervenor and its designees desiring to participate in a cause before the Commission regarding a FBP's Plan shall post a bond or other security acceptable to the Commission, in an amount to be determined by the Commission, to protect the utility from harm in the event the Authorized Participant breaches the confidentiality terms established under this Subchapter or as may otherwise be established by the Commission. A copy of such bond or other security shall be filed with the Commission's Court Clerk. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma Corporation Commission Commissioners and Staff.

(3) Any Authorized Participant found in violation of a Commission issued Protective Order and Proprietary Agreement, shall be liable for contempt penalties pursuant to the penalty provisions found in Article IX, § 19 of the Oklahoma Constitution, Title 17 of the Oklahoma Statutes and the Commission's Rules of Practice at OAC 165:5. This subsection shall not apply to the Attorney General of the State of Oklahoma or the Oklahoma

Corporation Commission Commissioners and Staff.

(4) In addition to the above protections, all Authorized Participants may be required by the Commission to enter into a separate non-disclosure agreement as a pre-requisite to being granted intervention and "Authorized Participant" status.

[Source: Added at 22 Ok Reg 708, eff 7-1-05]

165:55-25-11. Confidentiality

(a) Pursuant to the Commission's jurisdiction granted under Article IX, Section 18 of the Oklahoma Constitution, 51 O.S. (2001) §24A.22 of the Oklahoma Statutes and OAC 165:5, the Commission's Rules of Practice; all un-redacted documents related to a FBP's Homeland Security and Critical Infrastructure Plan shall be considered "Highly Sensitive and Confidential," and shall only be admitted into evidence in en camera proceedings.

(b) "Highly Sensitive Confidential" designation and protection shall extend but not be limited to the following: initial Plans (including underlying documents), Plan Update Reports, Certification Letters, Annual Reports made by Commission Staff, recommendations submitted by the Attorney General of the State of Oklahoma and un-redacted documents used in cost recovery proceedings. For all other documents, the "Highly Sensitive Confidential" designation may be granted upon hearing and Final Order of the Commission.

(c) Each FBP Plan and/or Plan Update Report prepared in accordance with this Subchapter, shall be marked "Highly Sensitive Confidential" and shall be kept and maintained on site at the FBP's business office in accordance with OAC 165:55-25-7(g), above. Only those individuals on the Staff of the Corporation Commission and in the State Attorney General's office and their respective experts who have been authorized by the Commission, shall have access to the Plan and Plan Update Reports prepared by each FBP and any related or supporting documentation thereto. All other parties granted authorized intervenor status to a security cause pursuant to OAC 165:55-25-10(c) may also be granted access to the Plan, Plan Update Reports and supporting documentation after notice and hearing.

[Source: Added at 22 Ok Reg 708, eff 7-1-05]

APPENDIX A. TELECOMMUNICATIONS COMPLAINT REPORT FORM [REVOKED]

[Source: Added at 15 Ok Reg 3054, eff 7-15-98; Revoked and reenacted at 21 Ok Reg 2101, eff 7-1-04; Revoked at 29 Ok Reg 1549, eff 7-12-12]

APPENDIX B. CUSTOMER COMPLAINT CODES

[Figure 1](#)

[Source: Added at 15 Ok Reg 3054, eff 7-15-98]

APPENDIX C. WIRELESS ETC CUSTOMER COMPLAINT CODES

[Figure 1](#)

[Source: Added at 21 Ok Reg 2101, eff 7-1-04]

CHAPTER 56. RESELLERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 131 et seq.]

[Source: Codified 7-1-95]

SUBCHAPTER 1. GENERAL PROVISIONS

165:56-1-1. Purpose; short title

(a) This Chapter establishes the Oklahoma Corporation Commission rules governing the regulation and operations of resellers of interexchange telecommunications services in Oklahoma which may be cited by the short title as the Telecommunications Reseller Rules.

(b) This Chapter is intended to define good business practices under normal conditions, to assure adequate service, to prevent unfair charges to the customer, and to protect resellers of intrastate telecommunications toll services from unreasonable demands.

(c) This Chapter is further intended to permit Oklahoma consumers to receive timely benefits from lawful market-driven price and service competition among resellers by applying only such regulatory requirements to those companies as are necessary to assure public access to telecommunications services, under tariff provisions which are not unjustly discriminatory and to preclude unjust and unreasonable rates and charges in such market.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX § 18 of the Constitution of the State of Oklahoma and Title 17 § 131 et seq. of the Oklahoma statutes, has authority and responsibility to supervise, regulate, and control the resale of intrastate telecommunications services in Oklahoma and to enact rules and regulations in connection therewith. No person or corporation not otherwise a reseller of telecommunications services within the meaning of this Chapter shall be deemed such solely because of the manufacture, distribution, installation or maintenance of customer premises communication equipment and accessories.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-3. Application of rules

This Chapter shall apply to every company that resells telecommunications services to the public, which company is by law subject to the jurisdiction of the Commission.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-4. Definitions

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

"Authorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Billing agent" means an entity which provides bills to an end-user for services received from a reseller.

"CIC" means carrier identification code which identifies a provider of toll services by a three or four-digit number.

"Class of service" means a description of service furnished a customer in terms of grade of service, type of rate, location, and use.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Commission" means the Oklahoma Corporation Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Complaint" means any oral or written report given to a reseller by an end-user of a reseller's service and/or the Commission's Consumer Services Division relating to dissatisfaction with the provision of or the rate(s) charged for the reseller's service(s). Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same situation giving rise to the dissatisfaction with the provision of or the rate(s) charged for the reseller's regulated services.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services provided by an entity reselling intrastate telecommunications services.

"Customer class" means class of service provided to a group of customers.

"Customer trouble report" means any oral or written report given to the reseller's repair service or contact person, and/or the Commission's Consumer Services Division by a customer relating to a defect or difficulty or dissatisfaction with the provision of the telecommunications service provided by the reseller.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Disconnection of service" means an arrangement made by the end-user or reseller for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"End-user" means the customer to whom a telephone number is assigned.

"Exchange" means a geographic area established by a telephone company and approved by the Commission for the administration of local telephone service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing communication service in that area.

"Executing carrier" means any telecommunications carrier that affects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"FCC" means the Federal Communications Commission.

"IXC" means interexchange carrier or interexchange company which is a carrier or company authorized by the Commission to provide long distance communications services, but not local exchange services, within the State of Oklahoma borders.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"LEC" means a local exchange company which is providing local exchange service.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"Non-deniable charge" means a charge for those non-regulated services for which nonpayment shall not result in a disconnection of basic local service.

"Not-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not regulated by the Commission. These would include any services offered from FCC tariffs such as interstate service offerings and any taxes, fees and surcharges applicable to those services, as well as any intrastate services not contained in tariffs approved by the Commission.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission and any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Reseller" means any person, partnership, cooperative corporation, corporation, or lawful entity that offers interexchange telecommunications services to the public through the use of the transmission facilities of other carriers or a combination of its own facilities and the transmission facilities of other carriers for resale to the public for profit. The term "reseller" as used in this Chapter shall not include LECs or IXC, which shall be regulated as provided for by 165:55.

"Rules of Practice" means OAC 165:5.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of non telecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other services which are not-regulated.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Slamming" means the unauthorized switching of an end-user's presubscribed IXC or reseller.

"Streamlined tariff revision(s)" means revision(s) proposed by a reseller which will become effective without notice and hearing or order of the Commission, in the time frame established in OAC 165:56-5-5, unless suspended.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end user. A carrier may be

treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Suspension of service" means an arrangement made at the initiative of the reseller for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"Telecommunications company" or **"Telecommunications carrier"** means a reseller.

"Telecommunications service" means service provided by a reseller including voice, data, and all other types of communications services, under the reseller's tariffs on file with the Public Utility Division of the Commission.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a reseller elects to post, in a searchable format, on a publicly available website.

"Territory" means the reseller's area of operation which may include the entire State of Oklahoma or some specified portion thereof.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Underlying carrier(s)" means the provider of facilities utilized by a reseller in the provisioning of its interexchange service to its customers.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 18 Ok Reg 2437, eff 7-1-01; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-1-5. Interpretation of rules

The words contained in this Chapter shall be given their ordinary and customary meaning, with technical terms and words being construed as generally understood within the telecommunications industry, except where otherwise expressly provided. Where, by its context, this Chapter establishes service standards or objectives, substantial compliance therewith under normal operating conditions will be deemed in compliance with this Chapter. Where, by its context, this Chapter imposes an absolute obligation upon the reseller, strict compliance is required.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to the reseller or the customer, or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter, upon application of any interested person, in accordance with the provisions of OAC 165:5. The Commission may grant temporary relief pending hearing.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97]

165:56-1-7. Exceptions or variances

If a reseller seeks an exception or variance from this Chapter in its tariff, such exception or variance shall be clearly shown on such tariff, sufficient to plainly bring to the Commission's attention the exact nature of said exception or variance. Any exception not so marked or identified in such tariff shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the exception or variance shall indicate the number of the pertinent Commission order.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-8. Supremacy

Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-9. Rules conform to law

This Chapter shall be construed to conform with the Oklahoma Constitution and with the laws of Oklahoma.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-10. Controversy over rules

Whenever a controversy exists in connection with the interpretation of this Chapter or its applicability, or any right or any duty imposed thereby, the Commission, upon application of any interested person and after notice and hearing, in accordance with the provisions of OAC 165:5, will enter such order thereon as it may deem appropriate.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97]

165:56-1-11. Severability

This Chapter shall not relieve, in any way, a reseller or customer from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable. This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-12. Conflict with Commission order

This Chapter shall not alter or amend any order of the Commission directed to a reseller, except where the provisions thereof are in direct conflict with this Chapter, in which case this Chapter shall supersede the provisions of any such order to the extent of conflict only.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-13. Tariff conformance [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked at 14 Ok Reg 2855, eff 7-15-97]

165:56-1-14. Exclusions

The term "reseller" as used in this Chapter shall not include LECs or IXC, which shall be regulated as provided for by 165:55.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-1-15. Universal service

Pursuant to OAC 165:59-3-40, every entity that operates or provides telecommunications service within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

165:56-3-1. Certificate of Convenience and Necessity

(a) Requirement for Certificate of Convenience and Necessity. No person shall resell any telecommunications service obtained from a certificated carrier to any customer in Oklahoma, without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) Application for Certificate of Convenience and Necessity. An application for a Certificate of Convenience and Necessity shall be made pursuant to the requirements of 17 O.S. § 131 *et seq.* and shall conform to the requirements thereof and with the Commission's Rules of Practice, OAC 165:5, and any additional requirements set forth in this Chapter. An original and four (4) copies of the application for a Certificate of Convenience and Necessity shall be filed with the Commission's Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) Application requirements for Certificate of Convenience and Necessity. An applicant to the Commission for a Certificate of Convenience and Necessity to provide reseller service in the State of Oklahoma shall be required to demonstrate its financial, managerial, and technical ability to provide the requested reseller service in the State of Oklahoma. An application for a Certificate of Convenience and Necessity to provide reseller services shall include as attachments to the application the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant, in a format approved by the Director of the Public Utility Division:

(1) As applicable, the complete name, including each and every trade name under which business will be conducted, corporate or other headquarters address and names/addresses of principal corporate officers or partners of the entity proposing to resell telecommunications service to the public in the State of Oklahoma. Also, include the telephone number and, if applicable, the toll-free telephone number.

(2) If different from those provided in paragraph (1) of this subsection, the name(s) and address(es) of all officers and corporate offices of the reseller located in the State of Oklahoma and the name(s) and address(es) of employee(s) responsible for Oklahoma operations.

(3) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma.

- (4) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. a d/b/a, utilized by the reseller.
- (5) A financial statement.
- (6) Contact name(s), address(es) and telephone number(s) of the individual(s) responsible for providing service to customers, for repairs and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's Consumer Services Division and Public Utility Division regarding questions and complaints against the reseller.
- (7) A description of the reseller's proposed procedures used to verify customer- ordered changes in presubscribed carriers, including, but not limited to, a proposed letter of agency that is consistent with the requirements of 47 CFR Ch. I, Section 64.1150, proposed independent third-party verification script and/or proposed telephone contact script.
- (8) A complete set of proposed tariffs which shall include terms and conditions of service and all rates, charges, and service classifications in a format approved by the Director of the Public Utility Division. The proposed tariffs shall comply with OAC 165:56-5-1 through OAC 165:56-5-3.
- (9) A copy of the applicant's proposed complaint report form which is consistent with OAC 165:56-7-5. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix H and Appendix I, respectively, to this Chapter.
- (10) A written affirmation, signed before a Notary Public by someone with authority to bind the applicant, that:
 - (A) The information contained in the application is true and correct;
 - (B) The reseller is familiar with and will comply with all applicable federal and state laws and the rules and orders of the Commission;
 - (C) The applicant possesses the financial ability to provide reseller services in the State of Oklahoma;
 - (D) The reseller will contribute to the Oklahoma Universal Service Fund annually pursuant to OAC 165:59;
 - (E) The reseller understands the Commission's contempt authority;
 - (F) A statement that the applicant is not currently under investigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation, if that is the case;
 - (G) A statement that the applicant has not been fined, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation, if that is the case;
 - (H) If either of the statements required in (F) and (G) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding; and
 - (I) A statement as to whether the applicant currently seeks state or federal universal service funding of any kind for services provided in the state(s) in which applicant is currently authorized to provide service, and whether applicant intends to seek Oklahoma Universal

Service Fund funding in Oklahoma.

(11) The reseller's carrier identification code (CIC) and a statement that the reseller will provide its CIC to each LEC providing service in the State of Oklahoma, in order for the reseller to be identified. In the event the reseller does not have an assigned CIC, proof shall be provided that efforts to obtain the code have been initiated. If the reseller uses more than one CIC, each CIC and all associated trade name(s) shall be provided.

(12) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(13) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(14) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(15) A list of all other states, if any, where:

(A) The applicant is authorized to operate;

(B) Authorization to operate is pending;

(C) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and,

(D) Authorization has been revoked, with a certified copy of the revocation document attached.

(16) A statement that the service territory is to be the State of Oklahoma or, if less than the State of Oklahoma, a description of the proposed service territory is to be provided.

(d) Requirements for expanding authority under an existing CCN. An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the Commission and provide all information and notice as required in Sections 165:56-3-1(c) and 165:56-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the Commission, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances.

(e) Amended application. During the Staff's review of the reseller's application, certain revisions and/or corrections to documents attached to the application may

be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The reseller shall file an original and four (4) copies of its amended application with the Commission's Court Clerk. Requested revisions and/or corrections may include, but shall not be limited to:

- (1) Revisions to the applicant's proposed tariffs;
- (2) Provision of documents omitted from the originally filed application; and/or,
- (3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(f) **Additional information.** The Public Utility Division Staff may issue data requests for additional relevant information as may be necessary. Data request responses shall be submitted to the Staff member requesting the information, and not filed with the Commission's Court Clerk.

(g) **Approval requirement.** Unless provided otherwise in this Chapter, or by the laws of the State of Oklahoma, no Certificate of Convenience and Necessity shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 19 Ok Reg 2000, eff 7-1-02; Amended at 21 Ok Reg 2123, eff 7-1-04; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-3-2. Notice requirements when filing for Certificate of Convenience and Necessity

Applicants seeking a CCN shall meet all notice requirements set forth in this Section.

(1) Requirements for filing an Application of a CCN. An application of a CCN shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

- (A) The Oklahoma Attorney General;
- (B) The Commission's Director of the Public Utility Division;
 - (i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Commission's Court Clerk and shall be delivered to the Director of the Public Utility Division in electronic copy form only.
 - (ii) The Director of the Public Utility Division shall update and post a report that includes reference to the Application of CCN on the Commission's website, within five (5) business days of receipt.

(2) Publication of a Notice of Application of a CCN. The Notice required by 17 O.S. § 132 shall be published as follows:

- (A) In newspapers of general circulation, sufficient to reach each territory affected, once a week for two (2) consecutive weeks with at least seven (7) days apart. Unless otherwise specified in the application, the reseller's area of CCN authority will be the State of Oklahoma.
- (B) Publication shall be at the expense of the applicant.
- (C) A "Proof of Publication" document shall be filed with the Commission's Court Clerk within fifteen (15) days of the last publication date.

(3) Requirements for a Notice of Hearing on an Objection to a CCN.

(A) When an objection is made in a cause of an Application of a CCN, the Applicant shall promptly file a Notice of Hearing at the Commission's Court Clerk requesting a date for a hearing on the merits of the application.

(B) Within ten (10) business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

- (i) The Oklahoma Attorney General;
- (ii) The Commission's Director of the Public Utility Division; and
- (iii) Any Intervenors, including the person or entity filing the objection.

[Source: Reserved at 15 Ok Reg 3075, eff 7-15-98; Added at 16 Ok Reg 2290, eff 7-1-99; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-3-3. Company contact names

Each reseller shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

- (1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).
- (2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers; and,
 - (E) Tariff issues.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

SUBCHAPTER 5. TARIFFS

165:56-5-1. Tariffs and/or Terms of Service required

(a) All resellers must file a tariff describing the services offered, the terms and conditions under which each of the services are provided and all effective rates and charges. Except as provided in this Subchapter, only those services contained in the reseller's tariff filed and approved by the Commission or Terms of Service may be provided to customers and only those rates and charges contained in the reseller's tariff on file with the Commission or Terms of Service may be charged to customers. The filed tariffs or Terms of Service are binding on the reseller and no deviation of any kind from the filed tariff or Terms of Service is permitted. Notwithstanding the foregoing and OAC 165:56-3-1(c)(8), a reseller, shall not be required to file a written tariff with the Commission.

(b) A reseller which has a written tariff on file with the Commission may withdraw the tariff if the reseller:

- (1) provides written notice to the Director of the Public Utility Division and the Oklahoma Attorney General, that it is withdrawing the tariff,
- (2) posts the Terms of Service, and

- (3) provides the Commission with the web page information where the language is posted.
- (c) The Commission maintains the same authority to review the Terms of Service, of a reseller, as permitted by OAC 165:56-5-5.
- (d) Failure to comply with this Section may result in the filing of a Motion to Cease and Desist and could result in revocation of the reseller's Certificate of Convenience and Necessity.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 19 Ok Reg 2000, eff 7-1-02; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-5-2. Information to be included in tariffs

The tariff shall include the following information:

- (1) Table of contents.
- (2) Symbols for changes in tariff.
- (3) Applicability of the tariff.
- (4) Accessibility and availability of tariff. Each reseller shall, upon request by an end-user, provide a copy of any relevant portion of this Chapter, and/or the applicable portion of the requested tariff(s) to such customer, at a reasonable charge.
- (5) Detailed billing and collection information.
- (6) Detailed credit requirements and deposit information.
- (7) Detailed information regarding disconnection by reseller of customer/past due accounts.
- (8) Detailed information regarding handling of complaints and disputed charges.
- (9) All services provided by the reseller and a detailed explanation of each.
- (10) A schedule of all rates and charges applicable to services provided in Oklahoma.
- (11) Title sheet.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 20 Ok Reg 2316, eff 7-15-03]

165:56-5-3. Requirements as to size, form, and identification of tariffs

- (a) All tariffs shall be in loose leaf form of a size eight and one-half inches by eleven inches (8-1/2"× 11") and shall be plainly printed or reproduced on only one side of paper of good quality. The tariff shall be in the format presented in Appendix B to this Chapter. The front page of the tariff shall contain the name of the reseller, including all trade names under which the reseller is providing telecommunications service in the State of Oklahoma, and the location of its principal office.
- (b) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show the Cause Number, wherein the tariff was approved by the Commission, and, where applicable, the Order Number for such approval. Each sheet shall show an effective date, an issue date, a revision number, section number or title, sheet number, name of the reseller, along with all trade names used by the reseller in the State of Oklahoma, and the name of the tariff in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98]

165:56-5-4. Symbols for changes

(a) Each reseller shall include in their tariff, notations indicating each change made with the proposed application revision. Notations (referred to as tariff symbols) to be used are:

- (1) (AT) means addition to text.
- (2) (C) means correction.
- (3) (CP) means change in practice.
- (4) (CR) means change in rate.
- (5) (CT) means change in text.
- (6) (DR) means discontinued rate.
- (7) (FC) means change in format lettering or numbering.
- (8) (MT) means moved text.
- (9) (NR) means new rate.
- (10) (RT) means removal of text.

(b) In addition to symbols for changes, each provision or rate element changed shall contain a vertical line which clearly shows the exact number of lines being changed.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 15 Ok Reg 3075, eff 7-15-98]

165:56-5-5. Revisions to tariffs

(a) Resold interexchange services are determined to be competitive.

(b) New or revised tariffs describing resold interexchange services shall have an effective date on or after the day following the day the submission is delivered to the Director of the Public Utility Division, subject to the following conditions:

- (1) The submission delivered to the Public Utility Division shall include a cover letter, a mark-up copy of the new or revised tariff pages in legislative format, and a final copy of the new or revised tariff pages.
- (2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages.
- (3) A new or revised tariff submitted to the Commission shall comply with the notice requirements of OAC 165:56-5-12. A copy of the notice shall accompany the submission and shall include the date sent to customers.
- (4) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(c) Revisions to the Terms of Service on a reseller's website will become effective on the day following the day the revision is posted on the website, or as otherwise indicated on the website.

(d) After an investigation, the Public Utility Division may file an application with the Commission seeking to revoke or modify any tariff or Terms of Service. After notice and hearing, the Commission may issue an order revoking or modifying any tariff or Terms of Service for good cause.

(e) The burden of proof to show that a proposed or revised tariff or Terms of Service is just and reasonable shall be upon the company proposing the new or revised tariff or Terms of Service.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 20 Ok Reg 2316, eff 7-15-03; Amended at 21 Ok Reg 2123, eff 7-1-04; Amended at 26 Ok Reg 1137, eff 7-1-09; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-5-5.1. Confidential information related to tariffs

(a) With the exception of information and data related to the dollar and percentage impacts of the proposed change(s) on end-user rates and the rationale for the proposed tariffs, any additional financial or cost data, or data which is identifiable to a specific customer, that is requested by the Public Utility Division Staff shall be deemed confidential records or trade secrets of the reseller under the Oklahoma Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless successfully challenged.

(b) All confidential information and data submitted to the Public Utility Division Staff under subsection (a) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:56-5-5.1".

(c) For each tariff filing submitted by a reseller in accordance with OAC 165:56-5-5, the same confidential information and data provided to the Public Utility Division Staff shall also be provided to the Office of the Attorney General upon the signing of a Proprietary Agreement by the Attorney General or its representative.

(d) All confidential information and data provided to the Office of the Attorney General of the State of Oklahoma under subsection (c) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:56-5-5.1."

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

165:56-5-5.2. Competitive services [REVOKED]

[Source: Added at 16 Ok Reg 2290, eff 7-1-99; Amended at 19 Ok Reg 2000, eff 7-1-02; Revoked at 21 Ok Reg 2123, eff 7-1-04]

165:56-5-5.3. Name changes and/or trade name additions

Tariff revisions to reflect a change to the name and/or change, deletion or addition of a trade name under which the reseller will be doing business in the State of Oklahoma shall become effective, without Commission order, the date of filing such tariffs, provided the filing contains the attestation required by paragraph (5) of this Section. The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:

- (1) An amended Certificate of Incorporation effecting a change of name pursuant to 18 O.S. § 1076, 1077 or 1031;
- (2) A Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140;
- (3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.1;
- (4) A Transfer of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.2; and,
- (5) An attestation that the tariffs are identical to the existing tariffs of the reseller except for the name change or change, addition or deletion of a trade name.

[Source: Added at 16 Ok Reg 2290, eff 7-1-99]

165:56-5-6. Suspension

(a) Any tariff filed with the Commission pursuant to OAC 165:56-5-5 may be suspended by Commission order, with or without notice or hearing, upon recommendation by the Commission Staff. The Commission may also order suspension of proposed revisions on motion by an aggrieved party, after notice and hearing.

(b) To lift the suspension of any filing made by a reseller pursuant to this Chapter, whether the application has been subsequently amended after the suspension or not:

(1) The applicant shall file a motion pursuant to OAC 165:5-9-2(b), which requests that the suspension be lifted, giving notice to the Attorney General of the State of Oklahoma and to all parties of record; or,

(2) The application may be set for hearing on the merits at a time to be agreed upon by the Public Utility Division and the applicant.

(c) If the application is scheduled for hearing pursuant to paragraph (b)(2) of this Section and the time for filing an objection to the amended filing has not elapsed, the Notice of Hearing shall be sent to the Attorney General of the State of Oklahoma and to any party(ies) of record.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 15 Ok Reg 3075, eff 7-15-98]

165:56-5-7. Objections

Any entity wishing to object to the proposed tariff change, new service offering or revision filed pursuant to this Chapter may file objections with the Commission's Court Clerk's office within fifteen (15) days after the proposed tariff is filed. Any such objection shall comply with the requirements of the Commission's Rules of Practice and this Chapter, and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting entity shall promptly serve its objection on the reseller which filed the proposed tariff changes or new service offering, the Director of the Public Utility Division and the State Attorney General.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-5-8. Conflict with filed tariffs

All tariffs heretofore filed by a reseller and approved by the Commission are not revoked, altered or amended by this Chapter, except to the extent they are in direct conflict with any provision of this Chapter, in which event such tariffs are superseded by this Chapter to the extent of conflict only.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-5-9. Promotional offerings

(a) Resellers may offer Promotional rates and/or terms and conditions of services for any purpose. Promotional offerings are not intended to replace any obligation of a reseller to submit tariffs or to post the Terms of Service.

(b) Resellers must maintain a log of all current promotional offerings and shall provide the log to the Commission upon request.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 19 Ok Reg 2000, eff 7-1-02; Amended at 26 Ok Reg 1137, eff 7-1-09; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-5-12. Type of notices

End-user notice of rate increase. Prior to or concurrent with the effective date of any increased rate to a residential customer, for a service determined to be competitive, each reseller, shall provide notice to the affected end-users of the rate increase. The notice shall be provided by any of the following:

(1) Prominent display on the end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or,

(4) Any other method approved by the Director of the Public Utility Division.

[Source: Added at 16 Ok Reg 2290, eff 7-1-99; Amended at 17 Ok Reg 20, eff 9-27-99 (emergency); Amended at 17 Ok Reg 2333, eff 7-1-00; Amended at 35 Ok Reg 1050, eff 9-14-18]

165:56-5-13. Flow through of net reductions in access charges

(a) All net reductions to billings to resellers directly resulting from flow through of access charge rate reductions received by IXCs, which are ordered by State statute and/or the Commission, shall be flowed through to customers by resellers in a manner approved by the Commission.

(b) The application/notice to flow through net reductions in billings from IXCs to resellers, directly resulting from flow through of access charge rate reductions by IXCs pursuant to OAC 165:55-5-12.1, shall be filed thirty (30) days after the effective date of the IXC's tariff. Such reduction shall be effective the same date as the IXCs tariffs reflecting the reduction was effective. Upon request, the Director of the Public Utility Division may extend the filing period an additional thirty (30) days.

[Source: Added at 16 Ok Reg 2290, eff 7-1-99]

SUBCHAPTER 7. RECORD REQUIREMENTS

165:56-7-1. Who shall file

The record keeping, reporting, and filing requirements listed in this Chapter shall apply to all resellers operating in the State of Oklahoma.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-7-2. Location of records

All records required by this Chapter shall be kept at a location which has been identified to the Commission's Director of the Public Utility Division. The records required by this Chapter shall be made available to the Commission or its authorized representative at any reasonable time upon request.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-7-3. Retention of records

All records required by this Chapter shall be preserved for two (2) years.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

165:56-7-4. Records to be provided to the Commission

(a) **Annual report.** Not later than April 1 of the year following the reporting year, each reseller shall provide to the Director of the Public Utility Division an annual report, in the format developed by the Director of the Public Utility Division and approved by the Commission after notice and hearing. The Oklahoma annual report will contain only Oklahoma operations.

(b) **Other information.** Each reseller shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

(c) **Contact names.** Each reseller shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues. If the below information is

unavailable, the reseller may seek a waiver from the PUD Director by making a request in writing.

- (1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).
- (2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers;
 - (E) Tariff issues;
 - (F) Billing inquiries;
 - (G) Regulatory matters;
 - (H) Oklahoma Universal Service Fund (and Monthly Payout, Fee Assessment, Requests for Funding, if different);
 - (I) PUD Fee Assessment (and Fee Assessment Payments, if different);
 - (J) Primary emergency;
 - (K) Afterhours emergency;
 - (L) Annual reporting;
 - (M) Attorney for regulatory matters; and
 - (N) Community Liaison.

(d) **Other information.** Each reseller shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 36 Ok Reg 711, eff 7-25-19]

165:56-7-5. Record of customer complaints

- (a) Each reseller shall maintain a record of customer complaints that compiles complaints that have been received by the company and includes, at a minimum:
- (1) The customer name;
 - (2) The account number;
 - (3) The applicable complaint code;
 - (4) The date the complaint was filed; and,
 - (5) The resolution of the complaint, to include the amount of refund, if any, given.
- (b) If the account number only is utilized, a cross reference with the end-user's name must also be readily available.
- (c) The categories of complaints to be used shall be negotiated between the individual reseller and the Director of the Consumer Services Division, subject to the approval of the Commission. A list of the suggested customer complaint codes is attached as Appendix H to this Chapter.
- (d) Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the reseller's regulated services.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98]

165:56-7-6. Report attestation

All reports required by this Chapter to be submitted to the Commission shall be attested to by an officer or manager of the reseller under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the reseller's operation.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95]

SUBCHAPTER 9. SUSPENSION AND DISCONNECTION

165:56-9-1. Billing disputes [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Revoked at 15 Ok Reg 3075, eff 7-15-98]

165:56-9-2. Deposits and interest [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked at 15 Ok Reg 3075, eff 7-15-98]

165:56-9-3. Denial or termination of service after notice [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 14 Ok Reg 2855, eff 7-15-97; Revoked at 15 Ok Reg 3075, eff 7-15-98]

165:56-9-4. Notice of Disconnection and Notice of Suspension

(a) When service to an end-user is to be disconnected for nonpayment of a bill for telephone service after service has been suspended or failure to make a security deposit after a reasonable time, the Reseller shall give at least ten (10) days notice of the Reseller's intent to discontinue service. Said notice shall be given by the Reseller as follows:

- (1) mailed or delivered to the end-user's billing address;
- (2) electronically via the internet to the email address provided by the end-user; or
- (3) telephonically to the end-user's assigned telephone number or other number provided by the end-user;

(b) If the mailed notice is returned from that address as undeliverable, the notice may be delivered to the premises at which the service was rendered. Mailed notice will be deemed given to the end-user three (3) business days after mailing by the Reseller.

(c) If electronic notice is returned from the email address as undeliverable, the Reseller shall give notice to the end-user using an alternative method as listed above. If the electronic notice is not returned, notice shall be deemed given to the end-user on the date the email was sent.

(d) If telephonic notice is not confirmed to have reached the end-user's telephone number, the Reseller shall give notice to the end-user using an alternative method as listed above. If confirmation of telephonic notice is obtained by the Reseller, notice shall be deemed given to the end-user on the date the telephonic notice as confirmed as given.

(e) Unless a dangerous condition exists or the end-user requests disconnection, a Reseller may suspend or disconnect service only on the date specified in the notice or within thirty (30) days thereafter, during regular business hours, so long as the suspension or disconnection does not occur within the last two (2) hours of the business day, nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Amended at 18 Ok Reg 2437, eff 7-1-01; Amended at 26 Ok Reg 1137, eff 7-1-09]

165:56-9-4.1. Suspension or disconnection for reasons other than nonpayment

- (a) Unless otherwise provided in this Chapter, service to an end-user may be suspended or disconnected only upon order of the Commission after notice and hearing. Prior to the merit hearing, the Commission may order suspension or disconnection of service for good cause with or without notice to the end-user.
- (b) End-users that communicate with the Reseller's employee(s) in any manner that is reasonably expected to frighten, abuse, torment, or harass such employee(s) or engage in actions reasonably construed as threat(s) against the Reseller's physical assets are subject to immediate disconnection, without notice. A Reseller that disconnects an end-user's service under this section will:
- (1) provide written or verbal notice to the Consumer Services Division of the disconnect action prior to the actual disconnect;
 - (2) within three (3) business days of the actual disconnect, provide a written description of the circumstances leading to the disconnect action; and
 - (3) give the customer written notice, which will include an address and telephone number, for the Consumer Services Division.
- (c) The Consumer Services Division may, after an informal inquiry and review of the written description of the circumstances leading to the disconnect action, direct the Reseller to restore services to the affected end-user and / or file an application with the Commission requesting a finding of contempt and the imposition of a fine or other penalty against a Reseller that unreasonably suspends or disconnects an end-user pursuant to subsection (b) of this section.

[Source: Added at 26 Ok Reg 1137, eff 7-1-09]

165:56-9-4.2. Notice of Disconnection or Notice of Suspension requirements

- (a) A notice of disconnection or notice of suspension shall contain the following information:
- (1) The words "NOTICE OF DISCONNECTION" or "NOTICE OF SUSPENSION" or words with the same meaning, in print type larger than the print type of the notice text.
 - (2) Name, address, and telephone number of customer.
 - (3) Statement of reason for the proposed disconnection or suspension of service.
 - (4) The date on or after which service will be disconnected or suspended unless appropriate action is taken.
 - (5) The telephone number of the Reseller where the customer may make an inquiry.
 - (6) Charges and procedures for reconnection or approved charges and procedures to avoid suspension.
 - (7) The address and telephone number of the Commission's Consumer Services Division in print size which is smaller than the print size used for the Reseller's telephone number.
 - (8) A statement that the end-user must contact the Reseller regarding the disconnection or suspension, prior to contacting the Commission's Consumer Services Division.
 - (9) Notice of suspension of service relating to past-due amounts shall inform the end-user that the total amount due may include charges for non-deniable and/or not regulated services which would not cause interruption

of local service. The notice must indicate a toll-free telephone number of a service center where questions can be referred and payment arrangements made.

(b) The Reseller shall not be required to give the written notice provided for in this Section in situations where the Reseller has evidence of fraudulent or illegal use of the Reseller's services, which if allowed to continue, would present a high risk of financial loss to the Reseller.

(c) The following additional information shall be in the notice unless said information can be obtained in the telephone directory and the notice refers the end-user to the location in the directory where the information can be obtained:

(1) A statement of how an end-user may avoid the disconnection of service or suspension of service, including a statement that the end-user must notify the reseller on the day of payment as to the place and method of such payment when the bill is paid at a place other than the office of the reseller.

(2) A statement that informs the end-user where payments may be made or how to obtain a listing of authorized payment agencies.

(d) Notice of disconnection and/or notice of suspension shall be received via the United States mail, unless the end-user agrees with the Reseller to receive a bill through different means.

[Source: Added at 26 Ok Reg 1137, eff 7-1-09]

165:56-9-5. Notification when reseller withdraws from business [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked at 15 Ok Reg 3075, eff 7-15-98]

165:56-9-6. Notification of merger or acquisition [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked at 15 Ok Reg 3075, eff 7-15-98]

SUBCHAPTER 10. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:56-10-1. Billing period

Bills to end-users shall be issued monthly, unless the reseller's approved terms and conditions of service prescribe a different interval. Bills may be issued on a billing cycle. All end-users shall receive their bills via the United States mail, unless the end-user agrees with the reseller to receive a bill through different means, such as electronically via the Internet. Whatever the method of delivery, bills shall comply with 165:56-10-2.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 18 Ok Reg 2437, eff 7-1-01]

165:56-10-1.1. Request for payments other than normal billings

The reseller shall issue a bill for any additional charges other than those charges normally billed on the regular billing cycle. The reseller shall not issue a notice of disconnection prior to five days after the mailing of a bill for additional charges. Additional billings could include but are not limited to:

- (1) New or additional deposits.
- (2) High toll charges.
- (3) Other advance payments.

[Source: Added at 16 Ok Reg 2290, eff 7-1-99]

165:56-10-2. Content of bills

(a) **Bill organization.** Telephone bills shall be clearly organized, and must comply with the following requirements:

- (1) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.
- (2) Where charges for two or more service providers appear on the same telephone bill, the charges must be separated by service provider.
- (3) The telephone bill must clearly and conspicuously identify any change in the service provider, including identification of charges from any new service provider.
- (4) The telephone bill shall clearly and conspicuously label all fees, surcharges, taxes, and usage rates, associated with the customer's use of the provider's service, including but not limited to, calling plans, universal service fees, access fees, and other separated charges.

(b) **Descriptions of billed charges.** Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that end-users can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) **Quantification of billed charges.** All bills shall also contain the following:

- (1) Balance in each billed account at the beginning of the current billing cycle, using a term such as "previous balance";
- (2) Amount of the charges debited to each billed account during the current billing cycle, using a term such as "current service";
- (3) Amount of payments made to each billed account from the previous billing cycle, using a term such as "payments";
- (4) Amount of the charges debited to each billed account during the current billing cycle for untimely payment of past charges, using a term such as "late charge";
- (5) A listing of the closing dates of the current billing cycle and the outstanding balance in each billed account on that date, specifying the "current amount due" and the "past due";
- (6) A listing of the statement, or payment, due date.

(d) **Deniable and non-deniable charges.** Where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which nonpayment will result in disconnection of basic local service, and charges for which nonpayment will not result in such disconnection. The carrier must explain this distinction to the end-user and must clearly and conspicuously identify on the bill those charges for which nonpayment will not result in disconnection of basic local service. Carriers may also elect to devise other methods of informing end-users on the bill that they may contest charges prior to payment.

(e) **Disclosure of inquiry contacts.**

- (1) Billing agents shall prominently display, a toll-free number or numbers by which end-users may inquire or dispute any charges on each bill. Where the end-user does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the carrier may comply with this requirement by providing an e-mail or web site address on each

bill. Each carrier must make a business address available upon request from an end-user.

(2) A reseller may list a toll-free number for itself, a clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the end-user's account and is fully authorized to resolve the end-user's complaints on the service provider's behalf.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 18 Ok Reg 2437, eff 7-1-01]

165:56-10-3. Bills rendered by a billing agent

(a) A reseller shall not act as a billing agent for an OSP, IXC, telecommunications service provider or another reseller, unless the reseller fully discloses on the bill the toll-free number of the certificated entity for whom the bill is being rendered or, if the billing agent has been given authority to make adjustments to the customer's bill, its toll-free number.

(b) A reseller shall not utilize the services of a billing agent unless the reseller requires that the billing agent follow the procedures set forth in OAC 165:56-10-1 through OAC 165:56-10-7 and OAC 165:56-10-11.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

165:56-10-4. Due date and penalty

Unless otherwise authorized by the Commission, bills shall be payable immediately upon receipt and past due twelve (12) days after the date of the reseller mailing, or after any deferred payment date previously established either by oral or written agreement between an end-user and the reseller. The date after which the bill is past due shall be stated on the bill. If the bill is not paid when past due, the reseller may apply late payment charges on any unpaid balance for regulated telecommunications services as provided in its filed, approved tariffs. Payment shall not be considered late if it is received by the due date at an authorized office.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 18 Ok Reg 2437, eff 7-1-01]

165:56-10-5. [RESERVED]

[Source: Reserved at 15 Ok Reg 3075, eff 7-15-98]

165:56-10-6. Billing disputes

(a) In the event of a dispute between a customer and a reseller regarding charges billed by the reseller, the reseller shall investigate the particular case and report the results thereof to the customer. During the period that the disputed amount is under investigation, the reseller shall not pursue any collection procedures or assess late fees with regard to the disputed amount. The customer shall be required to pay the undisputed part of the bill, and if not paid, the reseller may discontinue service.

(b) In the event the dispute is not resolved, the reseller shall inform the customer that the customer may utilize the complaint procedures of the Commission's Consumer Services Division. The information to be provided to consumers shall be:

(1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 460, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is P. O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 19 Ok Reg 2000, eff 7-1-02]

165:56-10-7. Refunds for service interruptions

Whenever service to any customer is inoperative, other than by reason of negligence, or willful act of the customer, or causes beyond the control of the reseller, and the service remains inoperative for more than twenty-four (24) consecutive hours after being reported by the customer or having been found to be interrupted by the reseller, the reseller shall refund, upon request of the customer, the prorated part of that month's monthly charge(s) for the period of days during which the telephone service was not provided. Credit shall be identified on the bill. The maximum credit during a single billing period shall not exceed the amount of toll charges and monthly recurring charges. The refund may be accomplished by a credit on the next bill. The reseller shall have no other liability for service interruptions.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

PART 3. DEPOSITS AND INTEREST

165:56-10-11. Deposits and interest

(a) Each reseller shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each reseller's tariffs.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except for (b), (c), (d), and (k).

(b) No reseller shall require a deposit of a residential customer who has received the same or similar type of classification of service for twelve (12) consecutive months and to whom service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) months service period shall have been within eighteen (18) months prior to the application for new service. The reseller plan may establish other relevant criteria which will qualify the customer for nonpayment of a deposit.

(c) The amount of the deposit shall not exceed an amount equal to two (2) months toll charges determined by actual or anticipated usage. The reseller plan may allow customers to pay deposits in installments.

(1) Upon written request by the customer, after a period of four (4) consecutive months during which time the average amount of toll charges is shown to have decreased by fifty percent (50%) or more, the reseller shall re-evaluate the amount of the deposit in order to determine if the original deposit amount continues to be consistent with the guidelines set forth in this Section.

(2) The amount of the deposit shall be reduced to an amount which is consistent with the deposit guidelines set forth in this Section.

(3) Any excess amount of the deposit resulting from the reduction required in paragraph (2) of this subsection shall be refunded to the customer.

(d) A present customer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the customer has had service disconnected during the last twelve (12) months pursuant to 165:56-12-2 or has presented a check subsequently dishonored.

(e) Interest on cash deposits shall be paid by each reseller at no less than the rate calculated as follows:

(1) For all consumer deposits returned more than thirty (30) days after receipt of the deposit, the interest rate shall be established the first day of January on each year to equal the average of the weekly percent annual yields on one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in (e)(1) results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(3) The Director of the Public Utility Division shall calculate the interest rate(s) pursuant to (e)(1) of this Section, and shall provide notice to the resellers via mail, e-mail or posting on the Commission's website by December 15th of each year, pursuant to subsection (e); otherwise the current interest rate(s) will remain in effect.

(f) If refund of a deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the reseller retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(g) The reseller shall provide payment of accrued interest for all customers annually by negotiable instrument or by credit against current billing.

(h) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(i) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of services. The balance, if any, shall be returned to the customer within thirty (30) days after settlement of the customer's account, either in person or by mailing it to the customer's last known address.

(j) If service is not connected, or after disconnection of service, the reseller shall promptly and automatically refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one (1) premise to another within the reseller's service area shall not be deemed a disconnection within the meaning of this Chapter, and no additional deposit may be required unless otherwise permitted by this Subchapter.

(k) The reseller shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. If the customer does not meet these refund criteria, the deposit and interest may be retained in accordance with subsection (d) of this Section.

- (l) The reseller may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.
- (m) The reseller shall keep records to show:
- (1) The name, account number, and address of each depositor.
 - (2) The amount and date of the deposit.
 - (3) Each transaction concerning the deposit.
- (n) The reseller shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.
- (o) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.
- (p) Upon the sale or transfer of any reseller or operating units thereof, the seller shall file, with the application of transfer, a verified list of the information in subsection (m) of this Section, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.
- (q) The deposit made by the customer with the reseller at the time of application for service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 35 Ok Reg 1050, eff 9-14-18]

SUBCHAPTER 11. UNLAWFUL PRACTICES

PART 1. SLAMMING

165:56-11-1. Slamming

Slamming is prohibited.

[Source: Added at 14 Ok Reg 2855, eff 7-15-97; Amended at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.1. Verification of orders for telecommunications service

(a) No telecommunications carrier shall submit or execute a change on the behalf of an end-user in the end-user's selection of a provider of telecommunications service except in accordance with the procedures prescribed in Part 1 of this Subchapter.

(1) **Requirement for submission of changes of provider.** No submitting carrier shall submit a change on the behalf of an end-user in the end-user's selection of a provider of telecommunications service prior to obtaining:

(A) Authorization from the end-user, and

(B) Verification of that authorization in accordance with the procedures prescribed in this Section. The submitting carrier shall maintain and preserve records of verification of end-user authorization for a minimum period of two years after obtaining such verification.

(2) **Executing carriers shall not verify changes of provider.** An executing carrier shall not verify the submission of a change in an end-user's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures described in Part 1 of this Chapter shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting

carrier.

(3) Exclusion of commercial mobile radio services providers.

Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Section as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Requirement for separate verification for each type of service. Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the end-user for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in Part 1 of this Subchapter.

(c) Requirement for confirmation of change order. No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:

(1) **Written authorization.** The telecommunications carrier has obtained the end-user's written authorization in a form that meets the requirements of 165:56-11-1.2; or

(2) **Electronic authorization.** The telecommunications carrier has obtained the end-user's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information in (c)1 of this Section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the originating automatic number identification; or

(3) **Third-party authorization.** An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (*e.g.* the end-user's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier change.

(d) Submission of carrier changes to executing carriers.

(1) Preferred carrier change orders submitted by resellers to an executing carrier other than through an electronic change order processing system must contain the customer name, telephone number to be changed, and a contact name and number for the submitting carrier. Failure of the submitting carrier to include the above information will relieve the executing carrier from complying with OAC 165:56-11-1.4(a).

(2) Preferred carrier change orders submitted by resellers to executing carriers through an electronic change order processing system must be

submitted in the industry recognized standards established by the Alliance for Telecommunications Industry Solution (ATIS) Ordering and Billing Forum (OBF).

[Source: Added at 18 Ok Reg 2437, eff 7-1-01; Amended at 19 Ok Reg 2000, eff 7-1-02]

165:56-11-1.2. Letter of agency form and content

- (a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of an end-user's request to change his or her preferred carrier selection. A letter of agency that does not conform with this Section is invalid for purposes of Part 1 of this Subchapter.
- (b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in (e) of this Section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the end-user to the telephone line(s) requesting the preferred carrier change.
- (c) The letter of agency shall not be combined on the same document with inducements of any kind.
- (d) Notwithstanding (b) and (c) of this Section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in (e) of this Section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the end-user is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.
- (e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:
 - (1) The end-user's billing name and address and each telephone number to be covered by the preferred carrier change order;
 - (2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;
 - (3) That the end-user designates [insert the name of the submitting carrier] to act as the end-user's agent for the preferred carrier change;
 - (4) That the end-user understands that only one telecommunications carrier may be designated as the end-user's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent the jurisdiction allows the selection of additional preferred carriers (e.g., intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and
 - (5) That the end-user understands that any preferred carrier selection the end-user chooses may involve a charge to the end-user for changing the end-user's preferred carrier.
- (f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the end-user.
- (g) Letters of agency shall not suggest or require that an end-user take some action in order to retain the end-user's current telecommunications carrier.
- (h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of

agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.3. Carrier liability for slamming

(a) **Carrier liability for charges.** Any submitting telecommunications carrier that fails to comply with the procedures prescribed in Part 1 of this Subchapter shall be liable to the end-user's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such end-user after such violation, as well as for additional amounts as prescribed in 165:56-11-1.6. The remedies provided in Part 1 of this Subchapter are in addition to any other remedies available by law.

(b) **End-user liability for charges.** Any end-user whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set in Part 1 of this Subchapter is liable for charges as follows:

- (1) If the end-user has not already paid charges to the unauthorized carrier, the end-user is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by an end-user that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the end-user of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the end-user for service provided after this 30-day period shall be paid by the end-user to the authorized carrier at the rates the end-user was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of 165:56-11-1.5(e).
- (2) If the end-user has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in 165:56-11-1.2(a), the authorized carrier shall refund or credit to the end-user any amounts determined in accordance with the provisions of 165:56-11-1.5(c).
- (3) If the end-user has been absolved of liability as prescribed by this Section, the unauthorized carrier shall also be liable to the end-user for any charge required to return the end-user to his or her properly authorized carrier, if applicable.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.4. Procedures for resolution of unauthorized changes in preferred carrier

(a) **Notification of alleged unauthorized carrier change.** Executing carriers who are informed of an unauthorized carrier change by an end-user must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) **Referral of complaint.** Any carrier, executing, authorized, or allegedly unauthorized, that is informed by an end-user or an executing carrier of an unauthorized carrier change shall direct that end-user to the Commission for resolution of the complaint.

(c) **Notification of receipt of complaint.** Upon receipt of an unauthorized carrier change complaint, the Commission will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30

days after the slam from the end-user's bill pending a determination of whether an unauthorized change, as defined by 165:56-1-4, has occurred, if it has not already done so.

(d) **Proof of verification.** Not more than 30 days after notification of the complaint, or such lesser time as is required by the Commission, the alleged unauthorized carrier shall provide to the Commission a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in 165:56-11-1.4 and 165:56-11-1.5. The Commission will determine whether an unauthorized change, as defined by 165:56-1-4, has occurred using such proof and any evidence supplied by the end-user. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.5. Absolution procedures where the end-user has not paid charges

(a) **Applicability.** This Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:56-1-4, has occurred and the end-user has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) **Removal of charges for the first 30 days.** An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by 165:56-1-4, from an end-user's bill upon notification that such unauthorized change is alleged to have occurred.

(c) **Challenging an end-user's allegation of unauthorized charges.** An allegedly unauthorized carrier may challenge an end-user's allegation that an unauthorized change, as defined by 165:56-1-4, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining end-user that:

(1) The complaining end-user must file a complaint with the Commission within 30 days of either:

(A) The date of removal of charges from the complaining end-user's bill in accordance with (b) of this Section or

(B) The date the allegedly unauthorized carrier notifies the complaining end-user of the requirements of this Section, whichever is later; and

(2) A failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to (b) of this Section being reinstated on the end-user's bill and, consequently, the complaining end-users will only be entitled to remedies for the alleged unauthorized change other than those provided for in 165:56-11-1.3(b)(1). No allegedly unauthorized carrier shall reinstate charges to an end-user's bill pursuant to the provisions of this Section without first providing such end-user with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this Section.

(d) **Procedure if thirty (30) days or fewer of unauthorized charges were incurred.** If the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:56-1-4, has occurred, the Consumer Services Division of the Commission shall issue a factual determination stating that the end-user is entitled to absolution from the charges incurred during the first 30

days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the end-user for those charges.

(e) Procedure if more than thirty (30) days of unauthorized charges were incurred. If the end-user has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the end-user for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the end-user for the same services had an unauthorized change, as described in 165:56-1-4, not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the end-user for 50% of the rate the unauthorized carrier would have charged the end-user for the services provided. However, the end-user shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (e)(1) of this Section.

(f) End-user payments for services provided after the first thirty (30) days. If the unauthorized carrier received payment from the end-user for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in 165:56-11-1.5 shall apply to those payments.

(g) Re-billing. If the Commission determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the end-user for charges incurred.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.6. Reimbursement procedures where the end-user has paid charges

(a) Applicability. The procedures in this Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:56-1-4, has occurred and the end-user has paid charges to an allegedly unauthorized carrier.

(b) Order requirements.

(1) If the Consumer Services Division of the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:56-1-4, has occurred, it shall issue a factual determination requiring the unauthorized carrier to forward to the authorized carrier the following:

(A) An amount equal to 150% of all charges paid by the end-user to the unauthorized carrier; and

(B) Copies of any telephone bills issued from the unauthorized carrier to the end-user.

(2) This factual determination shall be sent to the end-user, the unauthorized carrier, and the authorized carrier.

(c) End-user refund or credit by authorized carrier if payment is received. Within ten days of receipt of the amount provided for in this Section, the authorized carrier shall provide a refund or credit to the end-user in the amount of 50% of all charges paid by the end-user to the unauthorized carrier. The end-user has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the end-user, seek an additional refund from the unauthorized carrier, to the extent that the re-rated

amount exceeds the 50% of all charges paid by the end-user to the unauthorized carrier. The authorized carrier shall also send notice to the Commission that it has given a refund or credit to the end-user.

(d) **Billing and collection charges.** If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) **End-user refund or credit by authorized carrier if payment is not received.** If the authorized carrier has not received payment from the unauthorized carrier as required by (c) of this Section, the authorized carrier is not required to provide any refund or credit to the end-user. The authorized carrier must, within 45 days of receiving a factual determination as described in (b) of this Section, inform the end-user and the Commission if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the end-user of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) **Reinstatement into programs.** Where possible, the properly authorized carrier must reinstate the end-user in any premium program in which that end-user was enrolled prior to the unauthorized change, if the end-user's participation in that program was terminated because of the unauthorized change. If the end-user has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the end-user any premiums to which the end-user would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this Section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the end-user.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-11-1.7. Preferred carrier freezes

(a) A preferred carrier freeze (or freezes) prevents a change in an end-user's preferred carrier selection unless the end-user gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this Section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all end-users, regardless of the end-user's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) **Solicitation and imposition of preferred carrier freezes.**

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in 165:55-19-1.4 and 165:55-19-1.5 for changing an end-user's preferred carrier selections; and an explanation that the end-user will be unable to make a change in carrier selection unless he or she lifts the freeze;

and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the end-user's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the end-user's written and signed authorization in a form that meets the requirements of (d)(3) of this Section; or

(B) The local exchange carrier has obtained the end-user's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier freeze.

(3) **Written authorization to impose a preferred carrier freeze.** A local exchange carrier may accept an end-user's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this Section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with 165:55-19-1.5(b), (c), and (h) concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The end-user's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent

that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the end-user understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the end-user understands that any preferred carrier freeze may involve a charge to the end-user.

(e) **Procedures for lifting preferred carrier freezes.** All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer end-users the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept an end-user's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept an end-user's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the end-user in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the end-user's intent to lift the particular freeze.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

PART 3. CRAMMING

165:56-11-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 3075, eff 7-15-98]

165:56-11-3. Cramming

(a) Cramming is prohibited.

(b) Resellers, after a complaint of cramming by the customer, shall not disconnect or seek payment of the charge(s) pending resolution of the dispute.

(c) The reseller shall be subject to a fine, per day per occurrence, for any violation of this Section, on an intrastate basis. The amount of the fine shall be determined pursuant to 17 O.S. § 1 et. seq., after notice and hearing.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99]

SUBCHAPTER 12. SERVICE DENIAL

165:56-12-1. Denial or termination of service without notice

A reseller may refuse service or terminate existing service to an end-user without notice for tampering with the reseller's equipment, or misuse or abuse thereof in order to avoid payment of lawful charges or use thereof in such manner as to create danger to life or property of the reseller or other end-users.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

165:56-12-2. Denial or termination of service after notice

(a) A reseller may refuse service or terminate existing service to a customer pursuant to the disconnect procedure provided in OAC 165:56-9-4 for any of the following reasons:

- (1) Nonpayment of a bill within the period prescribed by this Chapter.
- (2) Failure to make a security deposit as set forth in this Chapter.
- (3) Violation of or noncompliance with any provision of law, or of this Chapter, or of the tariffs or terms and conditions of service of the reseller filed with and approved by the Commission.
- (4) Refusal to permit the reseller reasonable access to its telecommunications facilities for recovery, maintenance, and inspection thereof.
- (5) Interconnection of a device, line, or channel to the reseller's facilities or equipment contrary to the reseller's terms and conditions of service on file with and approved by the Commission.

(b) The reseller shall provide documentation to the customer, upon request, indicating the reason(s) that service is being withheld.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

SUBCHAPTER 14. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:56-14-1. Notification of certain transactions affecting the customers or operations of a reseller

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated resellers to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(b) The parties to an agreement, the performance of which will result in the transfer of a certificate of convenience and necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide local and/or interexchange telecommunications services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a reseller. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

- (1) The name of the acquiring entity and the acquired entity.
 - (2) Identification of the acquired assets.
 - (3) The anticipated completion date and the effective date (if different) of the transaction.
 - (4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").
 - (5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.
 - (6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.
 - (7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and the Consumer Services Division and will be primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers;
 - (E) Tariff issues; and,
 - (F) Receiving Notices related to causes docketed at the Commission.
 - (8) An affidavit, including a financial statement, that states that the surviving entity possesses the financial ability to provide reseller services in the State of Oklahoma.
 - (9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.
 - (10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.
 - (11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.
 - (12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.
 - (13) A statement of the approximate number of Oklahoma customers.
- (f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.
- (g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Commission shall act on a notification within thirty (30) business days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within thirty (30) business days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, if necessary, which conform to OAC 165:56-5-3, shall be provided to the Public Utility Division.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99; Amended at 18 Ok Reg 2437, eff 7-1-01; Amended at 19 Ok Reg 2000, eff 7-1-02]

165:56-14-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 3075, eff 7-15-98]

165:56-14-3. Cessation of business in Oklahoma

(a) At least thirty (30) days before the effective date of the cessation of the provisioning of telecommunications service(s) in the State of Oklahoma, a reseller shall file an original and eight (8) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of such filing to the Attorney General of the State of Oklahoma.

(b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:

- (1) The contact person who will be responsible for concluding all outstanding business with the Commission and customers;
- (2) A statement regarding the amount of any outstanding customer deposits and the date refund checks will be sent to customers; and,
- (3) The date of withdrawal;

(c) Notice of discontinuance shall be sent by regular mail to all of the reseller's customers. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

(d) Unless provided otherwise in this Chapter, no application for withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

(e) The Commission Staff may file an application to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The request may be in form of a letter to the Director of Public Utility. The letter shall conform with subsections (b) and (c) of this Section.

[Source: Added at 15 Ok Reg 3075, eff 7-15-98; Amended at 16 Ok Reg 2290, eff 7-1-99]

SUBCHAPTER 16. PAY-PER-CALL SERVICES

165:56-16-1. Prohibition of certain pay-per-call services or interactive programs

Each reseller is prohibited from violating 17 O.S. § 140.1 et seq.

[Source: Added at 16 Ok Reg 2290, eff 7-1-99]

SUBCHAPTER 17. SERVICE QUALITY STANDARDS

165:56-17-1. Response to customer complaint inquiries

A reseller shall respond to the Commission upon written or electronic inquiry from the Commission within the following time periods:

- (1) Inquiries regarding disconnection, suspension or termination of service - within one (1) business day of receipt of inquiry from the Commission.
- (2) Inquiries other than for disconnection, suspension or termination of service - within three (3) business days of receipt of inquiry from the Commission.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

165:56-17-2. Customer access to reseller

Any reseller that utilizes a mechanized answering system for answering of any customer calls regarding billing or repair during regular business hours must provide access to a live customer representative during the recitation of the mechanized options. If a customer is utilizing a rotary dial phone, they should be transferred to live customer representative during the recitation of the mechanized options.

[Source: Added at 18 Ok Reg 2437, eff 7-1-01]

APPENDIX A. APPLICATION FORM FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX B. SAMPLE TARIFF FORMAT [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX C. APPLICATION FORM FOR CHANGES TO TARIFFS [REVOKED]

[Source: Added at 12 Ok Reg 2147, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX D. PUBLICATION FORMAT [REVOKED]

[Source: Added at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX E. AMENDED APPLICATION [REVOKED]

[Source: Added at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX F. ANNUAL REPORT FORMAT [REVOKED]

[Source: Added at 14 Ok Reg 2855, eff 7-15-97; Revoked at 16 Ok Reg 2290, eff 7-1-99]

APPENDIX G. AFFIDAVIT OF AUTHORIZED AGENT FORM

[Figure 1](#)

[Source: Added at 14 Ok Reg 2855, eff 7-15-97]

APPENDIX H. TELECOMMUNICATIONS COMPLAINT REPORT FORM

[Figure 1](#)

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

APPENDIX I. CUSTOMER COMPLAINT CODES

[Figure 1](#)

[Source: Added at 15 Ok Reg 3075, eff 7-15-98]

CHAPTER 57. OPERATOR SERVICE PROVIDERS TELECOMMUNICATIONS SERVICES

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 131 et seq. and 139.2]

[Source: Codified 7-1-95]

SUBCHAPTER 1. GENERAL PROVISIONS

165:57-1-1. Purpose; short title

(a) This Chapter establishes the Oklahoma Corporation Commission rules and regulations governing the regulation and operation of operator service providers (OSPs) operating in Oklahoma which may be cited by the short title as the Oklahoma Operator Service Provider Rules.

(b) This Chapter is intended to protect consumers who make intrastate calls using the assistance of a live or automated operator or store and forward devices from pay telephones, hotels and hospitals, and other public locations and presubscribed customers against unreasonable charges and anti-competitive practices. This Chapter defines good business practices and adequate service standards, prevents unfair rates and charges, ensures that consumers can make an informed choice regarding OSPs and protects OSPs from unreasonable demands. This Chapter is further intended to include all OSP services provided to all subscribers in Oklahoma including operator services provided by IXC's, telecommunications service providers, payphone service providers and Resellers.

(c) This Chapter is further intended to allow Oklahoma consumers to receive timely benefits from lawful market driven price and service competition among OSPs by applying only such regulatory requirements to those companies as are necessary to assure public access to telecommunications services under tariff provisions which are not unjustly discriminatory and to preclude unjust and unreasonable rates or charges in the operator services market.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Added at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98]

165:57-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX § 18 et seq. of the Constitution of the State of Oklahoma and Title 17 of the Oklahoma

Statutes Sections 131 et seq., has authority and responsibility to supervise, regulate, and control OSPs in Oklahoma and to enact rules and regulations in connection therewith.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-3. Application of rules

This Chapter shall apply to every OSP in Oklahoma, which provider is by law subject to the jurisdiction of the Commission, including but not limited to operator services provided by IXCs, telecommunications service providers, payphone service providers and Resellers.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97]

165:57-1-4. Definitions

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

"Access code" means the preliminary digits that a user must dial to be connected to a particular outgoing trunk group or line.

"Aggregator" means any person or entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls including calls using an operator services provider; i.e., customers of an OSP. Aggregators include, but are not limited to, hotels, motels, hospitals, universities, airports, gas stations, and to the extent permitted by law, payphone service providers. Aggregator does not include inmate-only coinless phones provided by correctional institutions but shall include telephones provided for use by the public in visitation areas of correctional institutions.

"Answer supervision" means a network control signal sent from the terminating location to the originating location to inform the originating location that a call has been answered and a network control signal from the originating end to the terminating end to inform the terminating end that a calling party has hung up. In the public switched network, the answer supervision signal is used to start and stop billing for a call.

"Billing agent" means an entity which provides bills to an end-user for services received from an OSP.

"Blocking" means any and/or all of the following:

"Brand" means the audible and distinct identification by the OSP to the consumer of the OSP presubscribed by the aggregator.

"Call splashing" means the transfer of a telephone call from one OSP to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of the actual originating location.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means any oral or written report given to an OSP by an aggregator or consumer of an OSP's service and/or the Commission's Consumer Services Division relating to dissatisfaction with the provision of or the rate(s) charged for the OSP's service(s). Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same situation giving rise to the dissatisfaction with the provision of or the rate(s) charged for the OSP's regulated services.

"Consumer" means any person initiating any intrastate telephone call using the assistance of a live or automated operator or any person receiving an intrastate telephone call handled by an OSP in which the called party will be paying for the service.

"Customer trouble report" means any oral or written report given to the OSP's repair service or contact person by an aggregator or consumer of an OSP's service and/or the Commission's Consumer Services Division relating to a defect or difficulty or dissatisfaction with the provision of the OSP's services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same defect, difficulty, or dissatisfaction with the provision of the OSP's regulated services.

"End-user" means the consumer.

"Equal access" means a condition where the local exchange access service offered by a telephone company is made available in equal kind, quality and price to all long distance companies. Equal access also describes a condition where customers may choose for themselves the interexchange carrier to which their long distance calls are to be routed, using the same number of dialed digits regardless of which interexchange carrier is chosen.

"Equal access code" means an access code that allows the public to obtain access to the carrier associated with that code; i.e., 101XXXX.

"FCC" means Federal Communications Commission.

"ILEC" means an Incumbent Local Exchange Company, as defined in OAC 165:55.

"Interexchange telecommunications carrier" ("IXC") means any person, firm, partnership, corporation, or other entity, except incumbent LECs, resellers or OSPs, engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call is routed across state boundaries prior to reaching its termination point.

"Joint aggregator" describes a situation where more than one party exercises control over telephone equipment, whether through ownership of the equipment, control of access to the equipment or some other means. Each party is jointly responsible as an aggregator under these rules.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"LEC" means local exchange company, which is a telephone company authorized by the Commission to provide telephone service in a telephone exchange or exchanges.

"Operator service provider" ("OSP") means any common carrier that provides intrastate operator services or any other person or entity determined by the Commission to be providing operator services.

"Operator services" means the initiation of any intrastate telecommunications service, including, but not limited to, services from an aggregator location, or to presubscribed customers, which services include, as a component, any automated or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call.

"Payphone service provider" means any person, firm, partnerships, corporation, cooperative corporation or other lawful entity providing payphone service as defined in OAC 165:58.

"Presubscribed customer" means a customer that has indicated their choice of a primary interexchange carrier for use at their location. The customer's toll calls will then be routed to their presubscribed interexchange carrier, unless the customer designates otherwise, on a per-call basis, by use of a carrier access code.

"Reseller" means any person, partnership, cooperative corporation, or lawful entity that offers telecommunications services to the public through the use of the transmission facilities of an underlying carrier or a combination of its own facilities and the transmission facilities of an underlying carrier for resale to the public for profit, as defined in OAC 165:56.

"Rules of Practice" means OAC 165:5.

"Service" means telecommunications service in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied by the OSP in the provision of regulated offerings to consumers.

"Streamlined tariff revision(s)" means revision(s) proposed by an OSP which will become effective without notice and hearing or order of the Commission, in the time frame established in OAC 165:57-7-5, unless suspended.

"Telecommunications service provider" means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC as defined in OAC 165:55.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a reseller elects to post, in a searchable format, on a publicly available website.

"Zero minus ("0-") call" means an operator-assisted call where the calling party dials zero ("0") for an operator and waits until an operator comes on the line. The caller then states the telephone number they want to reach and the nature (person-to-person, collect, etc.) of the call.

"Zero plus ("0+") call" means an operator-assisted call where the calling party dials zero ("0") followed by the number being called, including the area code. This dialing pattern is used mostly for collect, credit card, person-to-person and third-party-billed calls. The caller indicates the type of call after dialing is completed and an operator may come on line.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 34 Ok Reg 1057, eff 9-14-18]

165:57-1-5. Interpretation of rules

The words contained in this Chapter shall be given their ordinary and customary meaning, with technical terms and words being construed as generally understood within the telecommunications industry, except where otherwise expressly provided. Where, by its context, this Chapter establishes service standards or objectives, substantial compliance under normal operating conditions will be deemed in compliance with this Chapter. Where, by its context, this Chapter imposes an absolute obligation upon the OSP, strict compliance is required.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to the OSP or the consumer, or

for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter, upon application of any interested person, in accordance with the provisions of OAC 165:5. The Commission may grant temporary relief pending hearing.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Added at 14 Ok Reg 2872, eff 7-15-97]

165:57-1-7. Exceptions or variances

If an OSP seeks an exception or variance from this Chapter in its tariffs, such exception or variance shall be clearly shown on such tariff, sufficient to plainly bring to the Commission's attention the exact nature of said exception or variance. Any exception not so marked or identified in such tariff shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the variance shall indicate the number of the pertinent Commission order.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-8. Supremacy

Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter. With regard to LECs and IXCs, this Chapter is intended to supplement OAC 165:55, the Commission's rules, and where a conflict arises, the provisions of this Chapter shall supersede OAC 165:55 with respect to LEC-provided and IXC-provided operator services only.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-1-9. Rules conform to law

This Chapter shall be construed to conform with the Constitution and laws of the State of Oklahoma.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-10. Controversy over rules

Whenever a controversy exists in connection with the interpretation of this Chapter or its applicability, or any right or any duty imposed thereby, the Commission, upon application of any interested person and after notice and hearing, shall enter such order thereon as it may deem appropriate.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-11. Severability

This Chapter shall not relieve in any way an OSP or aggregator from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-12. Conflict with Commission order

This Chapter shall not alter or amend any order of the Commission directed to OSPs, except where the provisions thereof are in direct conflict with any of this

Chapter, in which case this Chapter shall supersede the provisions of such order to the extent of conflict only.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-13. Conflict with filed tariffs

All tariffs previously filed by an OSP and approved by the Commission are not revoked, altered or amended by this Chapter, except to the extent they are in direct conflict with any provision of this Chapter, in which event such tariffs are superseded by this Chapter to the extent of conflict only.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-1-14. Tariff conformance [REVOKED]

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Revoked at 14 Ok Reg 2872, eff 7-15-97]

165:57-1-15. Universal service

Pursuant to OAC 165:59-3-40, every entity that operates or provides telecommunications service within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-1-16. Operator service intended for exclusive use of inmates

Operator services provided to payphones located in a state, federal, local, or county jail or in a correctional facility, which are intended for the exclusive use of prisoners, shall not be required to meet the minimum service requirements set forth in OAC 165:57-3-1(a)(6)(A) and (B), OAC 165:57-3-2(b)(1),(2),(3),(4), and (7), OAC 165:57-3-2(c), and OAC 165:57-3-3.

[Source: Added at 16 Ok Reg 2312, eff 7-1-99]

SUBCHAPTER 3. OPERATIONS

165:57-3-1. General operations - operator service providers

(a) Every OSP shall:

(1) Brand to the end-user at the beginning of each telephone call. For third party or collect calls, similar identification shall be made to the consumer who is responsible for payment.

(2) If subscribing to a LEC's 0- Transfer or similar service, not knowingly take any action that would deny other OSPs who subscribe to said 0- Transfer or similar service an equal opportunity of being offered to and chosen by the end-user where the end-user is indifferent to the OSP who carries the call. LECs who provide a 0- Transfer or similar service shall administer said service in a manner designed to assure that OSPs who subscribe to said service have an equal opportunity of being offered to and chosen by the calling party where the calling party does not have a preference.

(3) Permit the end-user to terminate the telephone call at no charge before the call is connected.

(4) Disclose immediately to the end-user, upon request and at no charge to the end-user:

(A) A quote of its rates or charges for the call.

- (B) The methods by which such rates or charges will be collected.
 - (C) The methods by which complaints concerning such rates, charges, or collection practices will be resolved.
- (5) Ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of this Chapter.
- (6) Withhold payment (on a location by location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator is:
- (A) Blocking access to intrastate common carriers by means of "800", "888", "950", or IOXXX access codes.
 - (B) Blocking access to the LEC operator on 0- calls.
 - (C) Blocking access to emergency services in violation of the requirements of this Chapter.
- (7) Not bill for unanswered telephone calls in areas where equal access and answer supervision is available.
- (8) Not knowingly bill for unanswered telephone calls where equal access is not available.
- (9) Not engage in call splashing, unless the end-user requests to be transferred to another provider of operator services, and the end-user consents to be transferred after it has been informed, prior to incurring any charges, that the rates for the call may not reflect the rates from the actual originating location of the call.
- (10) Except as provided in (9) of this subsection, not bill for a call that does not reflect the location of the origination of the call.
- (11) Be prohibited from billing and collecting any aggregator surcharges not specifically outlined in the tariffs required to be filed with the Commission under the provisions of this Chapter. In no case shall the tariffed aggregator surcharge exceed the amount of one dollar (\$1.00).
- (b) OSPs using automated equipment that will under certain circumstances transfer a call to another carrier will be allowed to brand after the input of billing information, to avoid end-user confusion.
- (c) OSPs shall not use the name of another party in the brand, unless that party has consented in writing to the use of its name in the brand.
- (d) OSPs shall regularly publish, to coincide with the publishing requirements of the FCC, and make available at no cost to inquiring consumers, written materials that describe any recent changes in operator services and in the choices available to consumers in that market.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97]

165:57-3-2. General operations - aggregators

- (a) An OSP and, to the extent permitted by law, a payphone service provider will have joint responsibility and liability for noncompliance as aggregators, unless otherwise agreed to in writing by the parties. This "joint aggregator" status must be determined based on the facts of each situation.
- (b) Aggregators/joint aggregators shall:
- (1) Post signage on or near telephones that are presubscribed to an OSP. The signage will state the following information:
 - (A) The name, address, and toll-free telephone number of the OSP.
 - (B) A written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain

access to the intrastate carrier of their choice and may contact their preferred intrastate carriers for information on accessing that carrier's service using that telephone.

(C) The name, address, hours of operation (8:00 a.m. - 4:30 p.m., Monday through Friday), and toll free telephone number of the Consumer Services Division of the Commission, to which the end-user may direct complaints and questions regarding operator services.

(D) The amount of any property surcharge applicable to the aggregator's phones and billed and collected by the OSP.

(2) Ensure that each of its telephones presubscribed to an OSP allows the consumer to use "800", "888", "950" and 101XXXX access code numbers to obtain access to the OSP desired by the consumer.

(3) Ensure that no charge by the aggregator to the end-user for using an "800", "888", "950" or 101XXXX access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed OSP.

(4) Directly route all "0-" calls to the LEC operator without charge to the caller.

(5) In addition to the requirement of OAC 165:57-3-2(b)(1), an OSP/aggregator shall disclose, audibly and distinctly, to the end-user, at no charge and before connecting any intrastate 0+ call, how to obtain the total cost of the call, including any and all surcharges, or the maximum possible total cost of the call, including any and all surcharges, before providing further oral advice to the end-user on how to proceed to make the call.

(6) The oral disclosure required in this subsection shall instruct end-users that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.

(7) The disclosure requirement established by paragraphs 5 and 6 of this Section shall be made on or before the date mandated by the FCC.

(c) The OSP identified in the brand must be consistent with the OSP identified on the signage posted on or near the aggregator's telephones.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99]

165:57-3-3. Immediate routing of emergency calls

OSPs shall connect an emergency call immediately to the emergency service provider that responds to the type of reported emergency at the site of the emergency, if known, or, if not known, to the local exchange provider at the originating location of the call. In the case of automated systems, the end-user will be directed through a call sequence that allows them to speak with a live operator who will process the emergency call.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 15 Ok Reg 3092, eff 7-15-98]

SUBCHAPTER 5. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:57-5-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person or entity shall furnish operator services to any end-user in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission. ILECs and certificated IXCs providing operator services prior to January 1, 1996, shall not be required to obtain a Certificate of Convenience and Necessity for the operator services being provided on that date.

(b) **Application for Certificate of Convenience and Necessity.** An applicant to the Commission for a Certificate of Convenience and Necessity to provide operator service in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested operator service in the State of Oklahoma. An application for Certificate of Convenience and Necessity to provide operator services shall be made pursuant to the requirements of 17 O.S. § 131 *et seq.* and shall conform to the requirements thereof and with the Commission's Rules of Practice, OAC 165:5, and any additional requirements set forth in this Chapter. An application for a Certificate of Convenience and Necessity shall be in a format approved by the Director of the Public Utility Division. An original and four (4) copies of the application for a Certificate of Convenience and Necessity shall be filed with the Commission's Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(c) **Application requirements for Certificate of Convenience and Necessity.** An application to the Commission for a Certificate of Convenience and Necessity to provide operator services shall include as attachments to the application the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant, in the format set forth in Appendix G to this Chapter:

- (1) As applicable the complete name, including each and every trade name(s) under which business will be conducted, corporate or other headquarters address and names/addresses of principal corporate officers or partners of the entity proposing to provide operator services to the public in the State of Oklahoma. Also, include the telephone number and, if applicable, the toll free telephone number.
- (2) If different from those provided in paragraph (1) of this subsection, the name(s) and address(es) of all officers and corporate offices of the OSP located in the State of Oklahoma and the name(s) and address(es) of employee(s) responsible for Oklahoma operations.
- (3) A copy of the applicable certificate, issued by Oklahoma's Secretary of State to transact business in the State of Oklahoma.
- (4) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. a d/b/a, used by the operator service provider in the State of Oklahoma.
- (5) A financial statement.
- (6) Contact name(s), address(es) and the toll free telephone number(s) of the individual(s) responsible for providing service to Aggregators and consumers, for repairs and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's Consumer Services Division and Public Utility Division regarding questions and complaints against the company.
- (7) A description of the OSP's proposed procedures used to verify customer-ordered changes in presubscribed carriers, including, but not limited to a proposed "letter of agency" that is consistent with the requirements of 47 CFR Ch.1, Section 64.1150, proposed independent

- third-party verification script and/or proposed telephone contact script.
- (8) A complete set of proposed tariffs which shall include terms and conditions of service and all rates, tolls, charges, and service classifications in a format approved by the Director of the Public Utility Division. The proposed tariffs shall comply with OAC 165:57-7-1 through OAC 165:57-7-3.
- (9) An example of signage proposed to be utilized by the OSP which is in conformance with OAC 165:57-3-2.
- (10) A copy of the applicant's proposed complaint report form which is consistent with OAC 165:57-5-24. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix H and Appendix I, respectively, to this Chapter.
- (11) A written affirmation, signed before a Notary Public by someone with authority to bind the applicant, in a format approved by the Director of the Public Utility Division that:
- (A) The information contained in the application is true and correct;
 - (B) The OSP is familiar with and will comply with all applicable federal and state laws, and the rules and orders of the Commission;
 - (C) The applicant possesses the financial ability to provide operator service(s) in the State of Oklahoma;
 - (D) The OSP will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59; and,
 - (E) The OSP understands the Commission's contempt authority.
- (12) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.
- (13) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service, and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.
- (14) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities, or other documentation as may be requested by the Commission.
- (15) A list of all other states, if any, where:
- (A) The applicant is authorized to operate;
 - (B) Authorization to operate is pending;
 - (C) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,
 - (D) Authorization has been revoked, with a certified copy of the revocation document attached.

(d) Requirements for expanding authority under an existing CCN. An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, and/or 58, must make application to the Commission and provide all information and notice as required in Sections 165:57-5-1(c) and 165:57-5-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the Commission, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances.

(e) Amended Application. During the Staff's review of the OSP's application, certain revisions and/or corrections to documents attached to the application may be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The OSP shall file an original and four (4) copies of its amended application with the Commission's Court Clerk. Requested revisions and/or corrections may include, but shall not be limited to:

- (1) Revisions to the applicant's proposed tariffs;
- (2) Provision of documents omitted from the originally filed application; and/or,
- (3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(f) Additional Information. The Public Utility Division Staff may issue data requests for additional relevant information as may be necessary. Data request responses should be submitted to the Staff member requesting the information, and not filed with the Commission's Court Clerk.

(g) Approval requirement. Unless provided otherwise in this Chapter, or by the laws of the State of Oklahoma, no Certificate of Convenience and Necessity shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 19 Ok Reg 2005, eff 7-1-02; Amended at 21 Ok Reg 2126, eff 7-1-04; Amended at 34 Ok Reg 1057, eff 9-14-18]

165:57-5-2. Notice of hearing for Certificate of Convenience and Necessity [REVOKED]

[Source: Added at 16 Ok Reg 2312, eff 7-1-99; Amended at 21 Ok Reg 2126, eff 7-1-04; Revoked at 34 Ok Reg 1057, eff 9-14-18]

165:57-5-2.1. Notice requirements when filing an Application for Certificate of Convenience and Necessity

Applicants seeking a Certificate of Convenience and Necessity shall meet all notice requirements set forth in this Section.

- (1) Requirements for filing an Application of a Certificate of Convenience and Necessity. An Application for a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

- (A) The Oklahoma Attorney General;

- (B) The Commission's Director of the Public Utility Division;
 - (i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Commission's Court Clerk and shall be delivered to the Director of the Public Utility Division in electronic copy form only.
 - (ii) The Director of the Public Utility Division shall update and post a report that includes reference to the Application of Certification of Convenience and Necessity on the Commission's website, within five (5) business days of receipt.
 - (C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.
 - (D) The ILEC in the proposed service territory.
- (2) Publication of a Notice of Application of a Certificate of Convenience and Necessity. The Notice required by 17 O.S. § 132 shall be published as follows:
- (A) In newspapers of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in each service territory affected.
 - (B) Publication shall be at the expense of the applicant.
 - (C) A "Proof of Publication" document shall be filed with the Commission's Court Clerk within fifteen (15) days of the last publication date.
- (3) Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.
- (A) When an objection is made in a cause of an Application of a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing at the Commission's Court Clerk requesting a date for a hearing on the merits of the application.
 - (B) Within ten (10) business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:
 - (i) The Oklahoma Attorney General;
 - (ii) The Commission's Director of the Public Utility Division; and
 - (iii) Any Intervenors, including the person or entity filing the objection.

[Source: Added at 35 Ok Reg 1057, eff 9-14-18]

165:57-5-3. Approval of initial tariffs

- (a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:57-5-1, an operator service provider shall file an Application requesting approval of its initial tariffs, unless filed pursuant to OAC 165:57-5-1(c)(8), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter.
- (b) All entities seeking approval of an initial tariff shall serve the file-stamped Application by mail, electronic mail, or personal service to the Oklahoma Attorney General and the Director of the Public Utility Division.

(c) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by the Commission.

(d) No later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:57-7-3, shall be provided to the Public Utility Division.

[Source: Added at 35 Ok Reg 1057, eff 9-14-18]

PART 3. GENERAL REQUIREMENTS FOR RECORDS AND REPORTS

165:57-5-20. Who shall file

The record keeping, reporting, and filing requirements listed in this Chapter shall apply to all OSPs operating in the State of Oklahoma.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-5-21. Location of records

All records required by this Chapter shall be kept at a location which has been identified to the Commission's Director of the Public Utility Division. The records required by this Chapter shall be made available to the Commission or its authorized representative at any reasonable time upon request.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-5-22. Retention of records

All records required by this Chapter shall be preserved for two (2) years.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-5-23. Records to be provided to the Commission

(a) **Annual report of operations.** Not later than April 1 of the year following the reporting year each OSP shall provide to the Director of the Public Utility Division an annual report in a format approved by the Director of the Public Utility Division. In addition, OSPs shall file a copy of any annual reporting form required by the FCC. The Oklahoma annual report will contain only Oklahoma operations.

(b) **Other information.** Each OSP shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

(c) **Contact names.** Each OSP shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues. If the below information is unavailable, the OSP may seek a waiver from the PUD Director by making a request in writing.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues;
- (F) Billing inquiries;
- (G) Regulatory matters;

- (H) Oklahoma Universal Service Fund (and Monthly Payout, Fee Assessment, Requests for Funding, if different);
- (I) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (J) Primary emergency;
- (K) Afterhours emergency;
- (L) Annual reporting;
- (M) Attorney for regulatory matters; and
- (N) Community Liaison.

(d) **Other information.** Each OSP shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 19 Ok Reg 2005, eff 7-1-02; Amended at 36 Ok Reg 712, eff 7-25-19]

165:57-5-24. Record of customer complaints

(a) Each OSP shall maintain a record of customer complaints, in the format suggested by the Director of the Consumer Services Division and included as Appendix H to this Chapter, that compiles complaints that have been received by the company and includes, at a minimum:

- (1) The aggregators and/or end-users name;
- (2) The account number;
- (3) The applicable complaint code;
- (4) The date the complaint was filed; and,
- (5) The resolution of the complaint, to include the amount of refund, if any, given.

(b) If the account number only is utilized, a cross-reference with the aggregators and/or end-users name must also be readily available.

(c) The categories of complaints to be used shall be negotiated between the individual OSP and the Director of the Consumer Services Division. A list of the suggested customer complaint codes is attached as Appendix I to this Chapter.

(d) Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same difficulty or dissatisfaction with the provision of the OSP's services.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99]

165:57-5-25. Report attestation

All reports required by this Chapter to be submitted to the Commission shall be attested to by an officer or manager of the OSP under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the OSP's operation.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

SUBCHAPTER 7. TARIFFS

165:57-7-1. Tariffs and/or Terms of Service required

(a) All OSPs must file a tariff describing the services offered, the terms and conditions under which each of the services are provided and all effective rates and charges for operator services. Only those services contained in the OSP's tariff filed

and approved by the Commission or Terms of Service may be provided to customers and only those rates and charges contained in the OSP's tariff on file with the Commission or Terms of Service may be charged to customers. The filed tariffs and/or Terms of Service are binding on the OSP and no deviation of any kind from the filed tariff or Terms of Service is permitted.

(b) Except as required in OAC 165:57-7-5, not later than thirty (30) days after the effective date of the tariff, an original and two (2) copies of the approved tariff which conforms to OAC 165:57-7-3 shall be provided to the Public Utility Division.

(c) An operator service provider which has a written tariff on file with the Commission may withdraw the tariff if the operator service provider:

- (1) provides written notice to the Director of the Public Utility Division and the Oklahoma Attorney General that it is withdrawing the tariff,
- (2) posts the Terms of Service, and
- (3) provides the Commission with the web page information where the language is posted.

(d) The Commission maintains the same authority to review the Terms of Service of an operator service provider, as permitted by OAC 165:57-7-5.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 19 Ok Reg 2005, eff 7-1-02; Amended at 35 Ok Reg 1057, eff 9-14-18]

165:57-7-2. Information to be included in an OSP's tariff

The tariff shall include the following information:

- (1) Table of contents.
- (2) Symbols for changes in tariff.
- (3) Applicability of the tariff.
- (4) Accessibility and availability of tariffs. Each OSP shall, upon request by an aggregator or end-user, provide a copy of any relevant portion of this Chapter, and/or the applicable portion of the requested tariff(s) to such aggregator or end-user, at a reasonable charge.
- (5) Detailed billing and collection information.
- (6) Detailed information regarding handling of complaints and disputed charges.
- (7) All services provided by the company and a detailed explanation of each.
- (8) All rates and charges applicable to services provided in Oklahoma.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97]

165:57-7-3. Requirements as to size, form and identification of tariffs

(a) All tariffs shall be in loose leaf form of a size eight and one-half inches by eleven inches (8-1/2' x 11') and shall be plainly printed or reproduced on only one side of paper of good quality. The tariff shall be in the format presented in Appendix B to this Chapter. The front page of the tariff shall contain the name of the OSP and location of its principal office.

(b) Tariff sheets are to be numbered consecutively. Each sheet shall show the Cause Number, wherein the tariff was approved by the Commission, and, where applicable, the Order Number for such approval. Each sheet shall show an effective date, an issue date, a revision number, section number or title, sheet number, name of the OSP along with all trade names used by the OSP, and the name of the tariff in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and

the sheet numbers shall be the same.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 19 Ok Reg 2005, eff 7-1-02]

165:57-7-4. Symbols for changes

(a) Each OSP shall include in their tariff, notations indicating each change made with the proposed application or revision. Notations (referred to as tariff symbols) to be used are:

- (1) "AT" means addition to text.
- (2) "C" means correction.
- (3) "CP" means change in practice.
- (4) "CR" means change in rate.
- (5) "CT" means change in text.
- (6) "DR" means discontinued rate.
- (7) "FC" means a change in format lettering or numbering.
- (8) "MT" means moved text.
- (9) "NR" means new rate.
- (10) "RT" means removal of text.

(b) In addition to symbols for changes, each provision or rate element changed shall contain a vertical line which clearly shows the exact number of lines being changed.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95]

165:57-7-5. Revisions to tariffs

(a) New or revised tariffs describing operator services shall have an effective date on or after the day following the day the submission is delivered to the Director of the Public Utility Division, subject to the following conditions:

- (1) The submission delivered to the Public Utility Division shall include a cover letter, a mark-up copy of the new or revised tariff pages in legislative format, and a final copy of the new or revised tariff pages.
- (2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages.
- (3) A new or revised tariff submitted to the Commission shall comply with the notice requirements of this subchapter. A copy of the notice shall accompany the submission. The submission shall clearly identify the date of notice and the method used to provide notice.
- (4) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(b) After investigating, the Public Utility Division may file an application with the Commission seeking to revoke or modify any tariff. After notice and hearing, the Commission may issue an order prospectively revoking or modifying any tariff for good cause.

(c) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(d) Notice of rate increase. Prior to or concurrent with the effective date of any increased rate, the OSP shall provide notice to the Director of the Public Utility Division, the Oklahoma Attorney General, and the affected aggregators or end-users of the increase. Said notice shall be provided by any of the following:

- (1) Prominent display on the aggregator's or end-user's bill;
- (2) Direct mailing;
- (3) Prominent display on an insert in the end-user's bill; or,

(4) Any other method of notice approved by the Director of the Public Utility Division.

(e) Failure to provide the information required by this Section at the time of submission may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:57-7-6 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

(f) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 21 Ok Reg 2126, eff 7-1-04; Amended at 35 Ok Reg 1057, eff 9-14-18]

165:57-7-5.1. Name changes and/or trade name additions

Tariff revisions to reflect a change to the name and/or change, deletion or addition of a trade name under which the OSP will be doing business in the State of Oklahoma shall become effective, without Commission order, the date of filing such tariffs, provided the filing contains the attestation required by subparagraph (5) of this Section. The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:

- (1) An amended Certificate of Incorporation effecting a change of name pursuant to 18 O.S. § 1076, 1077 or 1031;
- (2) A Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140;
- (3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.1;
- (4) A Transfer of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.2; and,
- (5) An attestation that the tariffs are identical to the existing tariffs of the OSP except for the name change or change, addition or deletion of a trade name.

[Source: Added at 16 Ok Reg 2312, eff 7-1-99]

165:57-7-5.5. Confidential information related to tariffs

(a) With the exception of information and data related to the dollar and percentage impacts of the proposed change(s) on aggregator or end-user rates and the rationale for the proposed tariffs, all information and data required by OAC 165:57-7-5(d) to be delivered to the Public Utility Division Staff concurrent with the filing of a proposed tariff revision and any additional financial or cost data, or data which is identifiable to a specific customer, that is requested by the Public Utility Division Staff, shall be deemed confidential records or trade secrets of the IXC, telecommunications service provider, payphone service provider, reseller or OSP under the Oklahoma Open Records Act as provided for by 51 O.S. 24A.22 and shall be kept confidential by the Commission, unless successfully challenged.

(b) All confidential information and data submitted to the Public Utility Division Staff under subsection (a) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:57-7-5(d)."

(c) For each tariff filing submitted by an IXC, telecommunications service provider, payphone service provider, reseller or OSP in accordance with OAC 165:57-7-5(d), the same confidential information and data provided to the Public Utility Division Staff shall also be provided to the Office of the Attorney General of the State of

Oklahoma upon the signing of a Proprietary Agreement by the Attorney General or its representative.

(d) All confidential information and data provided to the Office of the Attorney General under subsection (c) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:57-7-5(d)."

[Source: Added at 14 Ok Reg 2872, eff 7-15-97; Amended at 15 Ok Reg 3092, eff 7-15-98]

165:57-7-6. Suspension

(a) Any tariff filed with the Commission or submitted to the Director of the Public Utility Division pursuant to OAC 165:57-7-5 may be suspended by Commission Order, with or without notice or hearing, on recommendation by Public Utility Division Staff. The Commission may also order suspension of proposed revisions on motion by an aggrieved party, after notice and hearing.

(b) To lift the suspension of any filing or submission made by an OSP pursuant to this Chapter, whether the application has been subsequently amended after the suspension or not:

(1) The applicant shall file a motion pursuant to OAC 165:5-9-2(b), which requests that the suspension be lifted, giving notice to the Oklahoma Attorney General and to all parties of record; or,

(2) The application may be set for hearing on the merits at a time to be agreed upon by the Public Utility Division and the applicant.

(c) If the application is scheduled for hearing pursuant to paragraph (b)(2) of this Section and the time for filing an objection to the amended filing has not elapsed, the Notice of Hearing shall be sent to the Oklahoma Attorney General and to any party(ies) of record.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 15 Ok Reg 3092, eff 7-15-98; Amended at 35 Ok Reg 1057, eff 9-14-18]

165:57-7-7. Objections

Any entity wishing to object to an initial tariff filed pursuant to this Chapter may file objections with the Commission's Court Clerk within fifteen (15) days after the proposed tariff is filed. Any such objection shall comply with the requirements of OAC 165:5, the Commission's Rules of Practice, and this Chapter, and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting entity shall promptly serve its objection on the OSP which filed the proposed initial tariff, the Director of the Public Utility Division and the Oklahoma Attorney General.

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Amended at 35 Ok Reg 1057, eff 9-14-18]

SUBCHAPTER 9. BILLING, DISPUTES AND CEASING OPERATIONS [REVOKED]

165:57-9-1. Billing for unanswered calls [REVOKED]

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Revoked at 15 Ok Reg 3092, eff 7-1-95]

165:57-9-2. Disputed charges [REVOKED]

[Source: Added at 12 Ok Reg 3334, eff 8-11-95; Amended at 14 Ok Reg 2872, eff 7-15-97; Revoked at 15 Ok Reg 3092, eff 7-15-98]

165:57-9-3. Notification when an OSP withdraws from business [REVOKED]

[Source: Added at 12 Ok Reg 3334, eff 8-11-95; Revoked at 15 Ok Reg 3092, eff 7-15-98]

SUBCHAPTER 10. BILLING AND BILLING PAYMENT REQUIREMENTS

165:57-10-1. Billing period

Bills to customers shall be issued monthly, unless the OSP's approved terms and conditions of service prescribe a different interval. Bills may be issued on a billing cycle. All end-users shall receive their bills via the United States mail, unless the end-user agrees with the operator service provider to receive a bill through different means, such as electronically via the Internet. Whatever the method of delivery, bills shall comply with 165:57-10-3.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98; Amended at 19 Ok Reg 2005, eff 7-1-02]

165:57-10-2. Bills rendered by a billing agent

(a) An OSP shall not act as a billing agent for a reseller, telecommunications service provider, IXC or another OSP, unless the OSP fully discloses on the bill the toll-free number of the certificated entity for whom the bill is being rendered or, if the billing agent has been given authority to make adjustments to the customer's bill, its toll-free number.

(b) An OSP shall not utilize the services of a billing agent unless the OSP requires that the billing agent follow the procedures set forth in OAC 165:57-10-5 through OAC 165:57-10-11.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-3. Content of bills

(a) **Bill organization.** Telephone bills shall be clearly organized, and must comply with the following requirements:

(1) The name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill.

(2) Where charges for two or more service providers appear on the same telephone bill, the charges must be separated by service provider.

(3) The telephone bill must clearly and conspicuously identify any change in the service provider, including identification of charges from any new service provider.

(4) The telephone bill shall clearly and conspicuously label all fees, surcharges, taxes, and usage rates, associated with the customer's use of the provider's service, including but not limited to, calling plans, universal service fees, access fees, and other separated charges.

(b) **Descriptions of billed charges.** Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that end-users can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.

(c) **Quantification of billed charges.** All bills shall also contain the following:

(1) Balance in each billed account at the beginning of the current billing cycle, using a term such as "previous balance";

(2) Amount of the charges debited to each billed account during the current billing cycle, using a term such as "current service";

- (3) Amount of payments made to each billed account from the previous billing cycle, using a term such as "payments";
- (4) Amount of the charges debited to each billed account during the current billing cycle for untimely payment of past charges, using a term such as "late charge";
- (5) A listing of the closing dates of the current billing cycle and the outstanding balance in each billed account on that date, specifying the "current amount due" and the "past due";
- (6) A listing of the statement, or payment, due date.

(d) Disclosure of inquiry contacts.

- (1) Billing agents shall prominently display, a toll-free number or numbers by which end-users may inquire or dispute any charges on each bill. Where the end-user does not receive a paper copy of his or her telephone bill, but instead accesses that bill only by e-mail or internet, the carrier may comply with this requirement by providing an e-mail or web site address on each bill. Each carrier must make a business address available upon request from an end-user.
- (2) An operator service provider may list a toll-free number for itself, a clearinghouse, or other third party, provided such party possesses sufficient information to answer questions concerning the end-user's account and is fully authorized to resolve the end-user's complaints on the service provider's behalf.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98; Amended at 19 Ok Reg 2005, eff 7-1-02]

165:57-10-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-5. Due date and penalty

Unless otherwise authorized by the Commission, bills shall be payable immediately upon receipt and past due twelve (12) days after the date of the OSP mailing or after any deferred payment date previously established either by oral or written agreement between an end-user and the OSP. The date after which the bill is past due shall be stated on the bill. If the bill is not paid when past due, the OSP may apply late payment charges on any unpaid balance as provided in its filed, approved tariffs. Payment shall not be considered late if it is received by the due date at an authorized office.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-6. [RESERVED]

[Source: Reserved at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-7. Request for payments other than normal billings

The OSP shall issue a bill for any additional charges other than those charges normally billed on the regular billing cycle. The OSP shall not issue a notice of disconnection prior to five (5) days after the mailing of a bill for additional charges.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-8. [RESERVED]

[Source: Reserved at 15 Ok Reg 3092, eff 7-7-98]

165:57-10-9. Disputed charges

(a) In the event of a dispute between an end-user and an OSP, the OSP shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the OSP shall inform the end-user that the end-user may utilize the complaint procedures of the Commission's Consumer Services Division. The information to be provided to consumers shall be:

- (1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite 460, Oklahoma City, OK 73105.
- (2) The mailing address of the Consumer Services Division, which is P. O. Box 52000-2000, Oklahoma City, OK 73152-2000.
- (3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.
- (4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m., Monday through Friday.

(c) When a complaint has been made with the Commission's Consumer Services Division, the OSP shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by the Commission's Consumer Services Division. The end-user shall be required to pay the undisputed part of the bill, and if not paid, the OSP may discontinue service.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-10. [RESERVED]

[Source: Reserved at 15 Ok Reg 3092, eff 7-15-98]

165:57-10-11. Billing for unanswered calls

OSPs shall not knowingly bill for unanswered telephone calls regardless of whether equal access is available. If a form of answer supervision is available in equal access areas, the OSP is restricted from billing for unanswered calls in those areas regardless of whether the OSP subscribes to equal access.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

SUBCHAPTER 12. NOTIFICATION OF CHANGES TO OWNERSHIP, CONTROL OR BUSINESS OPERATION

165:57-12-1. Notification of transactions affecting the ownership or control of an OSP

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated operator service providers to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(b) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and Necessity, with or without the transfer of a

tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide operator services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and eight (8) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of an operator service provider. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

- (1) The name of the acquiring entity and the acquired entity.
- (2) Identification of the acquired assets.
- (3) The anticipated completion date and the effective date (if different) of the transaction.
- (4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").
- (5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.
- (6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.
- (7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and the Consumer Services Division and will be primarily responsible for:
 - (A) Providing customer service;
 - (B) Repair and maintenance;
 - (C) Answering complaints;
 - (D) Authorizing and/or furnishing refunds to customers;
 - (E) Tariff issues; and,
 - (F) Receiving Notices related to causes docketed at the Commission.
- (8) An affidavit, including a financial statement, that states that the surviving entity possesses the financial ability to provide operator service provider services in the State of Oklahoma.
- (9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.
- (10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.
- (11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(13) A statement of the approximate number of Oklahoma customers.

(f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.

(g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Commission shall act on a notification within thirty (30) business days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within thirty (30) business days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) When applicable, after approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, which conform to OAC 165:57-7-3, shall be provided to the Public Utility Division.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99; Amended at 19 Ok Reg 2005, eff 7-1-02]

165:57-12-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 3092, eff 7-15-98]

165:57-12-3. Cessation of business in Oklahoma

(a) At least thirty (30) days before the effective date of the cessation of the provisioning of operator service(s) in the State of Oklahoma, an OSP shall file an original and eight (8) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of

such filing to the Attorney General of the State of Oklahoma.

(b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:

(1) The contact person who will be responsible for concluding all outstanding business with the Commission and customers;

(2) The date of withdrawal;

(c) Notice of discontinuance shall be sent by regular mail to all of the OSP's customers. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

(d) Unless provided otherwise in this Chapter, no withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

(e) The Commission Staff may file a motion to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The request may be in the form of a letter to the Director of the Public Utility Division. The letter will conform with subsections (b) and (c) of this Section.

[Source: Added at 15 Ok Reg 3092, eff 7-15-98; Amended at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX A. APPLICATION FORM FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY [REVOKED]

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX B. SAMPLE TARIFF FORMAT [REVOKED]

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX C. APPLICATION FORM FOR CHANGES TO TARIFFS [REVOKED]

[Source: Added at 12 Ok Reg 2157, eff 7-1-95; Revoked and reenacted at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX D. PUBLICATION FORMAT [REVOKED]

[Source: Added at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX E. AMENDED APPLICATION [REVOKED]

[Source: Added at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX F. ANNUAL REPORT FORMAT [REVOKED]

[Source: Added at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX G. AFFIDAVIT OF AUTHORIZED AGENT FORM [REVOKED]

[Source: Added at 14 Ok Reg 2872, eff 7-15-97; Revoked at 16 Ok Reg 2312, eff 7-1-99]

APPENDIX H. TELECOMMUNICATIONS COMPLAINT REPORT FORM [Figure 1](#)

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

APPENDIX I. CUSTOMER COMPLAINT CODES

[Figure 1](#)

[Source: Added at 15 Ok Reg 3092, eff 7-15-98]

CHAPTER 58. FACILITATION AND PROVISIONING OF PAYPHONE SERVICE

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 131 et. seq. and 139.1]

[Source: Codified 5-15-97]

SUBCHAPTER 1. GENERAL PROVISIONS

165:58-1-1. Purpose; short title

- (a) This Chapter establishes the Oklahoma Corporation Commission rules governing the regulation and operations of Payphone Service Providers in Oklahoma, which may be cited by the short title as the Payphone Rules.
- (b) This Chapter is intended to define good business practices under normal conditions, to assure adequate service, to prevent collection of unfair charges from end-users, and to protect payphone service providers from unreasonable demands.
- (c) This Chapter is further intended to permit lawful market-driven price and service competition among payphone service providers by applying such regulatory requirements as are necessary to assure public access to payphone services, under tariff provisions which are not unjustly discriminatory, and to preclude unjust and unreasonable rates and charges in such market.
- (d) This Chapter is intended to establish public interest payphones for the purpose of making telecommunications services available in the interest of public convenience, health, safety and welfare, at locations where there would otherwise not be a payphone.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX §18 et seq. of the Constitution of the State of Oklahoma, 17 O.S. Section 131 et seq., and enactments of the Oklahoma Legislature, has authority and responsibility to supervise, regulate, and control payphone service providers seeking to or providing telecommunications service in the State of Oklahoma, and to enact rules and regulations in connection therewith.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-3. Application of rules

This Chapter shall apply to every payphone service provider seeking to or providing telecommunications service in the State of Oklahoma, including incumbent LECs and certificated IXCs providing payphone service in the State of Oklahoma as of January 1, 1996, and, where applicable, to every telecommunications service provider facilitating the provisioning of payphone service, which providers are, by law, subject to the jurisdiction of the Oklahoma Corporation Commission. (See Exclusions at OAC 165:58-1-15.)

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-4. Definitions

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

"Aggregator" means any person or entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls including calls using an operator services provider; i.e., customers of an OSP. Aggregators include, but are not limited to, hotels, motels, hospitals, universities, airports, gas stations and payphone service providers. The term "Aggregator" is not applicable to coinless payphones provided for use only by inmates at state, federal, local and county jails and correctional institutions, as provided for by 17 O.S. (1991) §139.1, but shall include payphones provided for public use in visitation or other areas of such jails and correctional institutions.

"Automatic Number Identification ("ANI")" means the automatic transmission by the local switching system of the originating telephone number to an interexchange telecommunications carrier or other provider of telecommunications service or the operator of a 911 system.

"Call completion" means a call that is answered by the called party.

"Certificate of Convenience and Necessity" as used in this Chapter means an order issued by the Commission authorizing a person, firm, partnership, corporation, cooperative corporation, or other lawful entity to provide telecommunications service in the State of Oklahoma, after the filing of an application and approval by the Commission.

"Commission" means the Oklahoma Corporation Commission.

"Competitive local exchange carrier ("competitive LEC")" means, with respect to an area or exchange(s), a telecommunications service provider that is certificated by the Commission to provide local exchange service in such area or exchange(s) within the State of Oklahoma after July 1, 1995.

"Customer trouble report" means any oral or written report given to the payphone service provider's repair department or contact person by an end-user relating to a defect or difficulty or dissatisfaction with the payphone service provider's instrument and/or service(s).

"End-user" means a member of the general public who uses a payphone.

"FCC" means the Federal Communications Commission.

"Incoming call screening" means a service that identifies the type of incoming calls, such as collect or third-party billed calls, for the purpose of restricting call completion.

"Incumbent local exchange company ("incumbent LEC")" means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Oklahoma on July 1, 1995, pursuant to its Certificate of Convenience and Necessity or grandfathered authority.

"Interexchange telecommunications carrier ("IXC")" means any person, firm, partnership, corporation, or other entity, except incumbent LECs, engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.

"Operator Service Provider ("OSP")" means any common carrier, certificated by the Commission that provides intrastate operator services, or any other person or entity certificated by the Commission to provide operator services.

"Operator services" means the initiation of any intrastate telecommunications service, including but not limited to, services from an aggregator location, which services include, as a component, any automated or live

assistance to an end-user for the purpose of arranging billing or completion, or both, of an intrastate telephone call.

"Outgoing call screening" means a two-digit code passed by the local switching system with an ANI at the beginning of each call that provides information about the originating line.

"Payphone service" means the provision of telecommunications service by a payphone service provider through the means of a public or semi-public payphone, which, except for calls to public emergency telephone numbers and other numbers as may be designated by state or federal regulation, is utilized by the use of coins or alternative billing mechanisms, and is accessible by members of the general public. For purposes of this Chapter, coinless telephones provided in guest rooms by a hotel/motel are not payphones.

"Payphone service instrument" means the equipment placed by a payphone service provider to facilitate the provisioning of payphone services to the end-user at a given location.

"Payphone service provider" ("PSP") means any person, firm, partnership, corporation, cooperative corporation, or other lawful entity providing payphone service as defined in these rules.

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

"Public interest payphone" means a Commission-designated payphone instrument which is placed, at a location where there would otherwise not be a payphone, in the interest of making available telecommunications service for public welfare, health and/or safety reasons.

"Public use" means any item available to, or area accessible by the general public for their use.

"Reseller" means a common carrier offering interexchange telecommunications services to the public that does not own transmission facilities, but obtains telecommunications services from another carrier for resale to the public for profit.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other unregulated services. (Enhanced services means services that are delivered over communications transmission facilities and that use computer processing applications to: (1) change the content, format, code or protocol of transmitted information; (2) provide the customer new or restructured information; or, (3) involve end-user interaction with information stored in a computer.)

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which services are offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications" means the transmission, between or among points specified by the user, of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service provider ("TSP")" means all authorized providers of local exchange service, whether an incumbent LEC or a competitive

LEC.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a reseller elects to post, in a searchable format, on a publicly available website.

"Zero minus ("0-") call" means an operator-assisted call where the calling party dials zero ("0") for an operator and waits until an operator comes on the line. The caller then states the telephone number they want to reach and the nature (person-to-person, collect, etc.) of the call.

"Zero plus ("0+") call" means an operator-assisted call where the calling party dials zero ("0") followed by the number being called, including the area code. This dialing pattern is used mostly for collect, credit card, person-to-person and third-party-billed calls. The caller indicates the type of call after dialing is completed and an operator may come on line.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-1-5. Interpretation of rules

The words contained in this Chapter shall be given their ordinary and customary meaning, with technical terms and words being construed as generally understood within the telecommunications industry, except where otherwise expressly provided. Where the rules of this Chapter establish service standards or objectives, substantial compliance will be deemed in compliance with this Chapter. Where the rules of this Chapter impose an absolute obligation upon the applicant, the payphone service provider and/or the telecommunications service provider, strict compliance is required.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship and/or excessive expense to the payphone service provider or the end-user, or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter upon application of any interested person. The Commission may grant temporary relief pending hearing.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-7. Supremacy

Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter. With regard to telecommunications service providers and IXCs providing payphone service as of January 1, 1996, this Chapter is intended to supplement OAC 165:55, the Commission's Telecommunications Services rules, and where a conflict arises, the provisions of this Chapter shall supersede OAC 165:55 with respect to the provisioning of payphone service only.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

165:58-1-8. Exceptions or variances in tariffs

If a payphone service provider seeks an exception or variance from this Chapter in its tariffs or terms and conditions of service, such exception or variance shall be clearly shown on such proposed tariffs or terms and conditions of service,

sufficient to plainly bring to the Commission's attention the exact nature of the said exception or variance being sought. Any exception or variance not so marked or identified in such proposed tariff or terms and conditions of service shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the variance shall indicate the number of the pertinent Commission order.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-9. Rules conform to law

This Chapter shall be construed to conform with the Oklahoma Constitution and with the laws of the State of Oklahoma.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-10. Controversy over rules

Whenever a controversy exists in connection with the interpretation of this Chapter or its applicability, or any right or duty imposed thereby, the Commission, upon application of any interested person and after notice and hearing, will enter such order thereon as it may deem appropriate.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-11. Severability

This Chapter shall not relieve, in any way, a payphone service provider from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable. This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person. The Commission may make exceptions to this Chapter for good cause shown.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-12. Conflict with Commission order

This Chapter shall not alter or amend any order of the Commission directed to a payphone service provider, except where the provisions thereof are in direct conflict with this Chapter, in which case this Chapter shall supersede the provisions of any such order to the extent of conflict only, unless otherwise ordered by the Commission.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-13. Conflict with filed tariffs

All tariffs and terms and conditions of service heretofore filed by a certificated IXC or incumbent LEC which currently provides payphones to the general public and whose tariffs have been approved by the Commission are not revoked, altered or amended by this Chapter, except to the extent they are in direct conflict with any provision of this Chapter, in which event such tariffs and terms and conditions of service are superseded by this Chapter to the extent of conflict only.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-14. Tariff conformance [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked at 16 Ok Reg 2333, eff 7-1-99]

165:58-1-15. Exclusions

(a) This Chapter shall not be applicable to coinless payphone service instruments provided for use only by inmates at state, federal, local and county jails and correctional institutions, as provided for by 17 O.S. (1991) §139.1. This Chapter shall be applicable to payphones located at such facilities which are available for public use.

(b) For purposes of this Chapter, coinless telephones provided in guest rooms by a hotel/motel are not deemed to be payphones.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-16. Confidential information

(a) If a payphone service provider is required by this Chapter to submit information to the Commission that the payphone service provider considers to be confidential, the payphone service provider shall file a motion for protective order concerning said confidential information.

(b) In the absence of a protective order, the Commission shall not be required to maintain confidentiality of information within its possession.

(c) Pending a determination regarding approval of any protective order by the Commission, the Staff may, at its option, review the information claimed to be confidential at a location supplied by the payphone service provider in Oklahoma City, Oklahoma.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-17. Public utility assessment fee

Each payphone service provider shall be subject to an annual assessment fee levied in accordance with Title 17 O.S. Section 180.11 and the provisions of OAC 165-5-3-20 et seq., which the payphone service provider shall be obligated to pay in a timely fashion consistent with the provisions contained in OAC 165:5-3-24.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-1-18. Universal service

Pursuant to OAC 165:59-3-40, every entity that operates or provides telecommunications service within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATE OF CONVENIENCE AND NECESSITY

165:58-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person or entity shall furnish payphone service under any name to any end-user in the State

of Oklahoma without first having secured from this Commission a Certificate of Convenience and Necessity to provide payphone service. Incumbent LECs and certificated IXC's providing payphone service prior to January 1, 1996, shall not be required to obtain an additional Order granting it a Certificate of Convenience and Necessity for the payphone services being provided on that date, except as provided in OAC 165:58-3-4.

(b) Application for Certificate of Convenience and Necessity. An application for a Certificate of Convenience and Necessity to provide payphone service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and four (4) copies of the application for Certificate of Convenience and Necessity shall be filed at the Commission's Court Clerk accompanied by the established filing fee. An example of the format for the application for Certificate of Convenience and Necessity is available from the Public Utility Division.

(c) Application requirements for Certificate of Convenience and Necessity. An applicant to the Commission for a Certificate of Convenience and Necessity to provide payphone service in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested payphone service in the State of Oklahoma. An application for a Certificate of Convenience and Necessity to provide payphone service, except as provided for in OAC 165:58-3-4, shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant in a format approved by the Director of the Public Utility Division.

(1) The application shall contain the following information:

(A) As applicable, the complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. (1991) §1140, corporate or other headquarters street address and names/addresses of principal or corporate officers or partners of the entity proposing to provide payphone service to the public in the State of Oklahoma. Also, include the telephone number and, if applicable, the toll-free telephone number.

(B) If different from those provided pursuant to subparagraph (1) (A) of this subsection, the name(s) and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(2) The attachments to the application shall include the following:

(A) A copy of the applicable certificate, issued to corporations by Oklahoma's Secretary of State, to transact business in the State of Oklahoma or for noncorporations, issued by the County Clerk's Office in each county in which the applicant intends to operate payphones.

(B) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name, i.e. d/b/a, utilized by the payphone service provider.

(C) A financial statement.

(D) Contact names(s), address(es) and telephone number(s) of the individual(s) responsible for providing service to customers, for

repair and maintenance, for answering complaints, and supplying refunds. This will be the principal contact to be utilized by the Commission's Consumer Services Division and Public Utility Division regarding questions and complaints against the payphone service provider.

(E) A brief description of its history of providing payphone service or other telecommunications services, in order to demonstrate its managerial and technical experience and abilities. Applicants without prior telecommunications or payphone experience shall provide documentation which supports its managerial and technical ability or other documentation as may be requested by the Commission.

(F) A complete set of proposed tariffs which shall include terms and conditions of service and all rates and charges for each service classification in a format approved by the Director of the Public Utility Division. The proposed tariffs shall conform with OAC 165:58-7.

(G) A copy of the applicant's proposed complaint report form which should comply with OAC 165:58-3-23. The complaint report form and complaint codes suggested by the Director of the Consumer Services Division are included as Appendix J and Appendix K, respectively, to this Chapter.

(H) A copy of the applicant's established procedures it intends to utilize in the State of Oklahoma to test its service location(s) and instrument(s).

(I) A statement signed in the presence of a Notary Public by an authorized agent of the payphone service provider attesting to the following:

- (i) Compliance with all requirements of all applicable federal, state and local laws and regulations concerning the provision of payphone service to the disabled and hearing impaired;
- (ii) Compliance with the National Electrical Safety Code;
- (iii) That the payphone service provider's instruments are registered pursuant to FCC Part 68;
- (iv) That the payphone service provider will pay the Public Utility assessment fee levied annually.
- (v) That the payphone service provider will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;
- (vi) That the payphone service provider understands the Commission's contempt authority;
- (vii) That the applicant will comply with all the signage requirements of OAC 165:58-5-3;
- (viii) That all statements contained in the application are true and correct;
- (ix) That the applicant possesses the financial ability to provide payphone service in the State of Oklahoma; and
- (x) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission.

(J) A listing of any other certificate(s) issued by the Commission, and identification of the service(s) being provided pursuant to such Certificate(s).

(3) Additional information as requested by the Commission.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57, and/or 58, must make Application to the Commission and provide all information and notice as required in Sections 165:58-3-1(c) and 165:58-3-3. However, information submitted in support of a previous Application for certification, if such Application was approved by the Commission, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an Application shall be filed pursuant to OAC 165:58-3-2.

(e) **Amended application.** During the Staff's review of the payphone service provider's application, certain revisions and/or corrections to documents attached to the application may be requested. After the parties have agreed to the necessary revisions and/or corrections, such revisions and/or corrections shall be attached to an amended application. The payphone service provider shall file an original and four (4) copies of its amended application with the Commission's Court Clerk. Requested revisions and/or corrections may include, but shall not be limited to:

- (1) Revisions to the applicant's proposed tariffs;
- (2) Provision of documents omitted from the originally filed application; and/or,
- (3) Correction of the statement, in the body of the application only, regarding the services for which authority to provide is being sought.

(f) **Adjunct and/or additional services.** Applicants seeking a Certificate of Convenience and Necessity to provide payphone services, that also intend to provide interexchange services and/or operator services as an adjunct service, solely in conjunction with and through its own public and/or semi-public payphone instruments, may file a single application seeking authority for all of the services it desires to provide. However, the application provided for under this subsection shall sufficiently address each of the relevant provisions required by the applicable Commission rules for applicants seeking authority to provide such service(s) (e.g., Reseller rules at OAC 165:56; OSP rules at OAC 165:57, etc.) for such adjunct authority to be considered by the Commission. In addition, the payphone service provider must ensure that its tariff includes the information set forth in OAC 165:58-7-2 for every adjunct service it intends to offer in the provisioning of payphone service. Any applicant or holder of a Certificate of Convenience and Necessity to provide payphone service, who seeks to provide any additional service(s) (e.g., interexchange service, operator service, etc.) to the general public, which is/are regulated by the Commission but which exceeds the offering of adjunct service(s) as contemplated by this subsection, must file a separate application seeking authority to provide such additional service(s) and must fully comply with the appropriate Commission rules and regulations governing the

application process and the provisioning of such regulated service(s).

(g) **Additional Information.** The Public Utility Division Staff may issue data requests for additional relevant information as may be necessary. Data request responses should be submitted to the Staff member requesting the information, and not filed with the Commission's Court Clerk.

(h) **Approval requirement.** Unless provided otherwise in this Chapter, or by the laws of the State of Oklahoma, no Certificate of Convenience and Necessity shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 19 Ok Reg 2012, eff 7-1-02; Amended at 21 Ok Reg 2130, eff 7-1-04; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-3-2. Expansion of service territory.

An Applicant wishing to expand its service territory must make application to the OCC and provide all information and notice as required under 165:58-3-1(c) and 165:58-3-1(e). However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct. If the previously submitted information is no longer true and correct, Applicant shall submit updated information along with a written affirmation.

[Source: Reserved at 14 Ok Reg 21, eff 9-30-96 (emergency); Reserved at 14 Ok Reg 1261, eff 5-15-97; Amended at 21 Ok Reg 2130, eff 7-1-04]

165:58-3-3. Notice of hearing for Certificate of Convenience and Necessity [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 16 Ok Reg 2333, eff 7-1-99; Revoked at 35 Ok Reg 1063, eff 9-14-18]

165:58-3-4. Streamlined certification

(a) Each incumbent LEC and certificated IXC providing payphone service in the State of Oklahoma on January 1, 1996 shall be exempt from the requirements of OAC 165:58-3-1(c) with respect to such payphone service. In the event that any such grandfathered payphone service provider, after January 1, 1996, desires to extend its payphone service into new territory or change the type of grandfathered payphone services being provided, such provider shall file an application specifying the expanded authority desired and shall comply with the requirements contained in OAC 165:58-3-4(c), (d), (e) and (f) before engaging in the provision of such extended payphone service.

(b) Any telecommunications service provider or certificated IXC not providing payphone service on January 1, 1996 shall be exempt from the requirements of OAC 165:58-3-1(c) with respect to payphone service, but shall comply with the requirements contained in OAC 165:58-3-4(c), (d), (e) and (f) before engaging in the provision of payphone service.

(c) A streamlined application for a Certificate of Convenience and Necessity to provide payphone service must be filed with the Commission containing the following information:

- (1) A complete set of proposed tariffs which shall include terms and conditions of service and all rates and charges for each service

classification in a format approved by the Director of the Public Utility Division, unless such tariffs have previously been filed and approved. The proposed tariffs shall conform with OAC 165:58-7.

(2) An affidavit stating that the applicant will comply with all requirements of OAC 165:58-5-3.

(3) A copy of the applicant's established procedures which are used to test and maintain its payphones.

(4) A statement signed before a Notary Public by an authorized agent of the payphone service provider, in a format approved by the Director of the Public Utility Division, attesting to the following:

(A) Compliance with all requirements of all applicable federal, state and local laws and regulations concerning the provision of

payphone service to the disabled and hearing impaired;

(B) Compliance with the National Electrical Safety Code;

(C) That the payphone service provider's instruments are registered pursuant to FCC Part 68; and,

(D) That the payphone service provider will pay the Public Utility assessment fee levied annually.

(E) That the payphone service provider will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59; and,

(F) That the payphone service provider understands the Commission's contempt authority.

(5) Additional information as requested by the Commission and/or its Staff.

(d) Applicants under this streamlined process for a Certificate of Convenience and Necessity to provide payphone service shall give Notice of the streamlined application, by mail or personal service to the Attorney General of the State of Oklahoma and to any telecommunications service provider possessing a Certificate of Convenience and Necessity applicable to the area sought to be served by the applicant. Further, such Notice shall be published pursuant to 17 O.S. Section 132. No certificate shall issue until the expiration of thirty (30) days from the date of the first publication of the Notice. Publication shall be at the expense of the applicant and shall be made in one or more newspapers which has/have met the statutory requirements for publication of legal notices and which is/are in general circulation in each territory where service will be offered. A "Proof of Publication" document shall be filed in the cause with the Commission's Office of the Court Clerk within seven (7) days of the last publication date.

(e) If no objections have been filed to a streamlined application made pursuant to this Section within (thirty) 30 days from the date of the first publication of Notice, the Commission may grant the Certificate of Convenience and Necessity to provide payphone service without hearing. If objections are filed, a hearing shall be held on the streamlined application.

(f) When a streamlined application is granted for payphone service under this Section, the applicant shall not begin offering payphone service until the Director of the Public Utility Division has approved the applicant's tariff.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

165:58-3-5. Requirement of a payphone service provider before initiation of service

(a) Copies of the payphone service provider's Certificate of Convenience and Necessity to provide payphone service, or for providers grandfathered pursuant to

OAC 165:58-3-1(a) other evidence of authority to provide payphone service (i.e. a letter from the Director of the Public Utility Division), must be provided to the telecommunications service provider providing the access line at each payphone location prior to the establishment of service. Access to the public switched network shall be prohibited until such copies or appropriate evidence have been provided.

(b) Access lines shall only be provided to the entity possessing a Certificate of Convenience and Necessity in that entity's own name.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

165:58-3-6. Notice requirements when filing an Application for Certificate of Convenience and Necessity

Applicants seeking a certificate of Convenience and Necessity shall meet all notice requirements set forth in this Section.

(1) Requirements for filing an Application for Certificate of Convenience and Necessity. An application of a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

- (A) The Oklahoma Attorney General;
- (B) The Commission's Director of the Public Utility Division;
 - (i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Commission's Court Clerk and shall be delivered to the Director of the Public Utility Division in electronic copy form only.
 - (ii) The Director of the Public Utility Division shall update and post a report that includes reference to the Application of Certificate of Convenience and Necessity on the Commission's website, within five (5) business days of receipt.
- (C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.

(2) Publication of a Notice of Application of a Certificate of Convenience and Necessity. The Notice required by 17 O.S. § 132 shall be published as follows:

- (A) In a newspaper of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in each service territory affected.
- (B) Publication shall be at the expense of the applicant.
- (C) A "Proof of Publication" document shall be filed with the Commission's Court Clerk within fifteen (15) days of the last publication date.

(3) Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.

- (A) When an objection is made in a cause for an Application for a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing with the Commission's Court Clerk requesting a date for a hearing on the merits of the application.

(B) Within ten (10) business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

- (i) The Oklahoma Attorney General;
- (ii) The Commission's Director of the Public Utility Division; and
- (iii) Any Intervenors, including the person or entity filing the objection.

[Source: Added at 35 Ok Reg 1063, eff 9-14-18]

165:58-3-7. Approval of initial tariffs

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:58-3-1, a payphone service provider shall file an application requesting approval of its initial tariffs, unless filed pursuant to OAC 165:58-3-1(c)(2)(F), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 7 of this Chapter.

(b) All entities seeking approval of an initial tariff shall serve the file-stamped Application by mail, electronic mail, or personal service to the Oklahoma Attorney General and the Director of the Public Utility Division.

(c) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by the Commission.

(d) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:58-7-3, shall be provided to the Public Utility Division.

[Source: Added at 35 Ok Reg 1063, eff 9-14-18]

PART 3. GENERAL REQUIREMENTS FOR RECORDS AND REPORTS

165:58-3-10. Who shall file

The record keeping, report, and filing requirements listed in this Chapter shall apply to all payphone service providers operating in the State of Oklahoma as defined in OAC 165:58-1-4.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

PART 5. RECORD REQUIREMENTS

165:58-3-20. Location of records

All records required by this Chapter shall be kept at the general office of each payphone service provider and shall be made available to the Commission or its authorized representative at any reasonable time upon request. Each payphone service provider governed by this Chapter shall keep all of its books and records in accordance with good business practices and as required by this Chapter and at such place as they are normally kept in the usual course of business. The payphone service provider shall keep the Commission advised as to the location of these records and shall make them available to the Commission at reasonable times for examination and inspection at a location designated by the Commission.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-3-21. Retention of records

All records required by this Chapter shall be preserved for two (2) years.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Not later than April 1 of the year following the reporting year, each payphone service provider shall provide to the Director of the Public Utility Division an annual report in the format provided by the Director of the Public Utility Division.

(b) **Other information.** Each payphone service provider shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

(c) **Contact names.** Each payphone service provider shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues. If the below information is unavailable, the payphone service provider may seek a waiver from the PUD Director by making a request in writing.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues;
- (F) Billing inquiries;
- (G) Regulatory matters;
- (H) Oklahoma Universal Service Fund (and Monthly Payout, Fee Assessment, Requests for Funding, if different);
- (I) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (J) Primary emergency;
- (K) Afterhours emergency;
- (L) Annual reporting;
- (M) Attorney for regulatory matters; and
- (N) Community Liaison.

(d) **Other information.** Each payphone service provider shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 19 Ok Reg 2012, eff 7-1-02; Amended at 36 Ok Reg 713, eff 7-25-19]

165:58-3-23. Record of Customer Complaints

(a) Each payphone service provider shall maintain a record of customer complaints, in the format suggested by the Director of the Consumer Services Division and included as Appendix J to this Chapter, that compiles complaints that have been received by the company and includes, at a minimum:

- (1) The instrument location;
- (2) The telephone number;
- (3) The applicable complaint code;
- (4) The date the complaint was filed; and,
- (5) The resolution of the complaint, to include the amount of refund, if any, given.

(b) The categories of complaints to be used shall be negotiated between the payphone service provider and the Director of the Consumer Services Division, subject to the approval of the Commission. A list of the suggested customer complaint codes is attached as Appendix K to this Chapter.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

165:58-3-23.1. Record of trouble reports

Each PSP shall maintain a complete written record of all customer trouble reports of service-affecting defects in payphone service provided by the PSP. The records shall identify the end-user or service affected, the time and date of the report, the nature of the defect reported, the action taken to correct the trouble, the date and time of trouble clearance or other disposition. Each PSP shall make a full and prompt investigation of every trouble report made to it by its end-users, either directly or through the Commission. It shall keep a record of each trouble report received. Each record shall show the name and address of the reporting end-user, the date and character of the trouble reported, and the adjustment or disposal made thereof, which record shall be retained for two (2) years. Records shall be kept of all trouble reports as defined by this Chapter.

[Source: Added at 16 Ok Reg 2333, eff 7-1-99]

165:58-3-24. Listing of payphone locations

Each payphone service provider shall maintain an updated and current list of its payphone locations. The listing shall include the applicable street location(s) and associated telephone number(s), if any, the name of the presubscribed operator service provider and long distance toll provider providing service at that location, and an up-to-date contact number for the OSP and the long distance toll provider. Each payphone service provider shall promptly furnish such information to the Commission Staff upon request.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

PART 7. REPORTING REQUIREMENTS

165:58-3-30. Report attestation

All reports required by this Chapter to be submitted to the Commission shall be attested to by an officer or manager of the payphone service provider under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the payphone service provider's operation.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

165:58-3-31. Due dates of reports

All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified in this Chapter or unless otherwise agreed to by the Director of the Public Utility Division:

- (1) Annual reports - Not later than May 1 of the year following the reporting calendar year.
- (2) Special and additional reports - As may be prescribed by the Commission.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

SUBCHAPTER 5. GENERAL REQUIREMENTS

PART 1. SERVICE REQUIREMENTS

165:58-5-1. Minimum service requirements

- (a) Each payphone service provider is responsible for the installation, maintenance, repair and operation of its payphone service instrument(s).
- (b) All payphone service instruments must be installed in compliance with the National Electrical Code and the National Electrical Safety Code.
- (c) Each payphone service provider is responsible for ensuring that its payphone service instrument(s) is/are registered and connected to the telephone network in compliance with Part 68 of the FCC Rules and Regulations and that the FCC registration number of each instrument to be connected shall be provided to the appropriate telecommunications service provider.
- (d) All installed payphone service instruments must be connected to the public switched network pursuant to tariffs authorized by the Commission and issued by a telecommunications service provider certificated to serve the location where each instrument is located, and each payphone service provider shall ensure that its equipment is installed and maintained such that it does not hinder, interfere with or preclude achievement of the following minimum standards:
 - (1) Dial tone: Ninety-five percent (95%) within three (3) seconds;
 - (2) Completion of calls: Ninety percent (90%) without encountering an all trunks, busy condition within the central office;
 - (3) Local interoffice trunks: Ninety-five percent (95%) of calls offered to the group will not encounter an all trunks busy condition; and
 - (4) Intrastate toll connecting trunks: Ninety-seven percent (97%) will not encounter an all trunks busy condition.
- (e) Each payphone service provider may only subscribe to and obtain intrastate service from certificated providers.
- (f) Payphone service providers are precluded from offering only coinless payphones in locations where the payphone service provider has entered into an exclusive contract.
- (g) An audible bell or other sound shall be required to indicate an incoming call, when applicable.
- (h) Each payphone service provider must follow the procedures established to test their payphone service, including each instrument and location.
- (i) All payphone service locations are subject to random and periodic inspections to assure compliance with Commission requirements. An example of the initial form which will be used by the Commission during inspections is attached as Appendix G to this Chapter. Changes to the inspection form may be made periodically to incorporate changes as needed.

(j) It will be a service objective of each payphone service provider to correct ninety percent (90%) of the interruptions of service on payphones on the next working day after the interruption is reported or discovered.

(k) Each payphone service provider shall maintain a toll-free number for the purpose of receiving customer trouble reports, which shall be answered twenty-four (24) hours a day.

(l) At a minimum, all payphone service providers shall:

(1) Allow access to an end-user's carrier of choice via 101XXXX, 1-800, 1-888 and 950 carrier access code dialing, without a coin;

(2) Allow free access to emergency calling, without requiring a coin or other method of payment;

(3) Provide the end-user access to local directory assistance;

(4) Allow end-users to place local and long distance calls, using any combination of nickels, dimes and quarters or, if the payphone instrument accepts same, currency, or alternative billing mechanisms (for example, but not limited to, calling/credit card calls, collect calls, and third-party billed calls);

(5) Maintain compliance with all applicable federal, state and local laws and regulations concerning the provision of payphone service to the disabled and hearing impaired;

(6) Ensure all keypads display both alpha and numeric representations;

(7) Subscribe to incoming call screening and outgoing call screening where available;

(8) Allow completion of local and long distance calls;

(9) Allow access to an operator without charge and without the use of a coin;

(10) Return any end-user deposited amount, if the call is not completed;

(11) Permit the caller or called party to terminate the call at no charge prior to completion of the call by the payphone service provider;

(12) Not limit the duration of local calls except for good cause shown through the filing of an application, after approval by the Commission. Any payphone service provider receiving such approval must also post information on or near each such payphone instrument sufficient to adequately inform the payphone end-user of the existence and extent of this limitation;

(13) Not impose any surcharge to the end-user for access to a telecommunications service provider;

(14) Not charge any end-user or called number for incomplete or unanswered calls;

(15) Not attach extension telephones to pay telephones, unless the pay telephone displays a notice that legibly and conspicuously states in capital letters, "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE."; and,

(16) The payphone service provider shall select a site for the payphone that will comply with state and city safety standards.

(m) Where the technology is not available to payphone service providers from incumbent LECs to allow access to dial 101XXXX calls described in paragraph (1) of subsection (l) of this Section, the requirement will be waived until such technology is offered by the incumbent LEC, and in any event not later than July 1, 1998.

(n) In addition to the requirement of OAC 165:58-5-3, an OSP/Aggregator shall disclose audibly and distinctly to the end-user, at no charge and before connecting any intrastate 0+ call, how to obtain the total cost of the call, including any and all surcharges, or the maximum possible total cost of the call, including any and all surcharges, before providing further oral advice to the end-user on how to proceed to make the call.

(o) The oral disclosure required in this Section shall instruct end-users that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

165:58-5-2. [RESERVED]

[Source: Reserved at 14 Ok Reg 21, eff 9-30-96 (emergency); Reserved at 14 Ok Reg 1261, eff 5-15-97]

165:58-5-3. Signage

(a) The following information shall be posted in a visible and readable location, on or near each payphone instrument:

- (1) The name, address and toll-free telephone number of the payphone service provider;
- (2) Instructions for use of the payphone, including instructions for accessing emergency services;
- (3) The name, address and toll-free number of the certificated provider of operator services and certificated long distance toll provider;
- (4) A written disclosure that the rates for all operator-assisted calls are available upon request, and that end-users have a right to obtain access to their carrier of choice and may contact their preferred carrier for information on accessing that carrier's service using that payphone;
- (5) A method of reporting service difficulties and obtaining refunds at no cost to the end-user;
- (6) The name, address, hours of operation (8:00 a.m.-4:30 p.m., Monday through Friday), and the local and toll-free telephone numbers of the Commission's Consumer Services Division, to which the end-user may direct complaints and questions regarding the payphone service provider and/or any instrument;
- (7) The name, address, and telephone number of the Federal Communications Commission;
- (8) If a payphone service instrument does not receive incoming calls, a notice shall be prominently displayed with either the words "OUTGOING CALLS ONLY" or "THIS TELEPHONE CANNOT RECEIVE TELEPHONE CALLS" or similar language approved by the Commission;
- (9) The payphone service instrument shall display the phone number of the instrument, and for each payphone service instrument, if any, for which emergency telephone number services capable of expediently identifying the instrument's location, in order to facilitate public safety response as set forth in OAC 165:55-13-10(a)(1)(E), do not exist, the provider of such payphone service instrument shall take reasonable steps to prominently display the physical address of the instrument;
- (10) The payphone service instrument shall display instructions on how to contact both local and long distance directory assistance;

- (11) The payphone signage shall include a notice that states "CHANGE NOT PROVIDED", if applicable;
- (12) Clearly identify the charge per local call;
- (13) Clearly identify if a charge per call for directory assistance is applicable; and
- (14) If an extension has been attached, a notice that legibly and conspicuously states in capital letters, "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE."

(b) Signage must be protected from the elements.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

165:58-5-4. [RESERVED]

[Source: Reserved at 14 Ok Reg 21, eff 9-30-96 (emergency); Reserved at 14 Ok Reg 1261, eff 5-15-97]

165:58-5-5. Access to emergency services

End-users must be able to access, where available, 911 emergency services, and 711 telecommunications relay services. The payphone service provider must allow 911 and 711 calls to be connected to the public service answering point at no charge without requiring a coin or credit card. Where 911 emergency service and/or 711 telecommunications relay services are not available, the caller must be instructed to dial "0" and calling "0" must, at no charge and without requiring a coin or credit card, directly connect the caller either with the local exchange service provider providing the payphone access line from which the call is made or with an OSP that will complete the emergency call at no charge.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 19 Ok Reg 2012, eff 7-1-02]

PART 3. PUBLIC INTEREST PAYPHONES

165:58-5-10. Public interest payphones

The Commission may, on a case-by-case basis, designate, establish or disconnect public interest payphones, and may determine minimum service requirements for each public interest payphone, so designated or established, upon the Commission's own application or the application of any interested party, after notice as required, including notice to the Attorney General, and after a hearing on the merits.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

SUBCHAPTER 7. TARIFFS

165:58-7-1. Tariffs and/or Terms of Service required

(a) All payphone service providers must file a tariff which sets forth all terms and conditions of service and all regulated rates and charges for payphone services. Those services contained in the company's tariff and approved by the Commission or Terms of Service may be provided to end-users at the regulated rates and charges contained in the company's filed tariff or Terms of Service. No deviation of any kind from the filed tariff or Terms of Service is permitted, unless otherwise ordered

by the Commission.

(b) Except as required in OAC 165:58-7-5, not later than thirty (30) days after the effective date of the tariff, an original and two (2) copies of the approved tariff which conforms to OAC 165:58-7-3 shall be provided to the Public Utility Division.

(c) Failure to comply with this Section may result in the filing of a Motion to Cease and Desist and could result in revocation of the payphone service provider's Certificate of Convenience and Necessity.

(d) A payphone service provider which has a written tariff on file with the Commission may withdraw the tariff if the payphone service provider:

- (1) provides written notice to the Director of the Public Utility Division and the Oklahoma Attorney General, that it is withdrawing the tariff,
- (2) posts the Terms of Service, and
- (3) provides the Commission with the web page information where the language is posted.

(e) The Commission maintains the same authority to review the Terms of Service of a payphone service provider, as permitted by OAC 165:58-7-5.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 19 Ok Reg 2012, eff 7-1-02; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-7-2. Information to be included in a payphone service provider's tariff

The tariff shall include the following information:

- (1) Table of contents.
- (2) Symbols for changes in tariff.
- (3) Applicability of the tariff.
- (4) Accessibility of tariffs.
- (5) Detailed billing and collection information.
- (6) Detailed information regarding handling of complaints and disputed charges.
- (7) All services provided by the company and a detailed explanation of each, including adjunct reseller and OSP services, if applicable.
- (8) All rates and charges applicable to regulated services provided in Oklahoma.
- (9) A price list which sets forth the charge for a local coin call.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

165:58-7-3. Requirements as to size, form, identification, and filing of tariffs

(a) All tariffs shall be in loose leaf form of a size eight and one-half inches by eleven inches (8-1/2" x 11") and shall be plainly printed or reproduced on paper of good quality. The tariff shall be in a format approved by the Director of the Public Utility Division. The front page of the tariff shall contain the name of the payphone service provider including all trade names and the location of its principal office(s).

(b) Tariff sheets are to be numbered consecutively. Each sheet shall show the cause number, the order number, if applicable, the issue date, the effective date, a revision number, section number or title, sheet number, primary name and all trade names of the payphone service provider, and the name of the tariff in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 19 Ok Reg 2012, eff 7-1-02]

165:58-7-4. Symbols for changes

(a) Each payphone service provider shall include in their tariff, notations indicating each change made with the proposed application or revision. Notations (referred to as tariff symbols) to be used are:

- (1) (AT) means addition to text.
- (2) (C) means correction.
- (3) (CP) means change in practice.
- (4) (CR) means change in rate.
- (5) (CT) means change in text.
- (6) (DR) means discontinued rate.
- (7) (FC) means change in format lettering or numbering.
- (8) (MT) means moved text.
- (9) (NR) means new rate.
- (10) (RT) means removal of text.

(b) In addition to symbols for changes, each provision or rate element changed shall contain a vertical line which clearly shows the exact number of lines being changed.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98]

165:58-7-5. Revisions to tariffs

(a) New or revised tariffs describing Payphone Services shall have an effective date on or after the day following the day the submission is delivered to the Director of the Public Utility Division, subject to the following:

- (1) The submission delivered to the Public Utility Division shall include a cover letter, a mark-up copy of the new or revised tariff pages in legislative format, and a final copy of the new or revised tariff pages;
- (2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages; and
- (3) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(b) After investigating, the Public Utility Division may file an application with the Commission seeking to revoke or modify any tariff. After notice and hearing, the Commission may issue an order prospectively revoking or modifying any tariff for good cause.

(c) Tariff revisions to reflect a change to the name and/or the addition of a trade name under which the payphone service provider will be doing business in the State of Oklahoma shall become effective, without Commission order, the date of submission of such tariffs, provided the submission contains the attestation required by subparagraph (5) of this subsection, unless the Commission orders the suspension of said tariff revisions pursuant to OAC 165:58-7-6. The request for name change or request for addition of a trade name shall be accompanied by the following, as applicable:

- (1) An amendment to the Certificate of Incorporation effecting a change of name pursuant to Section 1076, 1077 or 1031 of Title 18 of the Oklahoma Statutes;

- (2) A Trade Name Report filed with the Secretary of State as provided in Section 1140 of Title 18 of the Oklahoma Statutes;
 - (3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in Section 1140.1 of Title 18 of the Oklahoma Statutes;
 - (4) A Transfer of Trade Name Report filed with the Secretary of State as provided in Section 1140.2 of Title 18 of the Oklahoma Statutes; and,
 - (5) An attestation that the tariffs are identical, except for the name change or addition of a trade name, to the existing tariffs of the payphone service provider.
- (d) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-7-5.1. Confidential information related to tariffs

- (a) With the exception of information and data related to the dollar and percentage impacts of the proposed change(s) on end-user rates and the rationale for the proposed tariffs, any additional financial or cost data, or data that is identifiable to a specific customer, requested by the Public Utility Division Staff shall be deemed confidential records or trade secrets of the payphone service provider under the Oklahoma Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless successfully challenged.
- (b) All confidential information and data submitted to the Public Utility Division Staff under subsection (a) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:58-7-5.1."
- (c) For each tariff filing submitted by a payphone service provider in accordance with OAC 165:58-7-5, the same confidential information and data provided to the Public Utility Division Staff shall also be provided to the Office of the Attorney General upon the signing of a Proprietary Agreement by the Attorney General or its representative.
- (d) All confidential information and data provided to the Office of the Attorney General under subsection (c) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:58-7-5.1."

[Source: Added at 15 Ok Reg 3106, eff 7-15-98]

165:58-7-5.2. Name changes and/or trade name additions

Any name changes and/or trade name additions shall be approved pursuant to OAC 165-58-7-5(d).

[Source: Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-7-6. Suspension

- (a) Any tariff filed with the Commission or submitted to the Director of the Public Utility Division pursuant to OAC 165:58-7-5 may be suspended by Commission order, with or without notice or hearing, upon recommendation by the Public Utility Division Staff. The Commission may also order suspension of proposed revisions on motion by an aggrieved party, after notice and hearing.
- (b) To lift the suspension of any filing or submission made by a payphone service provider pursuant to this Chapter, whether the application has been subsequently amended after the suspension or not:

- (1) The applicant shall file a motion pursuant to OAC 165:5-9-2(b), which requests that the suspension be lifted, giving notice to the Oklahoma Attorney General and to all parties of record; or,
 - (2) The application may be set for hearing on the merits at a time to be agreed upon by the Public Utility Division and the applicant.
- (c) If the application is scheduled for hearing pursuant to (b)(2) of this Section and the time for filing an objection to the amended filing has not elapsed, the Notice of Hearing shall be sent to the Oklahoma Attorney General and to any party(ies) of record.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 19 Ok Reg 2012, eff 7-1-02; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-7-7. Objections

Any entity wishing to object to an initial tariff filed pursuant to this Chapter may file objections with the Commission's Court Clerk within fifteen (15) days after the proposed tariff is filed. Any such objection shall comply with the requirements of OAC 165:5, the Commission's Rules of Practice, and this Chapter, and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting entity shall promptly serve its objection on the payphone service provider which filed the proposed initial tariff, the Director of the Public Utility Division, any Intervenor, and the Oklahoma Attorney General.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-7-8. [RESERVED]

[Source: Reserved at 15 Ok Reg 3106, eff 7-15-98]

165:58-7-9. Changes to local coin rates

- (a) The charge for a local coin call was deregulated pursuant to the FCC's Order 96-338, issued September 20, 1996, Order 96-439, issued November 8, 1996, and Order DA97-678, issued April 4, 1997, in the FCC's Docket 91-35 and Docket 96-128 and became effective October 7, 1997.
- (b) The payphone service provider is required to provide, to the Public Utility Division, its local coin rate(s) on a separate local coin rate page or letter which will be included behind the approved regulated tariff for informational purposes only.
- (c) The payphone service provider is allowed to change the rate charged for a local coin call without Commission approval, but only after the following conditions have been met:
 - (1) Signage on all affected payphones shall be revised to reflect the revised local coin rate.
 - (2) Provide, by letter to the Director of the Public Utility Division, the requested information and an attestation that states that the signage on all affected payphones has been changed to reflect the revised local coin rate.

[Source: Added at 15 Ok Reg 3106, eff 7-15-98]

SUBCHAPTER 9. MISCELLANEOUS PROVISIONS

165:58-9-1. Notification when a payphone service provider withdraws from business [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked at 15 Ok Reg 3106, eff 7-15-98]

165:58-9-2. Responsibilities and penalties

(a) Each payphone service provider is responsible for abiding by all applicable Oklahoma statutes, Commission rules, regulations and orders, and telecommunications service provider's tariffs. Penalties for failure to comply with this requirement may include, but are not limited to, immediate disconnections of service and revocation of the payphone service provider's Certificate of Convenience and Necessity to provide payphone service or other type of authority to provide payphone service authorized by this Commission, after notice and hearing.

(b) Violation of OAC 165:58-3-5, by either the payphone service provider or the telecommunications service provider who is providing the access line, will subject one or both providers to fines and/or penalties including, but not limited to, denial or revocation of its Certificate of Convenience and Necessity, by the Commission, after notice and hearing.

(c) The Commission may suspend or revoke a PSP's Certificate of Convenience and Necessity for up to one year for repeat violations of Commission rules.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 16 Ok Reg 2333, eff 7-1-99]

SUBCHAPTER 11. OBLIGATIONS OF TELECOMMUNICATIONS SERVICE PROVIDERS

165:58-11-1. Obligations of telecommunications service providers to facilitate the provisioning of payphone service

(a) A listing, or no listing, in the local telephone white page directory will be provided to the payphone service provider on request, at no charge, for each line utilized by the payphone service provider.

(b) Access for payphone service providers must be available in all exchanges and service areas where facilities are available.

(c) Until such time as an applicable payphone access line tariff is approved, access by payphone service providers to the incumbent LEC's network will be provided by means of a special service arrangement based on the incumbent LEC's business access line tariff rate.

(d) Incoming call screening and outgoing call screening must be provided where and when it is technically feasible, and in any event not later than July 1, 1998.

(e) The telecommunications service provider shall not initiate a billable maintenance service call or take any other billable action in response to a trouble report on a payphone until such time as requested by the payphone owner or authorized agent.

(f) Directory assistance provided to a payphone service provider by a telecommunications service provider shall be on the same terms, conditions and rates that the telecommunications service provider provides such service to itself or its payphone service affiliate or subsidiary. Telecommunications service providers shall not be required to provide such service to payphones accessible to inmates of confinement facilities.

(g) The telecommunications service provider must provide to payphone service providers who use automated call completion technology to complete operator service calls the same services and information that the telecommunications service

provider provides to interexchange carriers, on the same rates, terms and conditions.

(h) Telecommunications service providers must offer direct dialed international call blocking ("011+" and "101XXXX+011+") where technically feasible.

(i) The telecommunications service provider shall only provide access lines to the payphone service provider after a copy of the Certificate of Convenience and Necessity has been provided. Additionally, the telecommunications service provider shall only provide access lines to a payphone provider in the same name as that listed on the Certificate of Convenience and Necessity and that shall be the account billing name.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Amended at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

SUBCHAPTER 12. NOTIFICATION OF CHANGES TO OWNERSHIP, CONTROL OR BUSINESS OPERATIONS

165:58-12-1. Notification of transactions affecting the ownership or control of a payphone service provider

(a) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and Necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and four (4) copies of a Notification of Transaction with the Commission's Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(b) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide payphone services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and four (4) copies of a Notification of Transaction with the Commission's Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a payphone service provider. Such transactions are not subject to regulation by the Commission.

(d) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

(1) The name of the acquiring entity and the acquired entity.

(2) Identification of the acquired assets.

(3) The anticipated completion date and the effective date (if different) of the transaction.

(4) The name of the entity(ies) which will be providing payphone services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").

(5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.

(6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.

(7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and the Consumer Services Division and will be primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues; and,
- (F) Receiving Notices related to causes docketed at the Commission.

(8) An affidavit, including a financial statement, that states that the surviving entity possesses the financial ability to provide payphone services in the State of Oklahoma.

(9) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.

(10) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(11) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(e) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to Oklahoma Attorney General.

(f) The Public Utility Division Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Public Utility Division shall act on a notification within thirty (30) business days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Court Clerk no later than fifteen (15) days after the proposed filing. The Oklahoma Attorney General shall be granted intervention in such proceeding, if requested.

(g) Within thirty (30) business days of the filing of the Notification of Transaction, the Public Utility Division Staff may file a Continuance of Review in the Cause stating that the Public Utility Division Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Public Utility Division Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(h) The Public Utility Division Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Public Utility Division Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Public Utility Division Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction, unless otherwise ordered by the Commission. If such a Notice is filed by the Public Utility Division Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(i) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, which conform to OAC 165:58-7-3, shall be provided to the Public Utility Division.

[Source: Added at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99; Amended at 19 Ok Reg 2012, eff 7-1-02; Amended at 35 Ok Reg 1063, eff 9-14-18]

165:58-12-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 3106, eff 7-15-98]

165:58-12-3. Cessation of business in Oklahoma

(a) At least thirty (30) days before the effective date of the cessation of the provisioning of payphone services in the State of Oklahoma, a payphone service provider shall file an original and eight (8) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of such filing to the Attorney General of the State of Oklahoma.

(b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:

- (1) The contact person who will be responsible for concluding all outstanding business with the Commission and aggregators/location owners;
- (2) Information as to the procedure for any refunds due to customers; and
- (3) The date of withdrawal;

(c) Notice of discontinuance shall be sent by regular mail to all of the payphone service provider's aggregators/location owners. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due aggregations/location owners.

(d) Unless provided otherwise in this Chapter, no withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

(e) The Commission Staff may file an application to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The company's request may be in the form of a letter to the Director of Public Utility Division. The letter will conform with subsections (b) and (c) of this Section.

[Source: Added at 15 Ok Reg 3106, eff 7-15-98; Amended at 16 Ok Reg 2333, eff 7-1-99]

SUBCHAPTER 13. FRAUD

165:58-13-1. Obligations of telecommunication service providers and payphone service providers regarding fraud

(a) Where call screening is available, the telecommunications service provider will not bill any call, including, but not limited to, third number billed, collect, 0+ or 0-calls, to a number which has been clearly identified to the operator, at the time of the call attempt, as a payphone. The telecommunications service provider will not be responsible for refunds or adjustments of charges for calls placed through another operator. However, the telecommunication service provider shall be

responsible to the payphone service provider for any fraud if the telecommunication service provider's call screening, which is paid for by the payphone service provider, fails.

(b) If a payphone service provider provides payphone service in a territory where call screening is not available, the payphone service provider shall be responsible to the provider(s) of telecommunication services who are adversely affected by fraudulent traffic from or to any of the payphones placed by the payphone service provider in such a territory, except that if a telecommunications service provider fails to comply with OAC 165:58-11-1(d), the telecommunications service provider shall be responsible to the providers of telecommunication services who are adversely affected by fraudulent traffic from or to payphones located in such territory.

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

APPENDIX A. APPLICATION FORM FOR CERTIFICATE OF PUBLIC AND CONVENIENCE AND NECESSITY [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked and reenacted at 15 Ok Reg 3106, eff 7-15-98; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX B. SAMPLE TARIFF FORMAT [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX C. SAMPLE NOTICE OF FILING [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked and reenacted at 15 Ok Reg 3106, eff 7-15-98; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX D. SAMPLE NOTICE OF APPLICATION AND HEARING [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked and reenacted at 15 Ok Reg 3106, eff 7-15-98; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX E. SAMPLE NOTICE OF STREAMLINE APPLICATION AND HEARING [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked and reenacted at 15 Ok Reg 3106, eff 7-15-98; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX F. APPLICATION FORM FOR CHANGES TO TARIFFS [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX G. TECHNICAL AND COMPLIANCE INSPECTION FORM PAY TELEPHONE INSPECTION FORM

[Figure 1](#)

[Figure 2](#)

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97]

APPENDIX H. AFFIDAVIT OF AUTHORIZED AGENT FORM

[Figure 1](#)

[Figure 2](#)

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked and reenacted at 15 Ok Reg 3106, eff 7-15-98]

APPENDIX I. ANNUAL REPORT [REVOKED]

[Source: Added at 14 Ok Reg 21, eff 9-30-96 (emergency); Added at 14 Ok Reg 1261, eff 5-15-97; Revoked at 16 Ok Reg 2333, eff 7-1-99]

APPENDIX J. TELECOMMUNICATIONS COMPLAINT REPORT FORM

[Figure 1](#)

[Source: Added at 15 Ok Reg 3106, eff 7-15-98]

APPENDIX K. CUSTOMER COMPLAINT CODES

[Figure 1](#)

[Source: Added at 15 Ok Reg 3106, eff 7-15-98]

CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE AND OKLAHOMA LIFELINE

[Authority: OKLA. CONST. art IX; §18, 17 O.S., §§ 137.3 and 139.101 et seq.]

[Source: Codified 7-1-97]

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-1. Purpose and title

(a) This Chapter establishes the Oklahoma Corporation Commission Rules and Regulations implementing the Oklahoma Telecommunications Act of 1997 (hereinafter referred to as the "Oklahoma Telecommunications Act"). This Chapter shall be cited as the Oklahoma Universal Service and Oklahoma Lifeline Rules.

(b) The purpose of this Chapter is to establish such rules pertaining to Universal Services and the Oklahoma Lifeline Service Program as are necessary and appropriate to implement the Oklahoma Telecommunications Act.

(c) This Chapter also establishes the procedures for administration of the OUSF and the OLF.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-1-2. Jurisdiction

The Oklahoma Corporation Commission has jurisdiction to enact this Chapter by virtue of Article IX § 18 of the Constitution of the State of Oklahoma, the Oklahoma Telecommunications Act, and the Federal Telecommunications Act of 1996. The Commission has the authority to assess a charge upon all telecommunications carriers and contributing providers, in conformance with federal and state law to support the objectives for Oklahoma Universal Services and Oklahoma Lifeline Service.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-1-3. Application of rules

(a) This Chapter shall be read in context with any applicable:

- (1) Federal law and/or regulation;
- (2) State law and/or regulation; and,
- (3) Commission order and/or rule.

(b) This Chapter shall be applicable to all eligible local exchange telecommunications service providers, eligible providers, and contributing providers.

(c) No person or corporation not otherwise a provider of telecommunications services shall be deemed such solely because of the manufacture, distribution, installation, or maintenance of end-user premises communication equipment and accessories.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-1-4. Definitions

In addition to terms defined in The Oklahoma Telecommunications Act, 17 O.S. §§ 139.101, et seq., the following words and terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" or **"OUSF Administrator"** or **"OLF Administrator"** means the same as Administrator, as defined in the Oklahoma Telecommunications Act.

"ALJ" means Administrative Law Judge.

"Assessed Revenues" means as that term is defined in 17 O.S. § 139.107(A).

"Bed" is a patient care bed or bassinets that is regularly maintained, staffed on a 24-hours basis, and immediately available for the care of patients.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"FCC" means the Federal Communications Commission.

"High-cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

"Interconnected Voice over Internet Protocol" or **"VoIP"** includes both fixed and nomadic versions of the service, with fixed Interconnected Voice over Internet Protocol service able to be used at only one location, and nomadic Interconnected Voice over Internet Protocol service able to be used at multiple locations. Interconnected Voice over Internet Protocol means a service that:

(A) enables real-time, two-way voice communications;

(B) requires a broadband connection from the user's location;

(C) requires Internet protocol-compatible customer premises equipment; and

(D) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for internet service that is in addition to the access connection charge.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined in the Oklahoma Telecommunications Act.

"OneNet" means statewide Internet and technology provider operated by the Oklahoma State Regents for Higher Education for the purpose of meeting the mission critical technology needs of Oklahoma's education, research, healthcare and public service communities.

"Reimbursement" means remuneration from the OUSF for Primary Universal Services and Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area within which a telecommunications service provider has authority to provide telecommunications services.

"SETDA" means the State Educational Technology Directors Association.

"Special Construction Cost" is the FCC's Category One eligible charge necessary to connect public schools and public libraries to broadband networks.

"State" means the State of Oklahoma.

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. §§151 et. seq.

"USAC" means the Universal Services Administrative Company.

"U.S.C." means United States Code.

"Unregulated services" means telecommunications services not regulated by the Commission.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 18 Ok Reg 2448, eff 7-1-01; Amended at 20 Ok Reg 2318, eff 7-15-03; Amended at 22 Ok Reg 1819, eff 7-1-05; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 31 Ok Reg 1087, eff 9-12-14; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-1-5. Interpretation of rules

The words contained in this Chapter shall be given their ordinary and customary meanings, with technical terms and words being construed as generally understood within the telecommunications industry, except where otherwise expressly provided.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to a party or parties subject to the rules of this Chapter, the Commission may, upon application and for good cause shown, issue an order waiving or modifying the requirements of this Chapter. The Commission may grant temporary relief pending hearing.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-1-7. Supremacy

This Chapter supersedes any conflicting Commission order that may be in effect on the effective date of this Chapter. If there is any conflict between this Chapter and the Oklahoma Telecommunications Act, the provisions of said Act shall supersede this Chapter to the extent of any conflict. If there is any conflict between said Act and the Federal Telecommunications Act of 1996, the provisions of the Federal Act shall prevail to the extent of any conflict.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-1-8. Controversy over rules

Whenever a controversy exists in connection with the interpretation of the rules of this Chapter or their applicability, or any right or duty imposed thereby, the Commission, upon application of any interested person and after notice and hearing, will enter such order thereon as it may deem appropriate.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-1-9. Severability

(a) Nothing in this Chapter shall relieve any entity from any of its duties under the laws of the State of Oklahoma or the United States.

(b) This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission.

(c) If any provision of this Chapter is held invalid, such invalidity shall not affect the other provisions of this Chapter or their applicability provided, such other provisions can be given effect without the invalid provision or its applicability, and to this end, the provisions of this Chapter are declared to be severable.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

SUBCHAPTER 3. OKLAHOMA UNIVERSAL SERVICE FUND

PART 1. OKLAHOMA UNIVERSAL SERVICES

165:59-3-1. Oklahoma Universal Services [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

PART 3. OKLAHOMA UNIVERSAL SERVICE FUND

165:59-3-10. Use of the Oklahoma Universal Service Fund

The Oklahoma Universal Service Fund is a state fund for demonstrated necessity or statutory entitlement. Funds from the Oklahoma Universal Service Fund may be sought as necessary to maintain rates for primary universal services that are reasonable and affordable, for special universal services, and for E911 and Technology Training Fund contributions, consistent with the Oklahoma Telecommunications Act.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 32 Ok Reg 868, eff 8-27-15]

165:59-3-11. How the Oklahoma Universal Service Fund shall be funded

The OUSF shall be funded consistent with 17 O.S. § 139.107.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 15 Ok Reg 1061, eff 1-6-98 (emergency); Added at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-12. Operational requirements and processes for the OUSF [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Revoked at 15 Ok Reg 1061, eff 1-6-98 (emergency); Revoked at 15 Ok Reg 1901, eff 7-1-98]

165:59-3-13. Establishment of OUSF Assessment

(a) The Administrator shall file a cause with the Commission's Court Clerk to establish or adjust the OUSF Assessment, as necessary, or on an annual basis, and assess the contributing providers required to contribute to the fund under 17 O.S. § 139.107. Notice of this filing shall be sent to all contributing providers via electronic mail to the contributing provider's contact information contained in their annual report.

(b) By posting on the Commission's website, the Administrator shall notify each contributing provider of the effective dates and rates of the ordered OUSF and OLF factors to be applied to OUSF Assessed Revenues.

(c) Contributing providers are to report revenues and make payment to the OUSF and OLF as described in OAC 165:59-3-44.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 15 Ok Reg 1061, eff 1-6-98 (emergency); Added at 15 Ok Reg 1901, eff 7-1-98; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-14. Eligibility to receive OUSF funding

(a) The incumbent local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996, shall be the eligible local exchange telecommunications service provider eligible for OUSF funding within the local exchange area, except as otherwise provided for in the Telecommunications Act, 17 O.S. §§ 139.101, et seq.

(b) Upon request, and after notice and hearing, the Commission shall consider the designation of more than one eligible local exchange telecommunications service provider in a universal service area to receive funding from the OUSF under the Oklahoma Telecommunications Act.

(c) Where the incumbent local exchange telecommunications service provider receives or is eligible to receive monies from the OUSF, except as otherwise provided in 17 O.S. § 139.106, the Commission, after notice and hearing, may designate other local exchange telecommunications service providers to be eligible for the funding, provided:

(1) The other local exchange telecommunications service provider is certificated by the Commission to provide and offer the primary universal services supported by the OUSF to all customers in the universal service area designated by the Commission, using its own facilities, or a combination of its own facilities and the resale of the services or facilities of another;

(2) The other local exchange telecommunications service provider may only receive funding for the portion of the facilities that it owns, maintains, and uses for regulated services;

(3) The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area; provided, the cost of any cost studies required to be performed shall be borne by the party requesting such studies, unless the party performing the study utilizes the study for its own benefit;

(4) The other local exchange telecommunications service provider advertises the availability and charges for services it provides through a medium of general distribution; and,

(5) It is determined by the Commission that the designation is in the public interest and the other local exchange telecommunications service provider is in compliance with all Commission rules for which a waiver has not been granted.

(d) For any area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines within the State, only the incumbent local exchange telecommunications service provider shall be eligible for OUSF funding except;

(1) Other eligible telecommunications service providers and eligible providers which provide Special Universal Services or Lifeline service shall be eligible to request and receive OUSF funds in the same manner as the incumbent local exchange telecommunications service provider in the same area pursuant to this Chapter;

(2) The incumbent local exchange telecommunications service provider may elect to waive the right to be the only eligible local exchange telecommunications service provider within the local exchange area by filing notice with the Commission; or

(3) When the Commission, after notice and hearing, makes a determination that it is in the public interest that another local exchange telecommunications service provider should also be deemed a carrier of last resort and be eligible to receive OUSF funding in addition to the incumbent local exchange telecommunications service provider. It shall not be in the public interest to designate another local exchange telecommunications service provider as being a carrier of last resort and eligible to receive OUSF funding if such designation would cause a significant adverse economic impact on users of telecommunications services generally or if the other carrier refuses to seek and accept carrier of last resort obligations throughout the universal service area as designated by the Commission. The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area and the other local exchange telecommunications service provider meets the requirements of subsection (c) of this Section.

(e) In order to be designated as an eligible local exchange telecommunications service provider for purposes of Federal Universal Service support, the local exchange telecommunications service provider shall meet the requirements of 47 U.S.C. § 214(e).

(f) Notwithstanding the criteria set forth in this Section for designation as an eligible local exchange telecommunications service provider, a commercial mobile radio service provider may, after notice and hearing, seek OUSF Funding for the provision of services supported by the OUSF.

(g) Notwithstanding the criteria set forth in this Chapter for designation as an eligible local exchange telecommunications service provider, any eligible provider may seek OUSF Funding for the provision of Special Universal Services consistent with 17 O.S. § 139.109.1.

(h) Any eligible provider shall receive funding for any Special Universal Services provided from the OUSF without a hearing, in a manner consistent with OAC 165:59-7-1 and the Oklahoma Telecommunication Act. The funding shall be approved only after the appropriate forms have been filed with the Commission's Court Clerk and reviewed by the OUSF Administrator or contracted agent.

(i) For an area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines within the State, the incumbent local exchange telecommunications service provider may elect to waive the right to be the only eligible local exchange telecommunications service provider within the local exchange area by filing notice with the Commission.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-15. Relinquishment of OUSF support eligibility [REVOKED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 15 Ok Reg 1061, eff 1-6-98 (emergency); Added at 15 Ok Reg 1901, eff 7-1-98; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-16. Designation of eligible telecommunications carriers for unserved areas

In no event shall any area(s) be without the capability of accessing universal services supported by the OUSF. If no eligible local exchange telecommunications service provider is currently providing the services that are supported by the OUSF to an unserved area or any portion of the area that requests such service, the Commission will:

- (1) Determine which eligible local exchange telecommunications service provider(s) are best able to provide such service to the unserved area(s), or portion of the area(s); and,
- (2) Order such eligible local exchange telecommunications service provider(s) to provide such service to that area(s), or portion of the area(s).

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

PART 5. ADMINISTRATION OF THE OUSF

165:59-3-30. Administration of the Fund

(a) The OUSF Administrator, may as necessary, take all actions necessary to fulfill the objectives of the Oklahoma Telecommunications Act, including but not limited to, contracting with a third party having no conflict of interest in the provisioning of telecommunications services for assistance with the administrative functions related to the OUSF.

(b) The OUSF Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of this Chapter and the Oklahoma Telecommunications Act.

(c) The OUSF Administrator and/or contracted agent shall administer the OUSF in accordance with this Subchapter and the Oklahoma Telecommunications Act.

(d) The OUSF Administrator's and/or contracted agent's duties shall include, but not be limited to:

- (1) Receiving, distributing, and accounting for funds paid into the OUSF;

- (2) Providing reimbursement to eligible providers and eligible local exchange telecommunications service providers in accordance with the Oklahoma Telecommunications Act;
- (3) Managing the daily operations and affairs of the OUSF;
- (4) Monitoring and assuring contribution/payment compliance as well as conducting periodic audits of the contributing providers to ensure that the contributing providers are accurately reporting and making proper payments to the OUSF;
- (5) Monitoring and assuring that OUSF funds received by the eligible local exchange telecommunications service providers and eligible providers are based on one of the categories for which reimbursement is allowed under the Oklahoma Telecommunications Act.
- (6) Informally resolving disputes;
- (7) Independently evaluate and review all Requests for OUSF Funding and OUSF administrative preapproval requests within time frames identified in the Oklahoma Telecommunications Act, and make a determination of the accuracy of the requests, advise the eligible local exchange telecommunications service provider or eligible provider requesting the funds of the determination of eligibility made by the OUSF Administrator, and determine the eligibility of the OUSF Beneficiary; and,
- (8) Performing any other duties as required by law and/or this Chapter.

(e) The OUSF Administrator and/or contracted agent shall authorize payment of the approved funding to the requesting eligible local exchange telecommunications service provider or eligible provider, pursuant to the Oklahoma Telecommunications Act.

(f) The Commission finds, pursuant to Article IX, Section 18 of the Oklahoma Constitution, and 51 O.S. § 24A.22, that all information that is not otherwise publicly available, provided by an eligible local exchange telecommunications service provider, an eligible provider, an OUSF Beneficiary, or contributing provider in all matters submitted and filed pursuant to the Oklahoma Telecommunications Act is hereby classified as confidential. All documents and information considered to be confidential must be clearly marked as such. All information classified as confidential shall be used by the OUSF Administrator, ALJ, any party to a Request for OUSF Funding or party to a request for reconsideration related to such Request, and the Commission solely in connection with the review and disposition of all matters subject to the Oklahoma Telecommunications Act. The OUSF Administrator, the ALJ, the Commission and all other parties that receive or review information deemed confidential herein shall keep all such information confidential, and shall only use such data for purposes of administering the OUSF, evaluating a Request for OUSF Funding, and/or prosecuting a request for reconsideration of the Administrator's determination of OUSF Funding, and shall not disclose such data to any unauthorized person, provided, confidential information may be disclosed to parties in the cause after the party in the cause signs a nondisclosure agreement, as posted on the Commission Website, or as otherwise agreed between the party requesting the information and the party receiving the request for confidential information.

(g) Pursuant to 51 O.S. § 24A.22, the Commission hereby does classify as confidential all information that is not otherwise publicly available, provided by an eligible local exchange telecommunications service provider, an eligible provider, an OUSF Beneficiary, or contributing provider, in conjunction with an audit of said eligible local exchange telecommunications service provider, eligible provider,

OUSF Beneficiary, or contributing provider. All information classified as confidential shall be used by the OUSF Administrator, ALJ, and the Commission solely in connection with the review and disposition of all matters subject to the Oklahoma Telecommunications Act. The OUSF Administrator, the ALJ, the Commission and all other parties that gain access as provided herein to confidential information shall keep all confidential information confidential, and shall not use such data except for purposes of administering the OUSF, and shall not disclose such data to any unauthorized person, provided, confidential information may be disclosed to parties in any filed cause after the party in the cause signs a nondisclosure agreement, as posted on the Commission Website, unless otherwise agreed to by the parties.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 20 Ok Reg 2318, eff 7-15-03; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-31. [RESERVED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-32. Audits of the Fund

- (a) The OUSF shall be audited annually by a non-OUSF, independent auditor selected by a committee with input from the State Auditor's Office. The committee shall be selected by the Commission's Director of Administration.
- (b) The annual audit should be based on assessed program risk conducted in accordance with standards.
- (c) The audit may include further objectives as requested by the Commission's Director of Administration, the State Auditor's Office, the Oklahoma Attorney General, and/or as required by the contract between the OUSF and independent auditor.
- (d) The cost of audits of the OUSF shall be funded by the OUSF.
- (e) All audit reports, once finalized, shall be provided to the Oklahoma Attorney General.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-33. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF

- (a) Any contributing provider operating within Oklahoma may dispute the amount of contribution assessed it by the OUSF Administrator for the OUSF and OLF, in the following manner:
 - (1) The contributing provider shall submit a written notice setting forth its dispute in detail to the OUSF Administrator, on or before the payment due date, and the OUSF Administrator shall have the responsibility for resolving the dispute.
 - (2) If satisfactory resolution is not achieved within thirty (30) days of the receipt of the written notice of dispute, the contributing provider may file an application with the Commission's Court Clerk requesting that the Commission resolve the dispute.

- (b) Pending final resolution of a dispute, the disputing contributing provider shall pay the disputed and undisputed amounts to the OUSF and OLF.
- (c) If the disputing contributing provider prevails in its dispute, the contributing provider will be entitled to a refund, with interest, at the then effective interest rate, as provided by OAC 165:55-9-14(e)(1), from the date the disputed charge was paid to the date of refund.
- (d) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the OUSF Administrator may have for further or additional sums payable.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-35. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-36. Resolution of other disputes

- (a) Any adversely impacted party may dispute the actions of an eligible local exchange telecommunications service provider or an eligible provider related to the provisioning of Universal Services. The adversely affected party may contact the OUSF Administrator or contracted agent of the OUSF and the OUSF Administrator shall have the initial responsibility for trying to resolve the dispute.
- (b) If satisfactory resolution is not achieved, the affected party may file an application requesting the Commission resolve the dispute.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-37. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-38. Violations

- (a) Failure to pay an assessed contribution to the OUSF shall be deemed a violation of the Oklahoma Telecommunications Act and this Chapter.
- (b) The Commission may use all authority it has pursuant to the Oklahoma Constitution and laws of this State to ensure compliance with the Oklahoma Telecommunications Act and this Chapter.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

PART 7. CONTRIBUTIONS TO THE OUSF

165:59-3-40. Contributors to the OUSF

- (a) The OUSF shall be funded in a competitively neutral manner in accordance with the Oklahoma Telecommunications Act.
- (b) Each contributing provider shall annually provide contact information to the OUSF Administrator for the purpose of correspondence regarding contribution to the OUSF. The submission of an annual report to the Commission shall be deemed compliance with this paragraph.

(c) Each telecommunications carrier providing wholesale telecommunications services to VoIP providers in Oklahoma will annually provide the identity, to include address, of each such VoIP provider(s) to the OUSF Administrator as available. While the names of the VoIP providers may be made publicly available, all information with regard to the reporting telecommunications carrier will be treated as confidential.

(d) The contributing provider must certify to the truth and accuracy of data used to determine the contributing provider's contribution amounts. The OUSF Administrator may verify any information used by the contributing provider in its determination of its contributions to the OUSF. Each contributing provider shall maintain records and documentation used in its determination of its contributions to the OUSF for three (3) years, and shall provide such records and documentation to the OUSF Administrator upon request. Inaccurate or untruthful information used by the contributing provider may lead to prosecution to the full extent of the law.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-41. [RESERVED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-42. Reporting requirements

Each contributing provider shall, within thirty (30) days from the date of a request made for information necessary for the OUSF Administrator to perform its duties under the Oklahoma Telecommunications Act and this Chapter shall submit the requested information to the OUSF Administrator, unless otherwise agreed between the OUSF Administrator and the contributing provider.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-43. [RESERVED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-44. Amount of contributions and charges assessed for the OUSF

(a) The amount of contribution required from each contributing provider shall be determined as provided in the Oklahoma Telecommunications Act.

(b) The OUSF Administrator or contracted agent shall, based on the amount to be contributed to the OUSF, calculate the contribution required to be made to the OUSF by each contributing provider, based on the fund level established by the Commission sufficient to recover the costs of administration and payments for OUSF and OLF requests for funding, as provided by the Oklahoma Telecommunications Act and the information provided pursuant to OAC 165:59-3-42.

(c) The fiscal reporting year shall be July 1 through June 30.

(d) Each contributing provider shall pay its contribution directly to the OUSF Administrator, or contracted agent, as directed by the OUSF Administrator, on a monthly or annual basis, conditioned upon an annual revenue threshold established by the OUSF Administrator.

(e) If the contributing provider qualifies to pay its contribution annually, payment shall be made at the beginning of the fiscal year, and is past due after August 31. If

the contributing provider underestimates its annual contribution by 15% or greater, the contributing provider shall be required to make its contributions monthly for the next fiscal reporting year, and underpayments will be subject to interest.

(f) If the contributing provider qualifies to pay its contribution monthly, the contributing provider shall report the prior calendar month's revenues, and pay on those revenues, by the end of the month, each month, without skipping a month.

(g) Interest shall be charged on any payment not received by the reporting due date at the rate of 1.5% monthly.

(h) The payment shall be payable to the OUSF. All contributions and interest payments shall be deposited into the OUSF account established by the OUSF Administrator and/or contracted agent.

(i) All contributions shall be subject to audit by the OUSF Administrator, or its contracted agent.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-45. [RESERVED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97]

165:59-3-46. Recovery of OUSF contributions

(a) A contributing provider may, at its option, recover the amount it pays into the OUSF from its retail customers as provided in the Oklahoma Telecommunications Act. If the contributing provider elects to recover the amount of its contributions from its retail customers, such recovery shall be made in a fair, equitable and nondiscriminatory manner.

(b) Any over-recovery of the OUSF contributions for the preceding year shall be carried forward to the ensuing year, and shall be included as a reduction in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the contributing provider's OUSF contributions. Any under-recovery of the OUSF contribution for the preceding year, may be included as an increase in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the contributing provider's OUSF recovery from its customers, provided the contributing provider made a reasonable attempt to collect the funds in the preceding year.

(c) The Commission may, as it deems appropriate, order modifications in a regulated contributing provider's method of recovery from its customers, after notice and hearing.

(d) In the event a contributing provider, excluding prepaid wireless providers, elects to recover its OUSF contributions from its customers, the amounts of the recovery shall be explicitly stated as a line item on customer's bills.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

PART 9. REQUEST FOR OUSF FUNDING

165:59-3-60. Requests for funding from the OUSF

(a) Eligible local exchange telecommunications service providers and eligible providers may request funding from the OUSF as allowed by the Oklahoma Telecommunications Act.

- (b) Any eligible provider may request funding from the OUSF as necessary for the provision of Special Universal Services.
- (c) Should the OUSF at any time experience a shortfall, the costs associated with administering the fund will be paid first, followed by the payment due to the Oklahoma Attorney General, pursuant to 17 O.S. § 139.103. Thereafter, any residual funds will be distributed to eligible providers and eligible local exchange telecommunications service providers on a pro rata basis, pursuant to their approved requests. The balance of each approved request for OUSF funding will be paid at such time as additional funds become available.
- (d) Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand (75,000) access lines shall be in accordance with the Oklahoma Telecommunications Act.
- (e) The OUSF Administrator shall process any request for OUSF funding by an ILEC serving seventy-five thousand (75,000) or more access lines or a CLEC, in accordance with the Oklahoma Telecommunications Act.
- (f) Requests for OUSF funding for the provision of Special Universal Service, including OUSF administrative preapproval requests, shall contain the following caption: In the matter of the request by (name of school/library/eligible healthcare provider /consortium) of (name of city / library system or city / health care system or city / Consortium lead) for funding from the Oklahoma Universal Service Fund.
- (g) Requests for OUSF funding for primary universal service shall contain the following caption: In the matter of the request by (name of eligible telecommunications service provider) for the (insert basis of request) for funding from the Oklahoma Universal Service Fund.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-61. Forms for requesting funding from the OUSF

- (a) The appropriate forms necessary for making an OUSF funding request and preapproval funding request shall be available on the Commission's website, and may be obtained from the OUSF Administrator.
- (b) The OUSF Administrator shall post the forms on the Commission's website no later than August 31 annually, for requests made for funding years prior to the funding year beginning July 1 annually, and on or before June 30, preceding each subsequent funding year.
- (c) Any party objecting to the form shall file an Application in the Commission's Court Clerk within fifteen (15) calendar days of the form being posted on the Commission's website. Notice of the objection shall be given to the OUSF Administrator, the Oklahoma Attorney General, and shall be posted on the Commission's website by the OUSF Administrator within three (3) calendar days of the filing of the Application.
- (d) The caption for filing an objection shall be as follows: In the matter of the application of (name of party filing the objection) objecting to the OUSF Administrator's form.
- (e) Each objection filed shall be filed in a separate cause and shall provide details of the objection sufficient to allow the Commission to fully evaluate the objection. The Commission may, within its sole discretion, conduct a hearing to resolve the dispute. If the Commission opts to conduct a hearing, it shall provide at least five (5) calendar days notice to the parties in the cause. Any interested person may participate in the hearing by filing an entry of appearance and a statement of

position setting forth their position on the objection. The entry of appearance and statement of position shall be served on all parties to the cause.

(f) The Commission shall issue a final order on the objection to the form within thirty (30) calendar days of the objection being filed, or if no order is issued, then the objection shall be deemed approved, and the form modified accordingly.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 15 Ok Reg 1061, eff 1-6-98 (emergency); Added at 15 Ok Reg 1901, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-62. Procedures for requesting funding from the OUSF [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1061, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1901, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 18 Ok Reg 2448, eff 7-1-01; Amended at 20 Ok Reg 2318, eff 7-15-03; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 29 Ok Reg 1583, eff 7-12-12; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-63. [RESERVED]

[Source: Reserved at 15 Ok Reg 1061, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1901, eff 7-1-98]

165:59-3-64. Identifying and measuring the level of OUSF funding

(a) In identifying and measuring the costs of providing primary universal services, exclusively for the purpose of determining OUSF funding levels under 17 O.S. § 139.106, the eligible local exchange telecommunications service provider serving less than seventy-five thousand (75,000) access lines shall, at its option:

- (1) Calculate such costs by including all embedded investments and expenses incurred by the eligible local exchange telecommunications service provider in the provision of primary universal service, and may identify high-cost areas within the local exchange area it serves and perform a fully distributed allocation of embedded costs and identification of associated primary universal service revenue. The cost study shall identify any investments and associated expenses jointly used for the provision of primary universal service and any other services and provide a reasonable allocation of those investments and expenses. Such calculation may be made using fully distributed FCC Parts 32, 36, and 64 costs, if such Parts are applicable. The high-cost area shall be no smaller than a single exchange, wire center, or census block group, chosen at the option of the eligible local exchange telecommunications service provider; or,
- (2) Adopt the cost studies approved by the Commission for a local exchange telecommunications service provider that serves seventy-five thousand (75,000) or more access lines; or,
- (3) Adopt such other costing or measurement methodology as may be established for such purpose by the FCC pursuant to Section 254 of the Federal Telecommunications Act of 1996.

(b) In identifying and measuring the cost of providing primary universal services, and exclusively for the purpose of determining OUSF funding levels pursuant to 17 O.S. § 139.106, each ILEC which serves seventy-five thousand (75,000) or more access lines and each CLEC shall identify high-cost areas within the local exchange and perform a cost study using a Commission-approved methodology from those identified in subsection (a) of this Section. The high-cost area shall be no smaller than a single exchange, wire center or census block group chosen at the option of the eligible ILEC or CLEC. If the Commission fails to approve the selected methodology within one hundred twenty (120) calendar days of the filing of the

selection, the selected methodology shall be deemed approved.

(c) Primary Universal Service provided by an eligible local exchange telecommunications service provider may be provided using facilities, including the end user loop component and functionality, which allow access to the Internet, including access to combined consumer voice and broadband Internet service. The costs and revenues associated with such facilities, calculated pursuant to Parts 32, 36, and 64 of Title 47 of the Code of Federal Regulations, may be included in determining OUSF funding levels, consistent with applicable federal and state laws. Primary Universal Service does not include broadband Internet access service as defined at 47 C.F.R. § 8.1(b).

(d) For any cause filed pursuant to 17 O.S. § 139.106(G), the OUSF Administrator's Determination, or order issued by the Commission, may be the basis for reimbursement for no more than five (5) subsequent twelve (12) month periods beyond the initial request, subject to an annual variance and risk-based review by the OUSF Administrator, pursuant to OAC 165:59-3-70(o).

[Source: Added at 15 Ok Reg 1061, eff 1-6-98 (emergency); Added at 15 Ok Reg 1901, eff 7-1-98; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17; Amended at 36 Ok Reg 714, eff 7-25-19]

165:59-3-65. [RESERVED]

[Source: Reserved at 34 Ok Reg 5, eff 8-12-16 (emergency); Reserved at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-66. Procedures for OUSF administrative preapproval request

Preapproval is an optional process available to OUSF Beneficiaries who desire to have certainty regarding the amount that will be paid from the OUSF in support of Special Universal Services on behalf of the OUSF Beneficiary.

(1) The OUSF Beneficiary may submit a "Request for OUSF Preapproval" to the OUSF Administrator to determine eligible services and credit amounts for the upcoming funding year.

(2) A Request for OUSF Preapproval may be submitted at any time by sending via electronic mail a digital copy of all required documentation to the OUSF Administrator, to the email address posted on the Commission's website, until such time as the Commission implements the electronic filing system. Once the electronic filing system is in place, the OUSF Beneficiary shall file all required documentation using the electronic filing system.

(3) The Request for OUSF Preapproval shall include the following:

(A) All documents and information required by the approved form;
and

(B) All documents identified in 17 O.S. § 139.109.1(F)(2)(d).

(4) The Request for OUSF Preapproval may include any documentation that would assist the OUSF Administrator in independently evaluating the request.

(5) The OUSF Administrator and/or contracted agent shall independently evaluate and review the Request for OUSF Preapproval, including all provided documentation, and issue an OUSF preapproval funding letter, without Commission order, to the OUSF Beneficiary within ninety (90) calendar days of receipt of the Request for OUSF Preapproval. The preapproval funding letter shall be electronically delivered to the OUSF Beneficiary.

(6) A Request for OUSF Preapproval that is found by the OUSF Administrator to be incomplete (missing information required by the form

and instruction package contained on the Commission website) may be denied.

(7) After a preapproval funding letter has been issued, an OUSF Beneficiary may submit a new Request for OUSF Preapproval to provide corrections or additional information per this Chapter; however, a new Request shall be submitted for each funding year. This new Request shall be submitted by sending via electronic mail a digital copy of all required documentation to the OUSF Administrator, to the email address posted on the Commission's website, until such time as the Commission implements the electronic filing system. Once the electronic filing system is in place, the OUSF Beneficiary shall file all required documentation using the electronic filing system.

(8) Unless an OUSF Beneficiary receives preapproval of a Request for OUSF Preapproval, the Beneficiary shall not identify the OUSF as the source of secured funds for any purpose.

(9) The amount of OUSF funding preapproved under this subsection shall be subject to adjustments based on the amount of support received from other sources, if any, as well as adjustments to pricing that may occur between the time of preapproval and installation of service.

(10) Additional services that are installed beyond those contained in the Request for OUSF Preapproval shall require either a new Request for OUSF Preapproval or a Request for OUSF Funding to be filed.

(11) Variance from the terms approved in the OUSF preapproval funding letter, which could have impacted bid selection may make the previously issued OUSF preapproval funding letter null and void.

(12) A Request for OUSF Preapproval submitted by an OUSF Beneficiary shall be signed by an authorized agent of the OUSF Beneficiary, or by the attorney for the OUSF Beneficiary.

[Source: Added at 34 Ok Reg 5, eff 8-12-16 (emergency); Added at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-67. [RESERVED]

[Source: Reserved at 34 Ok Reg 5, eff 8-12-16 (emergency); Reserved at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-68. Procedures for requesting funding from the OUSF - Special Universal Services

(a) An eligible provider of Special Universal Services may seek and obtain funds from the OUSF by filing a "Request for OUSF Funding" and "Notice of Request for OUSF Funding" with the Commission's Court Clerk. On the date of filing the Request for OUSF Funding, the eligible provider shall deliver a filed copy of the Request for OUSF Funding to the OUSF Administrator for processing.

(1) If the OUSF Beneficiary filed a Request for OUSF Preapproval, and a preapproval funding letter was issued by the OUSF Administrator, then the eligible provider must file the Request for OUSF Funding in the same cause number as the Request for OUSF Preapproval.

(2) If the Request for OUSF Funding requests anything different than what is stated in the OUSF preapproval funding letter, then the eligible provider shall file the Request for OUSF Funding as a new cause number.

(b) The Request for OUSF Funding shall include, but not be limited to the following:

(1) The name and address of the eligible provider;

(2) The name and address of the OUSF Beneficiary;

- (3) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;
- (4) The amount requested for funding;
- (5) The completed Affidavit, including all required attachments;
- (6) An affidavit signed by the eligible provider, verifying the truth and accuracy of the information contained in the Request for OUSF Funding and attachments; and
- (7) A copy of the preapproval funding letter, if preapproval was sought by the OUSF Beneficiary.

(c) To facilitate the timely evaluation of requests for funding from the OUSF, a Request for OUSF Funding shall not contain a request for funding Special Universal Services to more than one Eligible Healthcare Entity, or more than one School District, or more than one Library system. An eligible provider to a consortium may request a waiver from the OUSF Administrator to allow a Request for OUSF Funding to include eligible members of the consortium within a single request for funding. (d) No amended Requests for OUSF Funding shall be accepted. Eligible providers may withdraw the originally filed Request for OUSF Funding and file a new request at any time prior to the issuance of the Determination. Upon the filing of a Withdrawal of Request for OUSF Funding, the Commission's Court Clerk shall close the file, without Commission order. If a new request is filed, it shall be filed under a new cause number.

(e) A Request for OUSF Funding found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(f) It is the intention of the OUSF Administrator that each Request for OUSF Funding will be independently evaluated and reviewed on a case-by-case basis.

(g) Consistent with 17 O.S. § 139.109.1(B)(2), the OUSF Beneficiary shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources as a part of the eligible provider's Request for OUSF Funding, or an explanation for why alternative funding is not available.

(h) If an eligible provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the eligible provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.

(i) Concurrent with the filing of the Request for OUSF Funding, the eligible provider shall:

- (1) Provide copies of its Request for OUSF Funding and Notice of the Request for OUSF Funding to the OUSF Administrator, the Oklahoma Attorney General, and the OUSF Beneficiary.
- (2) Provide Notice of the Request for OUSF Funding to the contributing providers by providing an electronic copy of such Notice to the OUSF Administrator on the date the eligible provider files its Request for OUSF Funding with the Commission's Court Clerk, for posting on the Commission's website. The OUSF Administrator will then place the Notice on the Commission's website within five (5) business days.
- (3) Provide notice which identifies the dollar amount requested for the lump sum and any recurring amounts, as well as the name and address of the OUSF Beneficiary.

(j) The OUSF Administrator and/or its contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a Determination of the eligibility for funds, within sixty (60) calendar days if an OUSF preapproval funding letter was issued, or within ninety (90) calendar days if no preapproval funding letter was issued. Simultaneously with the OUSF Administrator or contracted agent providing a copy of the Determination to the eligible provider and parties to the cause, the OUSF Administrator or contracted agent shall file the Determination in the Commission's Court Clerk and post it to the Commission's website. The eligible provider shall provide a copy of the OUSF Administrator's Determination to the OUSF Beneficiary within five (5) calendar days after it is filed. If the OUSF Beneficiary received an OUSF preapproval funding letter and subsequently requested additional bids that were not reviewed by the OUSF Administrator during the preapproval process, then the OUSF preapproval funding letter is null and void.

(k) Any affected party, as defined in 17 O.S. § 139.106(D)(5), may file a request for reconsideration within fifteen (15) calendar days of the Determination being filed by the OUSF Administrator, by following the procedures in OAC 165:59-3-72.

(l) If no Request for Reconsideration is filed, the Determination shall be deemed final on the sixteenth (16) calendar day after the Determination is filed, and the cause with the Commission's Court Clerk shall automatically be closed upon the filing of a Notice of Disbursement by the OUSF Administrator. The OUSF Administrator or contracted agent shall issue payment within forty-five (45) days of the previously mentioned sixteenth (16) day, without an order of the Commission.

(m) Unless good cause is shown, any Request for OUSF Funding should be made within eighteen (18) months from the date the requesting eligible provider can determine the impact of occurrence of the circumstance giving rise to the request; however, if an OUSF Beneficiary has obtained an OUSF preapproval funding letter from the OUSF Administrator, the eligible provider shall make a request for funding within sixty (60) calendar days of the start of service.

(n) An eligible provider shall receive future reimbursement upon submission of properly formatted monthly payment requests, and any other required forms, to the OUSF Administrator and/or contracted agent, which shall include discount adjustments received from alternative funding sources designated to support universal service such as E-rate and the FCC's rural health care programs. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate discount approved by USAC.

(o) An eligible provider shall notify the OUSF Administrator and/or contracted agent in writing, and in a format determined by the OUSF Administrator and/or contracted agent, of any changes to the provisioning of service, including but not limited to disconnection of service, upgrade and/or downgrade in connectivity speed, change in E-rate discount, or price. Any change to the previously approved Special Universal Services will require approval from the OUSF Administrator and/or contracted agent in order to determine if a new Request for OUSF Funding will be required, rather than the OUSF Administrator approving reimbursement through the monthly payment process. The OUSF Administrator shall advise the eligible provider of its determination within sixty (60) calendar days of receipt of the written notice from the eligible provider identifying the change(s). If the OUSF Administrator fails to advise the eligible provider of its determination concerning the requested change within the sixty (60) calendar day period, the OUSF funding being received by the eligible provider will cease until a new Request for OUSF Funding is processed in accordance with the Oklahoma Telecommunications Act

and this Chapter.

(p) When an eligible provider will no longer be providing Special Universal Services it shall notify the OUSF Administrator of the disconnection of service date fifteen (15) business days prior to disconnection, or immediately upon receipt of a request for disconnection, if the request is less than fifteen (15) business days prior to disconnection.

(q) No OUSF funds shall be disbursed to an eligible provider of Special Universal Services until the services are installed and in service.

(r) A Request for OUSF Funding, pursuant to this Section, shall be signed by an authorized agent of the eligible provider, or by the attorney for the eligible provider.

[Source: Added at 34 Ok Reg 5, eff 8-12-16 (emergency); Added at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-69. [RESERVED]

[Source: Reserved at 34 Ok Reg 5, eff 8-12-16 (emergency); Reserved at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-70. Procedures for requesting funding from the OUSF - Primary Universal Service

(a) An eligible local exchange telecommunications service provider may seek and obtain funds from the OUSF for Primary Universal Service by filing a "Request for OUSF Funding" and "Notice of Request for OUSF Funding" with the Commission's Court Clerk. On the date of filing the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall deliver a filed copy of the Request for OUSF Funding to the OUSF Administrator for processing.

(b) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(G), and must be made available at the time of filing:

- (1) The name and address of the eligible local exchange telecommunications service provider;
- (2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;
- (3) The amount requested for funding;
- (4) A chart of corporate organization listing all employees, and detailing any affiliate relationships;
- (5) A list of affiliates, a description of the service(s) or goods provided to or by the requesting eligible telecommunications service provider for each affiliate, and the total expense charged to the requesting eligible local exchange telecommunications service provider by each affiliate in sufficient detail to demonstrate that any affiliate company utilizing employees or assets of the company are allocated or reimbursed in accordance with 47 C.F.R., 32.27. This information shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;
- (6) A written description and documentation showing how costs are separated for each regulated and non-regulated service that the requesting eligible local exchange telecommunications service provider provides to, or receives from, any affiliate that is associated with the Request for OUSF Funding. This description must show compliance with the cost allocation standards and procedures as set forth in 47 C.F.R. 64.901. This information

- shall be provided for the reimbursement year and the previous three (3) years (4 total), and shall include, but not be limited to, all contracts, memorandum, timesheets, calculations, and studies;
- (7) If applicable, copies of the eligible local exchange telecommunications service provider's Cost Allocation Manual (CAM), to include any changes to the CAM for the last three (3) years, including documentation supporting the cost allocation procedures and a current example of the application of the CAM's manual. If a CAM is unavailable, similar documentation must be provided;
 - (8) The most recent three (3) years preceding the request of audited financial statements, or if not subject to an audit, then reviewed financial statements, (including balance sheet, income statement, statement of cash flows accompanying notes, and any associated management letter);
 - (9) A description of network facilities, identifying all facilities included in the Request for OUSF Funding, with actual documentation available upon request by the OUSF Administrator;
 - (10) A description of the cost and accounting methodologies used to support the Request for OUSF Funding;
 - (11) A trial balance and general ledger in Excel format, or other format as agreed to by the Administrator;
 - (12) If applicable, a fully distributed cost study based on the FCC's Part 32, 36 and 64; provide plant reserve, rate base, income (revenue, expenses, and taxes), and other schedules included in the filing made with NECA or the FCC; a schedule of separations cost study for the reimbursement year. Underlying work-papers to be available onsite;
 - (13) Copies of the company's annual Federal Universal Service Fund (USF) High Cost Loop Data Collection forms for the reimbursement year and the previous three (3) years (4 total);
 - (14) The total number of full-time and part-time employees, officers, and/or contractors to include a listing of each of the above positions that includes title, duties, responsibilities, wages and/or salaries and benefits for the reimbursement year and the previous three (3) years (4 total);
 - (15) A list of expenses sought, including prior period adjustments and/or contingent liabilities that were reported on the eligible local exchange telecommunications service provider's books and records and are part of this request, including but not limited to any:
 - (A) reimbursed employee business expense, including travel, mileage, car rental, lodging, meals, etc.;
 - (B) lobbying;
 - (C) listing of all legal services and fees by law firm;
 - (D) advertising expenses;
 - (E) external relation costs;
 - (F) community outreach;
 - (G) entertainment;
 - (H) food, including travel, normal business, and company events;
 - (I) political contributions;
 - (J) charitable donations;
 - (K) penalties for fines or violations;
 - (L) membership fees and dues;
 - (M) gifts.

(16) The Federal tax classification (C-Corp, Sub-Chapter S, Partnership, etc.) of the eligible local exchange telecommunications service provider, and copies of the eligible local exchange telecommunications service provider's Federal and State tax returns for the reimbursement year and the previous three (3) years (4 total);

(17) A Description of the time tracking and reporting methods used by the eligible local exchange telecommunications service provider to distribute payroll dollars between regulated and non-regulated affiliates. Provide all supporting documentation for the reimbursement year and the previous three (3) years (4 total);

(18) A list of plant in-service retirements for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(19) A plant in-service schedule by account that provides existing plant and additions for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(20) Listing by account of all revenues, including aggregate customer revenues by category (residential, business, wholesale, etc.), that were used to off-set the eligible local exchange telecommunications service provider's OUSF funding request. This should include any amount received from the Federal USF, OUSF, and any other federal or state funding sources;

(21) The total number of customers by category (residential, business, wholesale, etc.) for the reimbursement year and the three (3) years prior to the reimbursement year (4 total);

(22) A copy of the eligible local exchange telecommunications service provider's regulated Continuing Property Records (CPR). If the CPRs do not tie to the general ledger, provide a reconciliation of the differences; and

(23) A list and copies of any audits or reviews to include letters, reports, memorandum, etc. conducted by the National Exchange Carriers Association (NECA), USAC, or FCC conducted during the reimbursement year and three (3) years prior to the reimbursement year (4 total).

(c) Unless a waiver is granted by the OUSF Administrator, the following minimum filing requirements are necessary for causes filed pursuant to 17 O.S. § 139.106(K), and must be made available at the time of filing:

(1) The name and address of the eligible local exchange telecommunications service provider;

(2) A description of the provisions of the Oklahoma Telecommunications Act relied on for the request;

(3) The amount requested for funding;

(4) Documentation necessary to substantiate the requested funding; and

(5) The most recently filed jurisdictional cost study;

(6) For highway relocation causes, the additional following minimum filing requirements are necessary:

(A) Copies of all bids;

(B) The request for proposal;

(C) Copies of all invoices and work orders;

(D) Documentation showing internal material accounting;

(E) Documentation showing internal labor accounting, including time sheets, and separate documentation showing accounting of overtime work;

(F) A certificate of completion of the relocation.

(d) No amended Requests for OUSF Funding shall be accepted. Eligible local exchange telecommunications service providers may withdraw the originally filed Request for OUSF Funding and file a new request at any time prior to the issuance of the Determination. Upon the filing of a Withdrawal of Request for OUSF Funding, the Commission's Court Clerk shall close the file, without Commission order. If a new request is filed, it shall be filed under a new cause number.

(e) Requests for OUSF Funding found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(f) It is the intention of the OUSF Administrator that each funding request will be independently evaluated and reviewed on a case-by-case basis.

(g) The eligible local exchange telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF Funding, or an explanation for why alternative funding is not available. Upon the eligible local exchange telecommunications service provider producing the documentation that it has sought alternative funding sources or an explanation for why alternative funding is not available, the eligible local exchange telecommunications service provider shall not be precluded from having its Request for OUSF Funding processed.

(h) If an eligible local exchange telecommunications service provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the eligible local exchange telecommunications service provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.

(i) Concurrent with the filing of the Request for OUSF Funding, the eligible local exchange telecommunications service provider shall:

(1) Provide copies of its Request for OUSF Funding and Notice of the Request for OUSF Funding to the OUSF Administrator and the Oklahoma Attorney General.

(2) Provide Notice of the Request for OUSF Funding, which shall include the dollar amount of the request for lump sum and any recurring amounts, to the contributing providers by providing an electronic copy of such Notice to the OUSF Administrator on the date the eligible local exchange telecommunications service provider files its Request for OUSF Funding with the Commission's Court Clerk, for posting on the Commission website. The OUSF Administrator will then place the Notice on the Commission website within five (5) business days.

(j) The OUSF Administrator and/or contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a determination of the eligibility for funds, which details the amount of funding recoverable from the OUSF, within ninety (90) calendar days. Simultaneously with the OUSF Administrator or contracted agent advising the provider and parties to the cause, the OUSF Administrator or contracted agent shall file the written Determination in the Commission's Court Clerk and post it to the Commission's website. The eligible local exchange telecommunications service provider shall provide a copy of the OUSF Administrator's Determination to all parties of record

within five (5) calendar days after it is filed.

(k) Any affected party, as defined in 17 O.S. § 139.106(D)(5), may file a Request for Reconsideration within fifteen (15) calendar days of the Determination being filed by the OUSF Administrator, by following the procedures in OAC 165:59-3-72.

(l) If no Request for Reconsideration is filed, the Determination shall be deemed final on the sixteenth (16) calendar day after the Determination is filed, and the cause with the Commission's Court Clerk shall automatically be closed upon the filing of a Notice of Disbursement by the OUSF Administrator. The OUSF Administrator or contracted agent shall issue payment within forty-five (45) calendar days of the previously mentioned sixteenth (16) day, without an order of the Commission.

(m) Unless good cause is shown, any Request for OUSF Funding pursuant to this Section should be made within a reasonable time from the date the requesting local exchange telecommunications service provider can determine the impact of occurrence of the circumstance giving rise to the request, including receipt or notification of alternative funding designed to support universal service. However, this shall neither preclude a local exchange telecommunications service provider from filing a Request for OUSF Funding, nor shall it preclude such a Request from being processed, prior to the time a final decision is made regarding alternative funding from a program designed to support universal service.

(n) A Request for OUSF Funding, pursuant to this Section, shall be signed by an attorney for the eligible local exchange telecommunications service provider.

(o) For causes filed pursuant to 17 O.S. § 139.106(G), consistent with OAC 165:59-3-64(d), and when the OUSF Administrator has previously issued an initial Determination or a Commission final order has been issued, an eligible local exchange telecommunications service provider may file an OUSF request pursuant to 17 O.S. § 139.106(G) and request a variance and risk-based review, provided that:

- (1) Requests for OUSF Funding made pursuant to the variance and risk-based review shall be filed with the Commission's Court Clerk and provided on the date of filing to the OUSF Administrator for processing.
- (2) The above provisions in OAC 165:59-3-70(d)-(f) and (i)-(l) are applicable to causes processed using the variance and risk-based review.
- (3) The OUSF Administrator shall develop an annual variance and risk-based review procedure and reporting format that specifies the information to be made available for purposes of such variance and risk-based review.
- (4) The annual variance and risk-based review process shall include the submission of all information requested, in a format to be developed by the OUSF Administrator.
- (5) Such annual variance and risk-based review shall be based on comparisons between and among the documentation provided with the initial Request for OUSF Funding, and the information subsequently provided in conjunction with an annual variance and risk-based review.
- (6) In no case shall an increase in OUSF funding based on an annual variance and risk-based review exceed five (5) percent of the initial amount granted by the Administrator's Determination or a final order issued by the Commission.

165:59-3-71. [RESERVED]

[Source: Reserved at 34 Ok Reg 5, eff 8-12-16 (emergency); Reserved at 34 Ok Reg 1011, eff 9-11-17]

165:59-3-72. Request for reconsideration procedures

(a) The Request for Reconsideration and a Notice of Prehearing Conference shall be filed with the Commission's Court Clerk and provided to all parties of record on the same day it is filed. Any party filing a Request for Reconsideration must be represented by an attorney, as defined in OAC 165:5-1-3.

(b) Notice of the Request for Reconsideration shall be given to the OUSF Administrator, the Oklahoma Attorney General, and all parties to the cause, and shall be posted on the Commission's website by the OUSF Administrator.

(c) Upon filing the Request for Reconsideration and the Notice of Prehearing Conference, the Request for Reconsideration shall, without Commission order, be assigned to an ALJ, and set for hearing on the next regularly scheduled prehearing conference date, which is at least five (5) business days after the date of filing, unless the parties agree or the Commission directs otherwise.

(d) At the time a Request for Reconsideration is filed, all documentation not contained in the public record and not filed in the cause with the Commission's Court Clerk, relied upon by the OUSF Administrator in making the Determination, shall be made available to the party filing the Request for Reconsideration. No confidential information and/or highly sensitive confidential information shall be provided until the nondisclosure agreement, as approved pursuant to OAC 165:59:3-30(f) is signed by the affected party. Additionally, all data requests issued with respect to a Request for Reconsideration shall be answered within ten (10) business days, unless otherwise agreed by the parties. Any prefiled testimony, statement of position, or legal brief in support of the Request for Reconsideration shall be filed with the Commission's Court Clerk within fifteen (15) calendar days of the Request for Reconsideration, and provided to all parties of record on the same day it is filed.

(e) Any responsive prefiled testimony or responsive legal brief shall be filed with the Court Clerk within ten (10) business days of the filing of the prefiled testimony or legal brief, as referenced in subsection (d), and provided to all parties of record on the same day it is filed.

(f) During the prehearing conference, the ALJ shall identify any additional requirements for a procedural schedule, including scheduling a hearing on the Request for Reconsideration, if deemed necessary by the ALJ. The parties shall identify all witnesses or potential witnesses who will provide testimony, and all witnesses or potential witnesses shall submit prefiled testimony. The ALJ may determine that a hearing on the Request for Reconsideration is not needed for causes without material disputes of fact or if all parties waive cross-examination. The hearing on the Request for Reconsideration shall be set within forty-five (45) calendar days of filing of the Request for Reconsideration, unless the Commission orders otherwise. The parties shall adhere to the procedural schedule set by the ALJ, without a Commission order.

(g) The ALJ shall issue an ALJ report containing the findings of fact, conclusions of law, and recommendation within fifteen (15) business days of the hearing on the Request for Reconsideration. If the ALJ determines no hearing on the Request for Reconsideration is necessary, the ALJ shall issue an ALJ report as set forth herein, no later than sixty (60) calendar days after the date the Request for Reconsideration was filed.

(h) Recommendations on motions, objections, and all filings made prior to the issuance of an ALJ report shall be addressed by the ALJ in the ALJ report, containing the recommendation on the merits of the Request for Reconsideration, unless the Commission orders otherwise.

(i) Oral or written exceptions regarding motions, objections, and all filings made prior to the issuance of an ALJ report will not be allowed, unless the Commission orders otherwise. Exceptions to the ALJ report, shall be governed under OAC 165:5-13-5(a)(2), (b) and (c).

(j) A Request for Reconsideration may be withdrawn at any time prior to opening of the record in the Hearing on the Request for Reconsideration by filing a Withdrawal of Request for Reconsideration with the Commission's Court Clerk. Upon filing a Withdrawal of Request for Reconsideration, the Cause shall be closed by the Commission's Court Clerk, without a Commission order, and payment shall be made within forty-five (45) calendar days after filing the Withdrawal of Request for Reconsideration.

(k) If the Commission does not issue a final order within thirty (30) calendar days from the date the Request for Reconsideration is filed, the Request shall be deemed approved on an interim basis subject to refund with interest. To obtain interim funding, the eligible local exchange telecommunications service provider or the eligible provider must file notice with the Commission's Court Clerk of its intention to seek interim funding. The OUSF Administrator shall pay the interim funding within forty-five (45) calendar days upon receipt of notice.

[Source: Added at 34 Ok Reg 5, eff 8-12-16 (emergency); Added at 34 Ok Reg 1011, eff 9-11-17]

SUBCHAPTER 5. LIFELINE SERVICE [REVOKED]

165:59-5-1. Lifeline Service Program [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Revoked at 15 Ok Reg 1195, eff 1-6-98 (emergency); Revoked at 15 Ok Reg 1915, eff 7-1-98]

165:59-5-2. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-5-3. Audits [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Revoked at 15 Ok Reg 1195, eff 1-6-98 (emergency); Revoked at 15 Ok Reg 1915, eff 7-1-98]

165:59-5-4. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-5-5. Recertification [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Revoked at 15 Ok Reg 1195, eff 1-6-98 (emergency); Revoked at 15 Ok Reg 1915, eff 7-1-98]

SUBCHAPTER 7. SPECIAL UNIVERSAL SERVICES

165:59-7-1. Reimbursement from the OUSF for Special Universal Service

(a) An OUSF Beneficiary may be eligible to receive funding from both the OUSF and other state or federal funds; however, in no instance will there be a double recovery. If the OUSF Beneficiary receives funding from another state or federal

fund for an investment or expense already reimbursed by the OUSF, the OUSF Beneficiary shall notify the eligible provider, and thereafter the eligible provider shall reduce the amount of its credit to the OUSF Beneficiary and its prospective funding request from the OUSF by an equivalent amount. The OUSF Beneficiary shall make every reasonable effort to obtain funding from another state and/or federal fund designated to support special universal service. The OUSF Beneficiary shall provide the OUSF Administrator with information regarding the OUSF Beneficiary's request for funding from government sources designed to support the provisioning of the Special Universal Service, i.e. the federal schools and libraries program or federal rural health care program, or an explanation of why such funding is not available, or why the OUSF Beneficiary did not request such funding. Failure to provide such documentation may result in the OUSF Administrator denying the request for Special Universal Service funding from the OUSF. The OUSF Beneficiary shall provide evidence of any exemption it has to obtain funding from another state or federal fund designated to support Special Universal Services.

(b) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.

(c) The OUSF Administrator will utilize the following procedures when evaluating a request for OUSF funding for Internet access to a public school or public library:

(1) A fair and open competitive bidding process shall be used to select the services and eligible provider for which OUSF funding will be sought, including costs for Internet access to schools and libraries for the balance not paid by E-rate.

(2) An affidavit will be required from the public school or public library that the bid information submitted to the OUSF Administrator for review contains all the bids received by the school or library. All evaluation tools utilized by the OUSF Beneficiary while reviewing the bids, including all received bids, must be provided to the OUSF Administrator at the Commission offices or in a manner approved by the OUSF Administrator.

(3) The OUSF will not reimburse charges for redundant service(s); however, if the eligible provider is unable to provision the eligible bandwidth using a single access line, the OUSF Beneficiary may choose to employ multiple access lines to provision the eligible bandwidth level established by the SETDA standard, as long as all lines are provisioned by the same eligible provider. The OUSF Administrator may waive this requirement for good cause shown.

(4) The OUSF shall not fund more than one eligible provider for the same service at the same location for the same time period, except during a transition period from one eligible provider to another. Such funding during a transition period shall not exceed thirty (30) calendar days.

(5) The OUSF will fund either the lowest cost reasonable qualifying bid, or a bid that is no more than 25% above the lowest cost reasonable qualifying bid, inclusive of all non-recurring eligible charges, for the eligible bandwidth range of the OUSF Beneficiary. If the selected bid is more than 25% above the lowest cost reasonable qualifying bid, the OUSF will fund the lowest cost reasonable qualifying bid plus the 25%.

(6) The OUSF Beneficiary's request for bids shall clearly identify the minimum and a maximum bandwidth at standard available levels as suggested in guidelines promulgated by the FCC or Commission rules.

(7) Once OUSF funding has been approved pursuant to the Oklahoma Telecommunications Act, the eligible provider should submit monthly payment reports to the OUSF Administrator or the contracted agent on a monthly basis. The initial payment will be as necessary to pay all amounts approved but not yet received by the eligible provider. After the initial monthly payment request is submitted, a monthly payment request should be submitted by the eligible provider to collect the amount of credit provided to the OUSF Beneficiary. The monthly payment requests shall be paid on the next regularly scheduled payment date. A new Request for OUSF Funding must be filed to recover any monthly payment amount that exceeds ninety (90) days of service, unless otherwise agreed to by the OUSF Administrator.

(8) Monthly payment reports must be received in the form and content prescribed by the OUSF Administrator.

(9) The OUSF Administrator will post to the Commission website a copy of the monthly payment report within five (5) business days of the payment report being approved by the OUSF Administrator.

(10) Monthly recurring amounts or other funding related changes (e.g. level of bandwidth, or changes in E-rate discount amount) will not be increased from the approved amount without supporting documentation being made available to the OUSF Administrator.

(11) Funding for eligible services, including federal funding, shall not exceed actual eligible expenses.

(d) The OUSF Administrator will utilize the following procedures when evaluating a request for OUSF funding for a telemedicine line:

(1) A fair and open competitive bidding process shall be used to select the services and eligible provider for which OUSF funding will be sought, including costs for Internet access to eligible healthcare entities.

(2) An affidavit will be required from the eligible healthcare entity that the bid information submitted to the OUSF Administrator for review contains all the bids received by the eligible healthcare entity. All evaluation tools utilized by the OUSF Beneficiary while reviewing the bids, including all received bids, must be provided to the OUSF Administrator.

(3) The OUSF will not reimburse charges for redundant service(s); however, the eligible healthcare entity may choose to employ multiple access lines to provision the eligible bandwidth level established by the FCC, and as stated in OAC 165:59-7-6(c), as long as all lines are provisioned by the same eligible provider.

(4) The OUSF shall not fund more than one eligible provider for the same service at the same location for the same time period, except during a transition period from one eligible provider to another. Such funding during a transition period shall not exceed thirty (30) calendar days.

(5) The OUSF will fund reasonable installation and/or reasonable construction charges. These charges shall be evaluated as part of the OUSF Administrator's analysis of lowest cost reasonable qualifying bid selection by the OUSF Beneficiary. Installation charges, construction charges, early termination fees, and charges assessed upon the expiration of a contract will be amortized over the initial term of the contract when determining the lowest cost reasonable qualifying bid.

(6) The OUSF will fund either the lowest cost reasonable qualifying bid, or a bid that is no more than 25% above the lowest cost reasonable qualifying

bid, inclusive of all non-recurring eligible charges, for the eligible bandwidth range provided in OAC 165:59-7-6(c) of the OUSF Beneficiary. If the selected bid is more than 25% above the lowest cost reasonable qualifying bid, the OUSF will fund the lowest cost reasonable qualifying bid plus the 25%.

(7) Once OUSF funding has been approved pursuant to the Oklahoma Telecommunications Act, the eligible provider should submit monthly payment reports to the OUSF Administrator or the contracted agent on a monthly basis. The initial payment will be as necessary to pay all amounts approved but not yet received by the eligible provider. After the initial monthly payment request is submitted, a monthly payment request should be submitted by the eligible provider to collect the amount of credit provided to the eligible healthcare entity. The monthly payment requests shall be paid on the next regularly scheduled payment date. A new Request for OUSF Funding must be filed to recover any monthly payment amount that exceeds ninety (90) days of service, unless otherwise agreed to by the OUSF Administrator.

(8) Monthly payment reports must be received in the form and content prescribed by the OUSF Administrator.

(9) The OUSF Administrator will post to the Commission website a copy of the monthly payment report within five (5) business days of the payment report being approved by the OUSF Administrator.

(10) Monthly recurring amounts or other funding related changes (i.e. level of bandwidth) will not be increased from the approved amount without supporting documentation being made available to the OUSF Administrator.

(11) Funding for eligible services, including federal funding, shall not exceed actual eligible expenses.

(12) Increases in cost caused by the expiration of a contract will not be permitted via the monthly payment process when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new Request for OUSF Funding will need to be filed in the Commission's Court Clerk to recover any difference in prices caused by an expired contract.

(13) Reimbursement of the cost for any additional service above and beyond the telemedicine bandwidth on contracts and invoices will be denied, unless the costs are in compliance with the Oklahoma Telecommunications Act. Invoices provided to request OUSF Funding must contain a breakdown of non-eligible expenses, such as firewall (unless provided as a standard component of Internet access by the eligible provider to all customers with the same type of service and not priced separately), email packages, and domain registration, etc.

(e) If a Request for Reconsideration is filed and subsequently withdrawn, the OUSF Administrator will pay the determined amount no later than forty-five (45) calendar days after the date the Request for Reconsideration is withdrawn.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 29 Ok Reg 1583, eff 7-12-12; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-2. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-7-3. Criteria for demonstration of need for Special Universal Services [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Revoked at 15 Ok Reg 1199, eff 1-6-98 (emergency); Revoked at 15 Ok Reg 1919, eff 7-1-98]

165:59-7-4. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-7-5. Toll-free calling to not-for-profit hospitals [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98; Amended at 18 Ok Reg 2448, eff 7-1-01; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-6. Telemedicine access for eligible healthcare entities

(a) It is the intention of the Commission that this Chapter be interpreted to assist in the development of telemedicine service programs which in turn have the following effects on eligible healthcare entities:

- (1) Empowering eligible healthcare entities, especially those in rural areas, to provide a higher level of medical service;
- (2) Expanding the range of medical services available, especially those in rural areas;
- (3) Providing greater access to more choices in medical care by patients in rural areas;
- (4) Reducing the number of rural patient transfers to urban areas;
- (5) Enhancing rural economic development; and
- (6) Reducing the costs of medical care at eligible healthcare entities.

(b) Upon compliance with the competitive bidding process, and other requirements set forth in the Oklahoma Telecommunications Act, and upon receipt of a written request by an authorized representative of an eligible healthcare entity, as defined by this Chapter, the eligible provider shall, by itself or in conjunction with another provider of telecommunications services, provide Special Universal Services to the eligible healthcare entity.

(c) Special Universal Services to an eligible healthcare entity include the provision of bandwidth per standards as recommended by the FCC sufficient for providing telemedicine services including the telemedicine line, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible telemedicine service. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(1) The OUSF Administrator shall approve funding for bandwidth requests, up to and including the amount listed below, for an eligible healthcare entity as follows:

(A) Department of Corrections shall be eligible for funding up to 100 Mbps;

(B) Federally Qualified Health Centers shall be eligible for funding as follows:

- (i) Urban locations up to 500 Mbps;
- (ii) Rural locations up to 100 Mbps.

(C) County Health Department shall be eligible for funding as follows:

- (i) Urban locations up to 500 Mbps;
- (ii) Rural locations up to 100 Mbps.

(D) City-County Health Department shall be eligible for funding as follows:

- (i) Urban locations up to 500 Mbps;
- (ii) Rural locations up to 100 Mbps.

(E) Not for Profit Mental Health and Substance Abuse Facilities (certified facilities pursuant to OAC 450, Chapters 17 and 24) that are not staffed 24-hours each day shall be eligible for funding up to 100 Mbps;

(F) Eligible healthcare entities that are staffed 24-hours each day, including those which are academic facilities, large medical centers, hospitals, and mental health and substance abuse facilities (certified facilities pursuant to OAC 450 Chapter 23) shall be eligible to receive bandwidth, based on licensed or certified beds, as follows:

- (i) 1 to 50 beds shall be eligible for funding up to 500 Mbps;
- (ii) 51 to 100 beds shall be eligible for funding up to 1 Gbps;
- (iii) 101 to 200 beds shall be eligible for funding up to 3 Gbps;
- (iv) 201 or greater beds shall be eligible for funding up to 10 Gbps.

(G) The eligible healthcare entities, identified above in (A) through (F), which support other eligible healthcare entities as a central location or host, may request additional bandwidth per supported location of up to twenty five percent (25%) of the supported eligible healthcare entity's eligible bandwidth.

(2) When determining whether funding for additional bandwidth is appropriate, when an eligible healthcare entity requests funding for a bandwidth that exceeds the amounts listed in section (1), the OUSF Administrator may consider, but not be limited to considering, the following factors:

- (A) Number of health care providers and staff at the eligible healthcare entity;
- (B) Number of beds at the eligible healthcare entity;
- (C) The telemedicine services provided at the eligible healthcare entity;
- (D) Support for other telemedicine facilities that require broadband access with consideration for any payments received by the supporting facility; and
- (E) Prior bandwidth usage, not including public network usage.

(d) In no case, however, shall reimbursement from the OUSF be made for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(e) The eligible provider shall be entitled to reimbursement from the OUSF for a one-time reasonable charge for the establishment of service of a new telecommunications line or wireless connection. Under this subsection (e), reimbursement is intended to allow for reasonable changes in 1) the

telecommunications services and technologies purchased by an eligible healthcare entity, 2) the physical location of an eligible healthcare entity by permitting establishment of new service at a new location, and/or 3) the eligible provider providing service to an eligible healthcare entity.

(f) The written request by an authorized representative of an eligible healthcare entity to an eligible provider shall be in the form and content approved by the OUSF Administrator.

(g) The OUSF Administrator and/or its contracted agent may periodically seek verification of continued eligibility from an eligible healthcare entity, and the eligible healthcare entity shall maintain sufficient documentation to be able to provide verification of eligibility within fifteen (15) calendar days after request of the OUSF Administrator and/or its contracted agent. Failure to supply the requested eligibility verification within the stated timeframe will result in immediate discontinuance of OUSF support until information is received and deemed complete, unless the Commission directs otherwise.

(h) Eligible healthcare entities that are eligible for funding from a program designed to support universal service, including but not limited to the FCC Rural Health Care Program, are expected to not only request funding, but to follow through and complete the process for Rural Health Care Program funding.

(i) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.

(j) If the eligible healthcare entity is eligible for Rural Health Care Program funding, the following documents shall be provided to the OUSF Administrator within thirty (30) calendar days after the eligible healthcare entity has either submitted the form to USAC, or received the form from USAC, whichever is applicable.

(1) If eligible under the Telecommunications program, the eligible healthcare entity must provide the OUSF Administrator the FCC Form 466, Funding Commitment Letter, FCC Form 467, and Health Care Provider Support Schedule.

(2) If eligible under the Healthcare Connect Fund, the eligible healthcare entity must provide the OUSF Administrator the FCC Form 462 and associated network cost worksheet, and Funding Commitment Letter.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 18 Ok Reg 2448, eff 7-1-01; Amended at 22 Ok Reg 1819, eff 7-1-05; Amended at 29 Ok Reg 1583, eff 7-12-12; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-7. Toll-free calling to public schools and public libraries [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-8. Internet access to public schools and libraries

(a) It is the intention of the Commission that this Chapter be interpreted to maximize the availability of Internet access to all public schools and public libraries within Oklahoma, so that children within Oklahoma will be able to utilize the Internet to enhance their learning opportunities, thereby better preparing them for the future.

(b) Special Universal Services for schools shall include the E-rate Eligible Services List (ESL) for Category One services as determined by the FCC for the applicable funding year or, in the absence of such a list, as published by USAC. In the event

no ESL is available from the FCC or USAC for the applicable funding year, eligible services will be those on the ESL for the last funding year for which an ESL was available.

(c) Special Universal Services shall include the provision of bandwidth sufficient for providing educational services not to exceed, without good cause shown, the standards established for the relevant funding year by SETDA or successor educational broadband standard including Internet access lines, WAN connections, reasonable installation, and network termination equipment owned and operated by the eligible provider as defined by the ESL that is necessary to provide the eligible service. Student counts as reported to the State Department of Education in October of the year prior to the relevant funding year shall be utilized for the purpose of determining bandwidth recommendations established by SETDA for purposes of this paragraph. In the absence of standards prescribed for the applicable funding year, the standards for the next prescribed funding year shall be used. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(d) Special Universal Services for libraries shall include the E-rate Eligible Services List (ESL) for Category One services as determined by the FCC for the applicable funding year or, in the absence of such a list, as published by USAC. In the event no ESL is available from the FCC or USAC for the applicable funding year, eligible services will be those on the ESL for the last funding year for which an ESL was available.

(e) Special Universal Services shall include the provision of bandwidth sufficient for providing library services per standards as recommended by the FCC including Internet access lines, reasonable installation, and network termination equipment owned and operated by the eligible provider that is necessary to provide the eligible service. Bandwidth may be rounded up to the next available standard service increment to avoid increased costs to the fund.

(f) Special Universal Services shall not include voice services that use separate lines or have allocated bandwidth.

(g) In no case will the OUSF reimburse an entity for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(h) The eligible provider shall update the OUSF Administrator through the monthly payment process if E-rate funding is discontinued, for any reason, within thirty (30) calendar days of receiving notification from USAC.

(i) The Commission encourages public schools to request sufficient bandwidth to achieve the school's educational goals.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Added at 15 Ok Reg 1199, eff 1-6-98 (emergency); Added at 15 Ok Reg 1919, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-9. County seats [REVOKED]

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98; Revoked at 34 Ok Reg 5, eff 8-12-16 (emergency); Revoked at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-10. Other sources of funds

(a) OUSF Beneficiaries should make every reasonable effort to seek other sources of funding from State or federal funds, to minimize the impact on the OUSF. This includes completing the application process and requesting disbursement of funds from the federal fund administrator when funding is approved.

(b) Completing alternative funding requests in a manner that results in reduced alternative funding, for which the OUSF Beneficiary would have otherwise been eligible, may reduce OUSF funding.

(c) In the event that federal universal service funding programs offer to match state funds for special construction cost, OUSF Beneficiaries will post bid requests with sufficient lead time for the OUSF Administrator to timely provide preapproval of the selected bid.

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-11. Dispute resolution

Any dispute(s) regarding any Special Universal Service shall be resolved pursuant to OAC 165:59-3-36.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98]

165:59-7-12. [RESERVED]

[Source: Reserved at 14 Ok Reg 2562, eff 7-1-97]

165:59-7-13. Reselling Special Universal Services Prohibited

Special Universal Services purchased from an eligible provider of Special Universal Services shall not be sold, resold or transferred in consideration for money or any other thing of value.

[Source: Added at 14 Ok Reg 2562, eff 7-1-97; Amended at 15 Ok Reg 1199, eff 1-6-98 (emergency); Amended at 15 Ok Reg 1919, eff 7-1-98; Amended at 22 Ok Reg 1819, eff 7-1-05; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-14. [RESERVED]

[Source: Reserved at 15 Ok Reg 1199, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1919, eff 7-1-98]

165:59-7-15. Provision of Special Universal Services

(a) After compliance with the Oklahoma Telecommunications Act, and upon receipt of a written request by an OUSF Beneficiary, the eligible provider receiving the request shall make a good faith effort to provide the requested Special Universal Service not later than ten (10) business days after receiving the request.

(b) If the requested Special Universal Service cannot be provided within the time limit established by subsection (a) of this Section, the eligible provider shall immediately notify the OUSF Beneficiary requesting the service of the estimated delay and any interim service that might be available. Service requests shall be filled as quickly as practicable, but no longer than thirty (30) days after the request for service has been received by the eligible provider unless unavoidable delays beyond the eligible provider's control are experienced. If the service will be delayed longer than thirty (30) days, the eligible provider shall promptly notify the OUSF Administrator of the reason for the delay upon becoming aware of the delay, and the anticipated completion date of the request for service.

[Source: Added at 15 Ok Reg 1199, eff 1-6-98 (emergency); Added at 15 Ok Reg 1919, eff 7-1-98; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-16. [RESERVED]

[Source: Reserved at 15 Ok Reg 1199, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1919, eff 7-1-98]

165:59-7-17. Disclosure on bill regarding provided Special Universal Services

(a) Each eligible provider shall render a bill to the OUSF Beneficiary regarding said Special Universal Services. The bill shall reflect the provider's itemized charges for the provisioning of Special Universal Services.

(b) Prior to signing a contract with an OUSF Beneficiary, the eligible provider shall provide the OUSF Beneficiary, written information regarding the limitations on funding from the OUSF. The content of the written information to be provided shall be posted on the Commission's website.

[Source: Added at 15 Ok Reg 1199, eff 1-6-98 (emergency); Added at 15 Ok Reg 1919, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-18. [RESERVED]

[Source: Reserved at 34 Ok Reg 5, eff 8-12-16 (emergency); Reserved at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-19. Competitive bidding

(a) In the interest of fostering a fair and open bidding process from all qualified bidders eligible to receive OUSF funding under the Oklahoma Telecommunications Act, the following are requirements for requests for bids:

(1) The bidder must be an eligible provider, as defined in 17 O.S. § 139.102.

(2) Bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding where the OUSF Beneficiary is located.

(A) The bid request must require ineligible services be priced separately from OUSF eligible services.

(B) The bid request shall not require that the Internet and WAN be provided by the same eligible provider.

(C) To avoid bid structuring, the bid request shall clearly identify the requested bandwidth range, inclusive of the eligible bandwidth limit, of the OUSF Beneficiary, and shall include a minimum and a maximum bandwidth at standard available levels as suggested in guidelines promulgated by the FCC or Commission rules.

(b) Bids must contain all costs to provide the Special Universal Services. Any bid containing estimated costs, other than fees and taxes to be paid to a third party, will be disregarded as not meeting the bid requirements.

(c) Bidders are presumed to know statutory requirements for contracts for public entities; bids that do not conform to requirements for public entities may be disregarded.

(d) An existing contract, selected by the OUSF Beneficiary for comparison to received bids, shall be considered as being submitted during the same bidding period as the awarded bid.

[Source: Added at 34 Ok Reg 5, eff 8-12-16 (emergency); Added at 34 Ok Reg 1011, eff 9-11-17]

165:59-7-20. [RESERVED]

165:59-7-21. Installation, construction, and special construction

(a) The OUSF will fund reasonable installation and special construction charges. These charges shall be evaluated for purposes of the OUSF Administrator's analysis of lowest cost reasonable qualifying bid selection by the OUSF Beneficiary as part

of the overall bid pricing and funding evaluation, and will be amortized as follows:

- (1) For schools and libraries, over a one (1) year period, unless the bid allocates the construction over multiple years and is approved pursuant to state or federal law.
- (2) For telemedicine, over the lifetime of the contract, not to exceed five (5) years.

(b) Upon request by the OUSF Beneficiary, during the preapproval process, the OUSF Administrator's analysis of lowest cost reasonable qualifying bid may allocate special construction charges over the period selected in the special construction cost analysis in (c) in order to consider long term cost effectiveness to the OUSF.

(c) Special Construction Cost:

- (1) Prior to posting the request for bids, the OUSF Beneficiary is required to seek OUSF Administrator review of any bid evaluation criteria for any projects involving special construction cost. Review of the request for bids and bid evaluation criteria does not guarantee approval of funding.
- (2) Cost effectiveness evaluation for projects with special construction cost may extend up to five (5) years.
- (3) If special construction is funded, special construction will not be available again to the location(s) specified for the period used in the analysis.
- (4) Special construction costs will not be included in monthly recurring costs.
- (5) Eligible providers that receive special construction cost funding for installation shall maintain or reduce monthly recurring costs.

SUBCHAPTER 9. OKLAHOMA LIFELINE FUND

PART 1. LIFELINE SERVICE PROGRAM

165:59-9-1. Purpose of Oklahoma Lifeline Fund

- (a) This Subchapter establishes guidelines for the administration of the Oklahoma Lifeline Fund, that are consistent with 17 O.S. §§ 139.105 and 139.107.
- (b) The Oklahoma Lifeline Fund is designed to advance the goals of universal service, and ensure that low-income residential customers within the State of Oklahoma, who meet the criteria of 17 O.S. § 139.105, and 47 CFR §§ 54.400 through 54.415, are provided financial assistance, pursuant to the Oklahoma Telecommunications Act.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 19 Ok Reg 2017, eff 7-1-02; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-3. Oklahoma Lifeline Service Program

- (a) The Oklahoma Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline program, to provide a monthly credit to the monthly bill of qualifying residential subscribers for basic local exchange service, in an amount equal to such amount as may be established by 17 O.S. § 139.105.

- (b) In order to qualify for the Oklahoma Lifeline Service Program, a customer must meet all applicable requirements of 47 CFR §§ 54.400 through 54.422 and/or 17 O.S. § 139.105.
- (c) Each eligible local exchange telecommunications service provider shall file tariffs implementing a Lifeline Service Program that is consistent with this Subchapter.
- (d) Lifeline Assistance shall not be available on a retroactive basis to the customers.
- (e) Upon notification to the eligible local exchange telecommunications service provider, the credit will be discontinued for customers who no longer qualify for Lifeline Assistance.
- (f) Lifeline Service benefits are applicable only to the primary line at the customer's principal residence. An applicant for Lifeline Service may report only one address in the state as the principal place of residence.
- (g) As a participant in Lifeline Assistance, customers will be eligible to receive Toll Restriction Service at no charge.
- (h) Each eligible local exchange telecommunications service provider with approved Lifeline Service tariffs shall advertise the availability of the Lifeline Service Program within its exchange(s) or service territory on, at a minimum, an annual basis.
- (i) The wireless eligible local exchange telecommunications service provider must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the eligible local exchange telecommunications service provider programmed in the phone and clearly identified.
- (j) All enrollment in any Lifeline Services from any outdoor mobile location shall be governed by OAC 165:55-23-16.
- (k) Any wireless handset provided in conjunction with the Lifeline Service must clearly and permanently identify the provider of the service.
- (l) An eligible local exchange telecommunications service provider may not provide Lifeline Service purely by resale without a Commission order.
- (m) An approved Lifeline tariff may not be modified without submitting the modification to the OLF Administrator at least fifteen (15) calendar days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the public interest. Unless the eligible local exchange telecommunications service provider receives written notification that its modification is NOT IN THE PUBLIC INTEREST within fifteen (15) calendar days after its submission, the submission is deemed to be in the public interest and may be implemented.
- (n) The eligible local exchange telecommunications service provider shall utilize a third party verification system that has been approved by the OLF Administrator to verify the customer's identity and address, or obtain a waiver from the OLF Administrator from this requirement.
- (o) The eligible local exchange telecommunications service provider must retain a copy of the signed application for Lifeline Service, and any recertification information for five (5) years.
- (p) The eligible local exchange telecommunications service provider shall maintain a database sufficient to identify any duplicates among all companies associated with the eligible local exchange telecommunications service provider.
- (q) Unless otherwise approved by Commission Order, any Lifeline plan on Tribal Land must include a minimum of one thousand (1,000) minutes of local voice use or unlimited domestic calling, to be considered in the public interest. Any Lifeline

plan on non-Tribal Land must include a minimum of five-hundred (500) minutes of local voice use to be considered in the public interest.

(r) All marketing efforts must clearly identify the eligible local exchange telecommunications service provider actually providing the Lifeline Service.

(s) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a thirty (30) days suspension of an eligible local exchange telecommunications service provider's ability to sign up new customers and/or a fine as authorized by 17 O.S. § 139.105 after notice and hearing.

(t) The eligible local exchange telecommunications service provider seeking reimbursement from the OLF for the provisioning of Lifeline services shall also note on the certified written statement obtained from the customer the name of the employee or representative who verified the customer's eligibility for Lifeline service and the type of documentation reviewed.

(u) Prior to obtaining money from the OLF, an eligible local exchange telecommunications service provider must show compliance with 17 O.S. § 139.105(E).

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 19 Ok Reg 2017, eff 7-1-02; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 30 Ok Reg 1581, eff 7-11-13; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-5. Recertification of Lifeline eligibility

Each eligible local exchange telecommunications service provider, eligible to receive Lifeline support from the Oklahoma Lifeline Fund and/or the federal Lifeline Fund shall, annually, require each end-user subscriber to recertify confirming their continued eligibility for the State or Federal Lifeline program. The eligible local exchange telecommunications service provider shall retain a copy of the signed recertification form for three (3) years.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-6. Retention of Lifeline eligibility records

All records, including the signup form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the eligible local exchange telecommunications service provider obtained a waiver from the requirement to utilize a third party verification system) shall be retained by the eligible local exchange telecommunications service provider for a minimum of three (3) years.

[Source: Added at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

PART 3. ADMINISTRATION OF THE OKLAHOMA LIFELINE FUND

165:59-9-11. Administration of the Fund

(a) The Public Utility Division of the Commission shall be the Administrator of the OLF. The administrative function shall be headed by the OLF Administrator, as defined in 17 O.S. § 139.102.

(b) The OLF Administrator may, as necessary, take all actions necessary to fulfill the objectives of the Oklahoma Telecommunications Act, including but not limited to, contracting with a third-party who has no conflict of interest in the provisioning of telecommunications services for assistance with the administrative functions related to the OLF.

(c) The OLF Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of this Subchapter and the Oklahoma Telecommunications Act.

(d) The OLF Administrator and/or contracted agent shall administer the OLF in accordance with this Subchapter and the Oklahoma Telecommunications Act.

(e) The OLF Administrator's or contacted agent's duties shall include, but not be limited to:

- (1) Receiving, distributing, and accounting for funds paid into the OLF;
- (2) Providing funding to eligible telecommunications providers from the OLF;
- (3) Managing the daily operations and affairs of the OLF;
- (4) Monitoring and assuring contribution/payment compliance, as well as conducting periodic audits of the contributing providers to ensure that the contributors are accurately reporting and making proper payments to the OLF;
- (5) Performing any periodic audits of the OLF deemed necessary by the Administrator, provided however, that the Staff of the Public Utility Division shall not conduct an annual audit for any year during which it also acted as the OLF Administrator;
- (6) Informally resolving disputes;
- (7) Independently evaluate and review all Requests for OLF Funding within the time frames identified in the Oklahoma Telecommunications Act, make a Determination of the accuracy of the requests, and advise the eligible local exchange telecommunications service provider requesting the funds of the determination of eligibility made by the OLF Administrator; and,
- (8) Performing any other duties as required by law, and/or this Chapter.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-12. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-13. Audits

(a) The OLF shall be audited annually by a non-OLF independent auditor selected by a committee with input from the State Auditor's Office. The committee shall be selected by the Commission's Director of Administration.

(b) The annual audit should be based on assessed program risk conducted in accordance with standards. It may also include a review of the documentation on file with the eligible local exchange telecommunications service provider regarding eligibility of the end-user to participate in the Lifeline Service Program, whether received during the initial enrollment or during the annual recertification process, and the amounts received by the eligible local exchange telecommunications service provider for reimbursement from the OLF.

(c) The audit may include further objectives as requested by the Commission's Director of Administration, and/or as required by the contract between the OLF and independent auditor.

- (d) The cost of audits of the OLF shall be funded by the OLF.
- (e) All audit reports, once finalized, shall be provided to the Oklahoma Attorney General.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-14. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-15. Violations

If a contributing provider to the OLF fails or refuses to make a contribution to the OLF as required by the Oklahoma Telecommunications Act and this Chapter, such violation will be resolved consistent with the provisions of OAC 165:59-3-38.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-16. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-17. Reporting requirements

Each contributing provider to the OLF shall, within thirty (30) calendar days from the date of a request made for information or a report by the OLF Administrator or contracted agent, submit to the OLF Administrator or contracted agent a completed report form based on a 12-month period identified by the OLF Administrator or contracted agent, containing such information as designated by the OLF Administrator.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

PART 5. CONTRIBUTIONS AND REIMBURSEMENTS

165:59-9-21. Contributions to the Oklahoma Lifeline Fund

- (a) The OLF shall be funded in a competitively neutral manner in accordance with the Oklahoma Telecommunications Act.
- (b) Each contributing provider, whether they are subject to the jurisdiction of the Commission or not, shall annually provide contact information to the OLF Administrator for the purpose of correspondence regarding contribution to the OLF. The submission of an annual report to the Commission shall be deemed sufficient for compliance with this paragraph.
- (c) Each telecommunications carrier providing wholesale telecommunications services to VoIP providers in Oklahoma will annually provide the identity, to include address, of each such VoIP provider(s) to the OLF Administrator as available. While the names of the VoIP providers may be made publicly available, all information with regard to the reporting telecommunications carrier will be treated as confidential.
- (d) The contributing provider must certify to the truth and accuracy of data used to determine the contributing provider's contribution amounts. The OLF Administrator may verify any information used by the contributing provider in its determination of its contributions to the OLF. Contributing providers shall maintain records and documentation to justify information used in its determination of its contributions

to the OLF for three (3) years, and shall provide such records and documentation to the OLF Administrator upon request. Inaccurate or untruthful information used by the contributing provider may lead to prosecution to the full extent of the law.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-22. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-23. Amount of contribution

(a) The OLF Administrator or contracted agent shall, consistent with 165:59-3-40, and based on the adjusted amount to be contributed to the OLF, independently evaluate and calculate the contribution required to be made to the OLF by each contributor, based on the fund level established by the Commission sufficient to recover the costs of administration and payments for Requests for OLF Funding as provided by the Oklahoma Telecommunications Act.

(b) The funding from each contributing provider shall be based on the total intrastate retail Oklahoma Interconnected Voice over Internet Protocol revenues and intrastate telecommunications revenues, from both regulated and unregulated services, of the contributing provider, herein after referred to as assessed revenues, as a percentage of all revenues of the contributing providers, or such other assessment methodology not inconsistent with federal law. Interconnected VoIP services shall be assessed only as provided for in the decision of the Federal Communications Commission, FCC 10-185, released November 5, 2010, or such other assessment methodology that is not inconsistent with federal law.

(c) For Interconnected VoIP services, contributing providers shall, consistent with the methodology of the FCC, identify intrastate retail revenue subject to the OUSF/OLF assessment through 1) direct assignment; 2) a company-specific traffic study; or 3) the inverse of the FCC safe harbor calculation, currently 35.1%. A contributing provider must file an application with the Commission and receive approval to utilize any methodology other than the safe harbor calculation.

(d) The fiscal reporting year shall be July 1 through June 30.

(e) Each contributing provider shall pay its contribution directly to the OLF Administrator, or contracted agent, as directed by the OLF Administrator, on a monthly or annual basis, conditioned upon an annual revenue threshold established by the OLF Administrator.

(f) If the contributing provider qualifies to pay its contribution annually, payment shall be made at the beginning of the fiscal year, and is past due after August 31. If the contributing provider underestimates its annual contribution by 15% or greater, the contributing provider shall be required to make its contributions monthly for the next fiscal reporting year, and underpayments will be subject to interest.

(g) If the contributing provider qualifies to pay its contribution monthly, the contributing provider shall report the prior calendar month's revenues, and pay on those revenues, by the end of the month, each month, without skipping a month.

(h) Interest shall be charged on any payment not received by the reporting due date at the rate of 1.5% monthly.

(i) The payment shall be payable to the OLF. All contributions and interest payments shall be deposited into the OLF account established by the OLF Administrator and/or contracted agent.

(j) All contributions shall be subject to audit by the OLF Administrator, or its contracted agent.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 16 Ok Reg 2360, eff 7-1-99; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-24. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-25. Procedures for requesting reimbursement from the OLF

(a) Any eligible local exchange telecommunications service provider required to file Lifeline Service tariffs may apply to the OLF Administrator or contracted agent of the OLF for reimbursement of the Lifeline Service Program credits provided for residential basic local service.

(b) Upon receipt of a "Request for OLF Funding", the OLF Administrator or contracted agent shall independently evaluate and review the Request and supporting documentation and, as appropriate, pay the applicable amount to the eligible local exchange telecommunications service provider, as provided in the Oklahoma Telecommunications Act.

(c) An eligible local exchange telecommunications service provider seeking reimbursement of eligible Lifeline Service Program credits from the OLF shall:

(1) File a "Request for OLF Funding" with the Commission's Court Clerk.

(2) Concurrent with filing the Request for OLF Funding, the eligible local exchange telecommunications service provider who is requesting funding from the OLF shall provide notice, which shall include the dollar amount of the request for lump sum and any recurring amounts, of the Request for OLF Funding to the OLF Administrator, the Oklahoma Attorney General, and to each contributing provider by providing an electronic copy of such notification to the OLF Administrator on the date the eligible local exchange telecommunications service provider files its Request for OLF Funding with the Commission's Court Clerk, for posting on the Commission's website. The OLF Administrator will then place the notification on the Commission's website within five (5) business days.

(d) An eligible local exchange telecommunications service provider may not receive reimbursements from the OLF unless it demonstrates that its rates have been reduced by an amount equal to the amount of the Lifeline payments that were previously included in the rate structure of the eligible local exchange telecommunications service provider. An eligible local exchange telecommunications service provider shall be eligible for support from the OLF for any amount which is greater than the amount which has been previously included in the rate structure of the eligible local exchange telecommunications service provider.

(e) The OLF Administrator and/or contracted agent shall independently evaluate, review, and determine the accuracy of the complete request and issue a Determination of the eligibility for funds, which details the amount of funding recoverable from the OLF, within ninety (90) calendar days. Simultaneously with the OLF Administrator or contracted agent advising the eligible local exchange telecommunications service provider and parties to the cause, the OLF Administrator or contracted agent shall file the written Determination with the Commission's Court Clerk and post it to the Commission's website.

(f) Any affected party may file a Request for Reconsideration within fifteen (15) calendar days of the Determination being filed by the OLF Administrator, by following the procedures in OAC 165:59-3-72.

(g) Any Request for Reconsideration will be processed using the provisions set forth in OAC 165:59-3-72.

(h) The OLF Administrator or contracted agent shall ensure that all OLF funds have been received and are on deposit in a sufficient manner so as to pay requests for OLF Funding in accordance with the Oklahoma Telecommunications Act and this Chapter. The OLF Administrator or contracted agent shall provide the approved funding to the requesting eligible local exchange telecommunications service provider, consistent with the procedures in O.A.C 165:59-3-68.

(i) Any request for funds from the OLF will be returned to the requesting party and deemed denied if the appropriate forms are not used or said forms are not completed in a satisfactory manner.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 28 Ok Reg 2255, eff 7-25-11; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-26. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-27. Recovery of contribution

Each contributing provider to the OLF may recover its contributions to the OLF consistent with 17 O.S. § 139.105. The OLF recovery received by each eligible local exchange telecommunications service provider shall be subject to an annual true-up. Any over- or under-recovery of the Lifeline Service Program contributions for the preceding year shall be carried forward for inclusion in the calculation for recovery in the ensuing year.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 32 Ok Reg 868, eff 8-27-15; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

165:59-9-28. [RESERVED]

[Source: Reserved at 15 Ok Reg 1195, eff 1-6-98 (emergency); Reserved at 15 Ok Reg 1915, eff 7-1-98]

165:59-9-29. Resolution of disputes regarding contributions

The resolution of disputes regarding the OLF shall be consistent with the procedures set forth in OAC 165:59-3-34.

[Source: Added at 15 Ok Reg 1195, eff 1-6-98 (emergency); Added at 15 Ok Reg 1915, eff 7-1-98; Amended at 34 Ok Reg 5, eff 8-12-16 (emergency); Amended at 34 Ok Reg 1011, eff 9-11-17]

CHAPTER 60. EXTENDED AREA SERVICE/WIDE AREA CALLING PLANS (EAS/WACP) [REVOKED]

[Authority: OKLA. CONST. art IX, § 18]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

165:60-1-1. Purpose; short title [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-2. Jurisdiction [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-3. Application of rules [REVOKED]

[Source: Amended at 11 Ok Reg 2587, eff 6-13-94; Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-4. Scope of rules [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-5. Interpretation of rules [REVOKED]

[Source: Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-6. Relief from rules [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-7. Rules conform to law [REVOKED]

[Source: Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-8. Controversy over rules [REVOKED]

[Source: Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-9. Severability [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-1-10. Definitions [REVOKED]

[Source: Added at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

SUBCHAPTER 3. APPLICATION AND GENERAL PROCEDURAL REQUIREMENTS [REVOKED]

165:60-3-1. Application for EAS/WACP [REVOKED]

[Source: Amended at 10 Ok Reg 2657, eff 6-25-93; Amended at 11 Ok Reg 2587, eff 6-13-94; Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-3-2. Intervenor status [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-3-3. Amendment of application [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-3-4. Dismissal of application [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

SUBCHAPTER 5. CRITERIA FOR EAS/WACP ARRANGEMENT [REVOKED]

165:60-5-1. Procedures for initiating cost, engineering and rate design studies [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-5-2. Procedures for conducting traffic studies [REVOKED]

[Source: Revoked at 16 Ok Reg 2366, eff 7-1-99]

165:60-5-3. Determination of adequacy of traffic to meet criteria [REVOKED]

[Source: Amended at 11 Ok Reg 2587, eff 6-13-94; Revoked at 16 Ok Reg 2366, eff 7-1-99]

165:60-5-4. Determination of costs, engineering, and rate design [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-5-5. Polling of affected subscribers [REVOKED]

[Source: Amended at 16 Ok Reg 2366, eff 7-1-99]

165:60-5-5.1. Technical conference [REVOKED]

[Source: Added at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-5-5.2. Initial hearing before the Commission [REVOKED]

[Source: Added at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-5-6. Hearing before the Commission en banc; Commission determination [REVOKED]

[Source: Revoked at 16 Ok Reg 2366, eff 7-1-99]

165:60-5-6.1. Polling of affected customers [REVOKED]

[Source: Added at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

165:60-5-7. Final Hearing before the Commission en banc [REVOKED]

[Source: Added at 16 Ok Reg 2366, eff 7-1-99; Revoked at 19 Ok Reg 2019, eff 7-1-02]

APPENDIX A. EXAMPLE OF A PETITION IN SUPPORT OF AN APPLICATION FOR EXTENDED AREA SERVICE [REVOKED]

[Source: Amended at 11 Ok Reg 2587, eff 6-13-94; Revoked at 16 Ok Reg 2366, eff 7-1-99]

CHAPTER 61. OKLAHOMA E911 EMERGENCY SERVICE FUND

[Authority: OKLA. CONST. art IX, § 18; 17 O. S., § 139.109]

[Source: Codified 7-15-98]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

165:61-1-1. Purpose and title [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-2. Jurisdiction [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-3. Application of rules [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-4. Definitions [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 16 Ok Reg 2377, eff 7-1-99; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-5. Interpretation of rules [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-6. Relief from rules [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-7. Supremacy [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-8. Controversy over rules [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-1-9. Severability [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

SUBCHAPTER 3. OKLAHOMA E911 EMERGENCY SERVICE FUND [REVOKED]

PART 1. E911 FUND [REVOKED]

165:61-3-1. Purpose of E911 Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-3. Use of the E911 Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-5. Administration of the Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-6. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-7. Entities eligible to receive disbursement from the E911 Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 18 Ok Reg 2453, eff 7-1-01; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-8. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-9. Threshold eligibility to receive funding [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-10. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-11. Cap on approved funding [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 16 Ok Reg 2377, eff 7-1-99; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-12. Waiver of cap on approved funding [REVOKED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98; Added at 16 Ok Reg 2377, eff 7-1-99; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-13. Preferences for receiving funding [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 16 Ok Reg 2377, eff 7-1-99; Revoked at 35 Ok Reg 1070, eff 9-14-18]

PART 3. APPLICATION [REVOKED]

165:61-3-20. Contents of application [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-21. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-22. Time for filing application [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 16 Ok Reg 2377, eff 7-1-99; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-23. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-24. Approval of application [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 16 Ok Reg 2377, eff 7-1-99; Amended at 18 Ok Reg 2453, eff 7-1-01; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-25. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-26. Review and appeal process [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

PART 5. RESPONSIBILITIES OF THE GOVERNING BODY [REVOKED]

165:61-3-30. Responsibilities of the governing body [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

PART 7. CONTRIBUTIONS TO THE E911 FUND [REVOKED]

165:61-3-40. Reporting requirements [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-41. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-42. Contributions to the E911 Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-43. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-44. Resolution of disputes regarding contributions [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Amended at 18 Ok Reg 2453, eff 7-1-01; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-45. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-46. Recovery of contributions [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-47. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-48. Review and/or audit of contributions [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-3-49. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-3-50. Violations [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

SUBCHAPTER 5. DISBURSEMENTS FROM THE E911 FUND [REVOKED]

165:61-5-1. Wait Lists [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-5-2. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-5-3. Time limits for installation of equipment [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

165:61-5-4. [RESERVED]

[Source: Reserved at 15 Ok Reg 490, eff 10-17-97 (emergency); Reserved at 15 Ok Reg 3133, eff 7-15-98]

165:61-5-5. Request for disbursement from the E911 Fund [REVOKED]

[Source: Added at 15 Ok Reg 490, eff 10-17-97 (emergency); Added at 15 Ok Reg 3133, eff 7-15-98; Revoked at 35 Ok Reg 1070, eff 9-14-18]

CHAPTER 65. WATER SERVICE UTILITIES

[Authority: OKLA. CONST. art IX, § 18; 17 O.S., §§ 151 et seq. and 159.11 et. seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:65-1-1. Purpose

The rules in this Chapter are intended to define good business practice under normal conditions to ensure safe, adequate and reliable service, as well as fairness to the public and to the utility.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to,

the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct a direction of the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral, electronic or written communication by an interested party requesting an investigation or corrective action regarding the provision of water services.

"CSD" means the Consumer Services Division of the Oklahoma Corporation Commission.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of water service. Any reference to a "customer" or "end-user" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Distribution" or **"Distribution service"** means the transportation of water services through a utility's distribution facilities bundled with any one or more of the services of billing, metering, customer service and similar services.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives water from any water supply source for service to one or more consumers.

"Electronic notification" means any automated communication received by e-mail, phone, text message or fax.

"Gallon" means one U.S. Standard gallon, containing 231 cubic inches and weighing 8.333 pounds.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of water services.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered or banks are closed, such as Columbus Day.

"Local forecast" means a statement of what the weather is predicted to be, that is issued by the National Weather Service for a specific county, city, and/or zip-code area.

"Meter" means any device that measures the quantity of water transferred from one party to another.

"NWS" means the National Weather Service.

"Pipe" means any tubing used in the gathering, transmission or distribution of water which meets the specifications of the DEQ.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where water service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"P.s.i.g." means pounds per square inch gauge.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Regulator" means a device used to reduce the water pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Service line" means a line that branches off a distribution main or distribution line in order to transport water from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Temporary service" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Uniform System of Accounts (USOA)" applicable to water utilities published by the National Association of Regulatory Utility Commissioners (NARUC) or other uniform system acceptable to the Commission may be adopted by a utility.

"Utility" means and includes any corporation, association, company, individual, and the trustees, lessees, or receivers, successors or assigns of any of them, (but shall not include a city, town or other body politic) that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, for the transmission and distribution of water by pipeline.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-1-3. Commission authority

The Commission has the authority to promulgate rules concerning the provision of water service to all consumers within the State of Oklahoma pursuant to Okla. Const. Art. IX §§18 and 34 and 17 O.S. § 151 et. seq.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-1-4. Scope of rules

(a) Every tariff filed by a water utility after the effective date hereof shall conform to this Chapter. The filing or acceptance of a tariff which is in conflict herewith shall not be deemed a waiver of this Chapter. Any tariff provision filed or approved

by the Commission prior to the adoption of this Chapter which is in conflict herewith is superseded by and shall be deemed to be amended to conform to this Chapter.

(b) The adoption of this Chapter shall in no way preclude the Commission from altering or amending this Chapter in whole or in part after notice and hearing or from allowing or requiring additional or different service, equipment, facility, or standards than prescribed in this Chapter, either upon complaint or application or upon its own motion. Nothing provided in this Chapter shall relieve any utility from any duty prescribed by the laws of the state of Oklahoma.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-1-5. Relief from rules of this Chapter and rules by utilities

(a) Whenever compliance with any of the rules requirement in this Chapter would result in unreasonable hardship or excessive expense to the utility or the consumer, the Commission may waive or modify the requirements of this Chapter, consistent with federal and/or state law, upon application of any interested party and after notice and hearing. Such application shall set forth the specific rule or rules sought to be waived and the reasons for requesting such waiver.

(b) A utility may decline to serve a consumer or prospective consumer until such person has complied with all applicable state and municipal regulations governing water service and this Chapter.

(c) A utility may prescribe rules and regulations for furnishing service not inconsistent with this Chapter. No such rules shall be valid until filed with and approved by the Commission. A utility may refuse or discontinue service for noncompliance with its service rules only in cases where its rules as approved specifically so provide. Service shall not be refused to a consumer where a balance is owed by a previous consumer at the same location.

(d) For good cause shown, the Commission may grant temporary relief from the requirements of this Chapter pending hearing.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-1-6. Controversy over rules of this Chapter

Whenever a controversy exists in connection with the interpretation of this Chapter, and the applicability of the requirements set forth herein, or any right or duty imposed thereby, either the utility or any interested parties may file a written application with the Commission or complaint with CSD of the Commission. The Commission, after notice and hearing, will make such order thereon as it may deem proper. Proceedings upon such an application or complaint will be governed by the provisions of the Commission's Rules of Practice [OAC 165:5].

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-1-7. Severability

If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

[Source: Added at 16 Ok Reg 2380, eff 7-1-99]

165:65-1-8. Violations

A violation of a Commission order, rule or requirement directing compliance with this Chapter shall constitute contempt of the Commission pursuant to 17 O.S. § 1 et. seq., after notice and hearing.

[Source: Added at 16 Ok Reg 2380, eff 7-1-99]

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:65-3-1. Construction and maintenance of plant, equipment, and facilities

(a) **Water plant and system construction and maintenance.** Each utility shall construct and maintain its entire water plant and system in such condition as will enable it to furnish safe, adequate and reliable service subject only to emergency conditions beyond its control.

(b) **Construction, installation, and maintenance of systems.** Transmission and distribution systems, including transmission mains and pipe lines, distribution mains, pumps, valves, storage tanks, meters, equipment, etc., shall be constructed, installed, and maintained in accordance with all applicable rules and orders of the Commission and DEQ. Utilities must be able to locate water lines consistent with the requirements of 63 O.S. §§ 142.1 *et seq.*

(c) **Statement regarding plant, equipment, and facilities.** Each utility shall submit to the Commission annually a statement regarding its plant, equipment, and facilities in such form as the Commission may require. Utilities other than those that purchase water shall provide appropriate authority for their use of water (U.S. Corps of Engineers, Oklahoma Water Resources Board, and/or other appropriate authority). All water service utilities that withdraw groundwater or divert stream water must hold a water right from the Oklahoma Water Resources Board before placing water to use.

(d) **Plans, surveys, and permits.** Each utility shall submit to the Commission a certified copy of all plans and surveys of its waterworks which have been filed with the DEQ. A description of the source from which the water supply is derived shall be filed with the Commission, and no new or different source of supply shall be used until a certified copy of the certificate of the DEQ approving the use of the new or different supply has been filed with the Commission. No utility shall sell water or extend water service to a consumer until certified copies of all permits required to be issued by the DEQ to the utility are filed with the Commission.

(e) **Depth of mains.** Water mains, except mains used exclusively for temporary or seasonal service, shall be installed below the normal frost line or otherwise protected to prevent freezing in accordance with DEQ.

(f) **Dead ends.** Insofar as practicable the utility shall design its distribution system so as to avoid dead ends on its mains. Where dead ends exist, under circumstances that adequate water circulation does not exist, the utility shall provide hydrants or valves for the purpose of flushing the mains. Mains without adequate circulation shall be flushed every ninety (90) calendar days, or more often if necessary, to maintain the proper quality of the water. Records shall be kept of the date, place and duration of flushing mains; and such records shall be used as a guide to determine the necessary frequency of flushing of the same mains thereafter.

(g) **Segmentation of systems.** The design of water mains or systems hereafter constructed shall contain valves at intervals throughout the system to facilitate repairs and minimize interruptions of service to consumers.

(h) **Grid systems.** Whenever feasible, the distribution system shall be laid out in a properly segmented grid so that in case of breaks or repairs the interruption of service to the consumers can be kept at a minimum.

(i) **Fire protection service.** Specifications, location, installation, and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities and connecting mains, and the ownership of such facilities shall be subject to negotiation between the utility and the municipality served. Fire hydrants and public and private fire protection facilities shall conform to the requirements of the city where installed or in the absence of city requirements, to the rules and orders of the Commission.

(j) **Valves.** Each utility shall inspect the principal mainline valves on its distribution system at least once every two (2) years. A record of each valve shall be kept showing the size, type, location, date of inspection and the results thereof.

(k) If PUD informs the utility of any safety issues concerning the utility's plant, equipment, or facilities by identifying the relevant Commission rule, or other applicable Federal or State laws implicated by the safety issue, the utility shall electronically provide photographic evidence to PUD showing completion of work and that the issue has been resolved. If the utility has the necessary equipment it shall provide such evidence via electronic photographs or such other method that will reasonably show the issue has been resolved.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-3-2. Extent of system in which utility shall maintain service

(a) With the exception of emergency conditions beyond its control, each utility shall operate and maintain in safe, efficient, and proper condition all the facilities and instrumentalities used in connection with the transmission, distribution, regulation, measurement, and delivery of water to any consumer up to and including the point of delivery into the piping owned by the consumer.

(b) A water utility may operate and maintain any privately owned lines utilized by the utility for transmission and distribution of water, if granted such permission by the owner of the private line.

(c) No residential meter shall be installed inside a residence.

(d) The meter shall be set at the nearest feasible point to the property or curb line of the consumer.

(e) All mains, water lines, pipes, and equipment owned by the consumer from the outflow side of the meter shall be maintained in a safe, efficient, and proper condition by and at the expense of the consumer. The utility shall have the right to inspect a new installation prior to furnishing service and the right to inspect an existing installation under reasonable conditions. Service may be refused or discontinued until the provisions of this Chapter are complied with.

(f) Each water utility, for each locality that it serves, shall provide contact information for an office or agent where the consumer may pay bills and conduct any other necessary business with a representative of the utility. Such office or agent shall be available to the consumer during reasonable business hours at least five (5) days per week.

(g) The utility shall provide in the telephone directory for each area it serves a telephone listing by which the utility personnel can be notified at any time during a twenty-four (24) hour day period of any utility service deficiency or emergency. If utility personnel are not available to accept the call and the call is recorded, the utility shall contact the consumer to confirm receipt of the call within two (2) hours.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-3-3. Service pipes and meter sets

- (a) Upon application by any bona fide applicant for water service, the utility shall provide a tap and a corporation cock at the main, furnish and install a service pipe of suitable material and capacity, furnish and install a shut-off cock, a meter box, and all other fittings necessary to set a meter on the applicant's property abutting upon any public way in which the utility has an adjacent water distribution main.
- (b) Where additional meters are furnished by the utility for the convenience of the consumer, a charge for such meters may be made in accordance with a schedule approved by and on file with the Commission.
- (c) The utility may charge the residential applicant a tap-on charge specified in its tariff or rules of service on file with and approved by the Commission for furnishing and installing the necessary material and coupling devices, providing the meter setting and connecting the meter to the consumer's house service line. The charge shall be a non-recurring charge for the premises, notwithstanding later change in ownership or consumers there served. Subsequent consumers may be charged a service initiation fee, provided such fee is listed in the utility's approved tariff. The meter box, meter, and all other fittings used in connecting service and serving the meter shall remain the property of the utility. When it is necessary to make a tap-on of a size larger than required for a residential consumer, the tap-on and meter setting cost shall be charged the consumer as specified in the tariff or Rules of Service, or if no such charge is there stated, at the actual cost to the utility.
- (d) Where the utility and the consumer cannot agree upon the location, dimensions and type of installation to be made, the utility shall advise the consumer of the CSD and provide the telephone number to the consumer to address the problem and seek resolution. If the problem remains unsolved, either the consumer or the utility may file an application with the Commission for hearing and final determination.
- (e) Where circumstances require the meter to be set at a point other than the property or curb line, the proper service pipes shall be installed by the utility from the main to the meter. If the meter is located inside the property line at the consumer's request, the consumer shall pay the cost of the service pipe from the property or curb line to the meter and for installation thereof, under uniform rates to be adopted by the utility and approved by and on file with the Commission. The utility shall own and maintain all service lines and equipment up to the outflow side of the meter wherever installed.
- (f) The utility shall provide each service connection with an individual shut-off cock. No tandem service shall be allowed.
- (g) The size, design, material, and installation of the consumer's service pipe shall conform to any code, ordinances or requirements of the city or town where installed, or where no such requirements exist, to the rules and orders of the Commission and the Service Rules of the utility filed with and approved by the Commission. No service pipe shall be less than three-fourths inch (3/4") nominal size. All service pipes shall be laid underground at a depth sufficient to prevent freezing, except where service is not intended to be used during freezing weather and the pipes are actually drained during such periods.
- (h) In the installation of a service pipe the consumer shall not install any tee or branch connection without consent of the utility. The consumer shall leave the trench open and pipe uncovered until it has been inspected by the utility or inspection waived. The service pipe shall be provided with a suitable shut-off cock by the consumer. The consumer is responsible for maintenance of all service pipes from the outflow side of the meter.

- (i) When the installation of a service pipe requires a trench to remain open on the consumer's property for an inspection or waiver of inspection, the utility shall perform the inspection, or request that the inspection be performed if done by a third party, within fourteen (14) calendar days of the installation.
- (j) All open trenches shall be clearly marked for the safety of the public using, at a minimum, caution tape or flags.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-3-4. Extension of mains

- (a) **General.** A utility shall extend its distribution mains to serve the consumers within the corporate limits of a municipality served by the utility, or any recorded addition thereof, or within a reasonable distance from the utility's existing distribution system in accordance with the provisions of this Chapter.
- (b) **Free extension.** A utility shall extend its distribution system, as needed, up to one hundred feet (100') per residence without cost to the one requesting service. In arriving at the length of such main extension necessary to render service to the consumer, the distance shall be measured along lines of proper construction from the nearest distribution main with adequate capacity.
- (c) **Extension above free limit-advance.** If the extension necessary to furnish service is greater than allowed as a free extension under subsection (b) of this Section, a utility may require an advance of the cost of the main extension over the free limit. However, the utility shall not arbitrarily or with disparity impose the obligation of requiring an advance, but rather shall determine whether to require an advance and the amount thereof on a case-by-case basis. Whenever such advance is made, the utility shall be required to refund to the consumer who made the advance an amount equal to the cost of one hundred feet (100') of free extension for each additional consumer whose service line is connected to such main within a period of ten (10) years from the making of the extension. No refunds shall be made for consumers connected to future extensions tied into such an extension. This refund will cease after ten (10) years from the making of the extension but the total of all refunds shall not exceed the original advance. The advance shall not draw interest.
- (d) **Extensions above free limit-revenue basis.** The Commission may authorize a utility to make extensions above the free limit upon receipt of a lesser advance, or no advance, when the gross anticipated annual revenue from an extension will provide the utility with an adequate return on its investment pursuant to a formula or other method approved by the Commission. After such authorization, the utility shall make extensions when requested by the consumer pursuant to such approved formula or method.
- (e) **Extension above free limit-special contract.** In lieu of making an extension pursuant to subsections (c) or (d) of this Section, a utility may make an extension above the free limit with a lesser advance or no advance, when the utility has entered into an agreement whereby the one proposing to provide the advance guarantees a minimum annual revenue from the extension to the utility. Such an agreement shall be deemed a special contract governed by OAC 165:65-9-7.
- (f) **Determining cost of extension.** In determining the amount of advance, if any, which shall be made for an extension pursuant to this Section, the total construction cost of the extension shall first be determined in accordance with the approved system of accounts for water utilities and from such total construction cost there shall be deducted:
 - (1) Costs incident to any increase in size of the main in excess of that required to adequately and satisfactorily provide service, costs incident to

future expansion or to continue a construction plan of the utility, and costs necessary to correct inadequate capacity.

(2) The total construction cost of that portion of the extension constituting a free extension, which includes meters, service regulators, stopcocks, and service connections.

(g) **Extensions applicable in prospective real estate subdivisions.** In lieu of an extension pursuant to other provisions of this Section, a utility may require a developer desiring an extension to a prospective real estate subdivision to make an advance equal to the estimated cost of the extension before construction is started, and such advance shall not draw interest. At least annually for a period not to exceed ten (10) years, the utility shall refund to the developer a sum equivalent to the cost of the free extension under subsection (b) of this Section for each consumer connected to the extension during the calendar year. In no case will the total amount refunded exceed the amount advanced to the utility. Consumers locating on an extension made pursuant to this Section will not be required to make an advance for an extension.

(h) **Extension above free limit.** If the extension above the free limit is of such length and the future anticipated revenues therefrom so small that it is doubtful that the extension would ever make a fair return on the investment, the utility or any interested person or entity may apply to the Commission for an appropriate order after notice and hearing.

(i) **Property of extension.** Every extension shall at all times be the property of the utility regardless of whether an advance or contribution is made for its construction. Any unrefunded portion of an advance shall become the property of the utility.

(j) **Filing an extension policy.** In lieu of the extension provisions described in subsections (b) through (i) of this Section, a water utility may file with the Commission an Extension of Facilities Policy governing reasonable extensions of facilities to consumers. This plan must be approved by the Commission.

(k) **Other extensions of facilities.** A utility may implement a policy whereby consumers who request water service requiring the installation of new distribution mains may apply to the utility for service in compliance with Commission-approved tariffs, and may negotiate with the utility to perform some of the work necessary to install the new mains. If a mutually acceptable agreement is reached, the utility and the consumer shall enter a written agreement which conforms with the requirements provided in the utility's Commission-approved tariff. The utility shall own any distribution main installed pursuant to this subsection, and shall be responsible for proper maintenance and operation of the line.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-3-5. Sale or disposal of facilities by utility

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a water utility's jurisdictional plant or operating system or the transfer of some or all of a water utility's customers to a person or entity that is not an affiliate of such utility, shall, at least ninety (90) calendar days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and four (4) copies of a joint application, consistent with OAC 165:5-7-1, with the Commission's Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Department of Environmental Quality. Additionally, the person or entity receiving the facilities or customers shall, at the

time of the filing, be providing water service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

- (1) The names of the parties to the transaction and the addresses of their respective principal places of business;
- (2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;
- (3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;
- (4) A narrative description of how the transferred customers will continue to receive safe and reliable water service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;
- (5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;
- (6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide water service to the transferred customers after the effective date of the transaction;
- (7) The names, addresses, email addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for PUD and CSD and who will be primarily responsible for:
 - (A) Customer service issues;
 - (B) Repair and maintenance issues;
 - (C) Customer complaint issues;
 - (D) Authorizing and furnishing refunds to customers;
 - (E) Tariff issues; and
 - (F) Receiving notices related to causes docketed at the Commission;
- (8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;
- (9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;
- (10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable water utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the

provision of such service;

(11) The information required by OAC 165:65-11-3(o) and (q) and an affirmation that the records and reports required by OAC 165:65-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to OAC 165:65-9 and OAC 165:65-11-3(o) and (q), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is, fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) calendar days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) calendar days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for water service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) calendar days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to OAC 165:65-9-7, reflecting the changes or additions to rates and/or terms of service to PUD for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to OAC 165:65-1-5.

(i) This section does not apply to transactions that involve discontinuance of service pursuant to OAC 165:65-11-10 or 165:65-11-11 or routine retirement or replacement of facilities.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 25 Ok Reg 2218, eff 7-11-08; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-3-5.1. Acquisition, control, or merger of domestic public water utilities [REVOKED]

[Source: Added at 25 Ok Reg 2218, eff 7-11-08; Amended at 31 Ok Reg 1091, eff 9-12-14; Revoked at 36 Ok Reg 718, eff 7-25-19]

165:65-3-6. Tampering with measuring or regulating equipment

No shut-off valve, meter, meter box or other property or equipment owned by a utility wherever situated, whether upon consumer's premises or elsewhere, shall be tampered with or interfered with either for the purpose of adjustment or otherwise except by representatives of the utility owning the same; and official responsibility under a municipal government shall not constitute an exception to this Section.

SUBCHAPTER 5. WATER QUALITY, TESTING, AND PRESSURE

165:65-5-1. Purity of water supply

All water furnished by any utility for human consumption or household purposes shall comply with all requirements and water quality standards of the DEQ.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-5-2. Water analyses and records

- (a) The result of all tests made by the DEQ and tests made by the utility shall be kept on file in the office of the utility and made available for public inspection for a period of at least three (3) years. These records shall show when, where, and by whom the test was made. The standard methods of testing specified by the DEQ shall govern the collection and examination of the water tested.
- (b) Whenever tests disclose the presence of bacillus coli, or any bacterial count, the utility must immediately take all steps necessary to make its water supply comply with the water quality standards prescribed by the DEQ.
- (c) The water supply system, including wells, pumping equipment, treatment works, mains, and service pipes shall be maintained at all times in a sanitary condition.
- (d) No physical connection between the water distribution system of a utility and that of any other water supply or system shall be permitted, unless each water supply and the inter-connection thereof is approved by the DEQ.
- (e) The growth of algae in the water at the source of supply in reservoirs or other basins, and in the water mains shall be controlled by proper treatment.
- (f) Any driven or drilled well furnishing water for domestic purposes shall be equipped with suitable casing and well head equipment, and the utility shall maintain the tightness of the well at the surface of the ground sufficient to prevent the infiltration of any water other than that produced from the water bearing strata tapped by the well in accordance with the rules of the DEQ.
- (g) The utility shall follow all DEQ rules, except where the Commission rules provide a higher standard.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-5-3. Pressure

(a) A water utility shall maintain a pressure throughout its distribution system which will comply with the requirements of the National Board of Fire Underwriters and which shall not at any time fall below a minimum of thirty (30) pounds per square inch gauge (p.s.i.g.) or rise above a maximum of one hundred twenty-five (125) pounds per square inch gauge (p.s.i.g.) at the consumer's service connection except for temporary fluctuation in pressure over which the utility has no control.

(b) In order for the water utility to insure that water pressure is maintained within the Commission's specifications in (a), the utility shall be required to do one of the following things:

- (1) Place a pressure gauge on the outflow side of each meter that can easily be read by the utility, customer and/or Commission staff; or
- (2) Place a faucet at the outflow side of each meter in order to attach a water pressure gauge with a $\frac{3}{4}$ inch fitting to read the pressure; or
- (3) Test the water pressure by utilizing the outside faucet at a customer's service point.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-5-4. Station meters and pressure gauges

(a) **Station meters.** The utility shall install station meters and instruments necessary to keep a daily and monthly record of the total amounts of water delivered into the mains.

(b) **Pressure gauges.** Each utility shall provide itself with one (1) or more pressure gauges for making pressure surveys as required by this Chapter. These gauges shall be suitable to record the pressure experienced on the utility's system and shall be able to record at least a twenty-four (24) hour continuous test. One recording pressure gauge shall be maintained in continuous service at some representative point on the utility's mains.

(c) **Pressure surveys.** Each utility required to have recording pressure gauges shall make frequent records during periods of maximum use, each covering intervals of at least twenty-four (24) hours duration of the water pressure at various points on the system. All records or charge made by these meters shall be identified, dated, and kept on file and available for inspection for at least two (2) years.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

SUBCHAPTER 7. METER REQUIREMENTS AND TESTING

PART 1. GENERAL PROVISIONS

165:65-7-1. Meter requirements and testing

(a) No service water meter shall be allowed in service which has an incorrect gear ratio or dial train, or is in any way mechanically defective, or shows an average error in measurement in excess of two percent (2%), plus or minus, when registering water at stream flow equivalent to approximately one-tenth (1/10), one-half (1/2), and full normal rating under average service pressure. When adjustment is necessary, such adjustment shall be made as accurately as practicable for average rate of flow under actual conditions of installation.

(b) For purposes of application, the average error of a water meter is defined as one-third (1/3) of the algebraic sum of the errors when tested in accordance with (a) of this Section.

[Source: Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-7-2. Adjustment of bills

(a) **Allowable error in adjustment of charges.** Whenever any water meter is tested by PUD or the utility at the request of the consumer to determine the accuracy with which it has been registering in service, it may be considered correct if found to have an average error of no more than two percent (2%) and no adjustment of charges shall be required unless the error is greater than two percent (2%).

(b) **Fast meters.** Whenever any water meter tested by PUD or the utility is found to have an average error of more than two percent (2%) fast, (or in favor of the utility), the utility shall refund to the consumer the overcharge based upon the corrected meter reading for a period equal to one-half (1/2) the time elapsed since the last test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, or the error was due to meter tampering or theft, in which case the overcharge shall be computed from that date.

(c) **Slow meters.** Whenever any water meter tested by PUD or the utility is found to have an average error of more than two percent (2%) slow, (or in favor of the consumer), the utility may charge for the water consumed, but not included in bills previously rendered, based upon the corrected meter reading for a period equal to one-half (1/2) of the time elapsed since the last previous test, but not to exceed six (6) months, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the corrected amount, in installment payments, over the same period of time in which the incorrect billing took place, but not to exceed six (6) months, unless otherwise agreed to by the utility and consumer.

(d) **Non-registering meter.** If a meter is found not to register or to register intermittently for any period, the utility may charge for an estimated amount of water used, by averaging the amounts registered over corresponding periods in previous years, or in the absence of such information, over similar periods preceding or subsequent thereto. The estimated billing shall not exceed six (6) months, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay the estimated billing amount, in installment payments, over six (6) months, unless otherwise agreed to by the utility and consumer.

(e) **Incorrect register on meter.** If a meter is found to have an incorrect register, the error shall be corrected. Where the error is adverse to the consumer the utility shall refund to the consumer the excess charged for the water incorrectly metered for the period of time the meter was used in billing the consumer. Where the error is adverse to the company, the utility may charge the consumer the undercharge for the water incorrectly metered for the period of time the meter was used in billing the consumer, unless it can be established that the error was due to meter tampering or theft. The utility shall allow the consumer to pay any unbilled amount over the same period of time in which the undercharge took place, but not to exceed six (6) months, unless otherwise agreed to by the utility and consumer.

(f) **Inaccurate usage amount.** Bills rendered to the consumer by the utility with inaccurate usage shall be adjusted with the next succeeding bill. The utility shall

advise the consumer of the error prior to the next bill being rendered. However, the utility may make a special reading without charge to the consumer and render a corrected bill to the consumer. The utility shall allow the consumer to pay any unbilled amount over the same period of time in which the undercharge took place, unless otherwise agreed to by the utility and consumer.

(g) **Exception.** This Section shall not apply to routine testing and replacement of meters pursuant to OAC 165:65-7-11.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-7-3. Prepayment meters

No utility shall use prepayment meters geared or set as to cause a rate or amount higher than would be paid if a standard type meter were used, except under a special tariff for this class of service filed with and approved by the Commission.

165:65-7-4. Information as to reading of meters

(a) **Meter reading records.** The meter reading records shall show:

- (1) Consumer's name, address, and rate schedule symbol.
- (2) Identifying number or description of the meter.
- (3) Meter readings and dates thereof.
- (4) If the reading has been estimated.
- (5) Any applicable multiplier or constant.

(b) **Information to customers.** Each utility supplying metered service shall adopt a means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, by distributing booklets or folders describing the method, or by notice to the effect that the method will be explained by contacting the utility. Meter reading information shall be sent at least annually to each consumer.

(c) **Meter reading information.** Each service meter shall be read by the utility.

(1) **Information required.** Each service meter shall indicate clearly the number of gallons of water registered by the meter. Where water is measured in cubic feet or where the quantity is determined by calculation from recording devices, the utility upon request shall supply the consumer with sufficient information to make clear the method by which the quantity is determined.

(2) **Meter reading.** Each service meter shall be read by the utility at approximate monthly intervals at least ten (10) times a year on approximately the same day of each meter-reading period. If for reasons beyond the control of the utility it is impossible to read a meter for two (2) successive monthly billing periods, it will be permissible for the utility to submit an estimated bill based upon past service records the amount of such estimated bill to be adjusted as necessary when access to the meter is obtained.

(3) **Access to meters and other property.** The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on the consumer's premises for purpose of meter reading and maintenance. Refusal on the part of the consumer to provide reasonable access for the purpose of meter reading shall be deemed sufficient cause for discontinuance of service on the part of the utility, after notice as provided in this Chapter for discontinuance of service for nonpayment of bills. The utility shall provide its employees with a means of identification in order to

claim the right of access.

(4) **Alternative reading periods.** Upon application of the utility and after notice and hearing, the Commission may authorize the reading of meters less frequently than monthly and prescribe conditions and procedures therefore.

(5) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

PART 3. TESTING

165:65-7-10. Meter testing facilities and equipment

(a) **Test facilities.** Each utility furnishing metered water service shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with this Chapter. Any utility may be excused from this requirement by the Commission provided that arrangements satisfactory to the Commission are made for the test of its meters by another utility or agency equipped to test meters in compliance with this Chapter.

(b) **Shop equipment.** The utility's meter test shop shall insofar as practicable simulate the actual service conditions of temperature, inlet pressure, and outlet pressure. It shall be provided with all necessary fittings, including a quick acting valve for controlling the starting and stopping of the test and a device for regulating the flow of water through the meter under test within the requirements of this Chapter, and shall include the minimum test equipment as specified in the notes section of the appropriate AWWA Standard in effect for the type of meters to be tested. The overall accuracy of the test equipment and test procedures shall be sufficient to enable the test of service meters within the requirements of this Chapter. In any event, the inherent overall accuracy of the equipment shall permit tests with an overall accuracy of the equipment shall permit tests with an overall error of not greater than three tenths of one percent (.003).

(c) **Test measurement standards.**

(1) **Basic standards.** A measuring device for test of meters may consist of a calibrated tank for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory approved by the Commission. If a weight standard is used, the scales shall be tested and calibrated periodically by an approved laboratory and a record maintained of the results thereof.

(2) **Size of basic standards.** When basic standards are used for meter tests, they shall be of a capacity sufficient to insure adequate determination of accuracy and shall be subject to the approval of the Commission.

(3) **Standard meters.** A standard meter may be provided and used by any utility for the purpose of testing meters in place. A standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by this Chapter. In any event, such test shall be made at least once each week while the standard meter is in use and a record of all tests shall

be kept by the utility.

165:65-7-11. Periodic and routine tests

(a) Each utility shall adopt the following periodic and routine test and repair schedule of its meters:

- (1) 1 inch and smaller meters: 10-year interval between test years
- (2) 1 ½ inch and 2 inch meters: 6-year interval between test years
- (3) 3 inch meters: 4-year interval between test years
- (4) 4 inch and larger meters: 2-year interval between test years

(b) If the meters of a utility are maintained in compliance with the provisions of the schedule in (a) of this Section, and if at least ninety percent (90%) of the meters tested register an accuracy of not less than ninety-eight percent (98%) nor more than one hundred two percent (102%) during a three (3) year period, the utility, upon application and after notice and hearing, may be granted an extension in the time interval between test years.

(c) If the water meter testing program of a utility does not meet the standards prescribed in subsection (b) of this Section over a three (3) year period, the time interval between test years may be reduced by the Commission after notice and hearing. Change in ownership or assets of the water utility shall not change the requirements for periodic testing of active meters being utilized by the utility.

(d) All meters and/or associated metering devices, when tested, shall be adjusted as closely as practicable to the condition of zero (0) error.

(e) All tolerances of this Chapter are to be interpreted as maximum permissible variations from the condition of zero (0) error. In making adjustments no advantage shall be taken of the prescribed tolerance limits.

(f) The utility shall maintain a record of the most recent test of each meter.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03]

165:65-7-12. Meter testing on request of consumer

(a) Upon receipt of written request of a consumer, the utility shall within twenty (20) calendar days thereafter test the accuracy of the meter or replace the meter.

(b) No deposit or payment shall be required, whether or not there is an applicable charge in the utility's tariff, from the consumer for such meter test as requested by the consumer, unless the consumer has requested such meter test within the previous twelve (12) months. If the meter meets the accuracy standards of the Commission, and the consumer has not requested such a test in the previous twelve (12) month period, and the consumer was notified before such test of the tariff charge that might be applicable to such meter test, then the consumer should bear the expense of the test provided an approved charge is in the utility's tariff.

(c) Any charge made pursuant to subsection (b) of this Section shall be refunded to the consumer if the meter is found when tested to have an average error of more than two percent (2%).

(d) A consumer may make written request to be present when the utility conducts the test on his meter and may have an expert or other representative present at the time, in which case the utility shall conduct the test only in the presence of the persons requested.

(e) A written report stating the name of the consumer requesting the test, the date of the request, the location of the premises where the meter has been installed, the type, make, size and serial number of the meter, the date of removal, the date tested, and the result of the test shall be supplied to such consumer within ten (10) business days after the completion of the test.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-7-13. Referee meter tests by Commission

(a) Upon written request to the Commission by a consumer, a test will be made of the consumer's meter by a representative of the Commission. The test shall be made as soon as reasonably possible after the request.

(b) The consumer may make written request to be present or have a representative present to witness the testing of the meter by a representative of the Commission. Upon receipt of such request, the Commission shall notify the utility to remove and seal the meter in the presence of the consumer and to keep the meter in the same condition with the seal unbroken until the test can be made in the presence of the consumer or his representative.

(c) Cost of the referee meter test shall be borne by the utility if the accuracy of the meter falls outside of the standards of the Commission. Cost of the test shall be borne by the consumer if the accuracy of the meter meets the standards of the Commission.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-7-14. Replacement meters

(a) A request from a consumer for replacement of the service meter on his premises shall be deemed a request for the test of the meter pursuant to OAC 165:65-7-12.

(b) The utility shall make no charge for initial connection of water service for a consumer except the charges specified in the approved tariffs and rules of service of the utility; except that for each disconnection and reconnection of service for the same consumer at the same location within twelve (12) months after a previous connection of service, the utility may make a charge prescribed in its approved tariffs or Rules of Service.

[Source: Amended at 31 Ok Reg 1091, eff 9-12-14]

SUBCHAPTER 9. RECORDS, REPORTS, AND FILING REQUIREMENTS

165:65-9-1. Retention, location and availability of records; contact persons

(a) **Record retention.** Unless otherwise specified herein, all records required by the rules in this Chapter shall be preserved by the utility in the form and for a period of time not less than two (2) years and shall be available for examination by the Commission or its representatives.

(b) **Record location.** All records required by this Chapter shall be kept within Oklahoma at the office or offices of the utility and shall be open for examination by the Commission or its representatives; provided that if the general office of the utility is located outside of Oklahoma, the records may be kept at the general office. Each utility shall maintain records in such detail that the cost of property located and business done in the State of Oklahoma can be accurately and readily ascertained, and the utility shall make available any such records for examination by the Commission or its authorized representative. Each utility shall notify the Commission as to the location of the office or offices at which the various classes of records are kept and shall file with the Commission such reports as the Commission may from time to time require.

(c) **Submetering records.** In the event of the use of submetering, all submetering records shall be retained for a period of two (2) years and shall be available for inspection by the Commission, the affected consumer and/or duly interested person

or entity at a location accessible to the consumer affected by submeters.

(d) **Contact persons.** Each utility shall notify in writing, the PUD Director within thirty (30) days of a change in the company-designated contacts for PUD and CSD issues.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s), and shall be furnished applicable to each operating district, town or any segment of the utility so that PUD will be able to reach the responsible person at any time. If this information is unavailable, the utility may seek a waiver from the PUD Director by making the request in writing.

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

- (A) Providing customer service;
- (B) Repair and maintenance;
- (C) Answering complaints;
- (D) Authorizing and/or furnishing refunds to customers;
- (E) Tariff issues;
- (F) Regulatory matters;
- (G) PUD Fee Assessment (and Fee Assessment Payments, if different);
- (H) Primary emergency;
- (I) After hours emergency;
- (J) Annual reporting;
- (K) Attorney for regulatory matters;
- (L) Community liaison; and
- (M) Engineering operations, meter tests and repairs.

(e) **Other information.** Each utility shall promptly furnish such other information as PUD or the Commission may request, unless otherwise ordered by the Commission.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-2. Interruptions of service

Each utility shall make reasonable efforts to avoid interruption of service. When an interruption occurs service shall be re-established as soon as possible.

(1) Each utility shall keep a record of interruptions of service on its primary distribution system, including a statement of the time, duration and cause of each such interruption. The record shall be available to the Commission or its representative on request.

(2) The log for each unattended substation shall show interruptions that require attention to restore service with the estimated time and duration of interruption.

(3) Any planned interruption shall be made at a time that will not cause unreasonable inconvenience to consumers and shall be preceded by at least a two (2) day notice to consumers affected.

(4) The utility is required to report cybersecurity or infrastructure security events that affect customers immediately to the PUD Director or designee.

[Source: Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-2.1. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each water utility shall have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy on file with the Commission's CSD Director and the Commission's Emergency Liaison. No later than September 30 of each year, this policy shall be reviewed by the utility at least annually and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each water utility shall provide and keep current, the phone number of any 24 hour emergency operations center or a list with a minimum of two individuals with 24-hour contact numbers to the Commission's CSD Director and the Commission's Emergency Liaison. The following items are guidelines to be addressed in the policy:

- (1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.
- (2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.
- (3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.
- (4) Once water to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments, and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.
- (5) Attempted notification of high-priority customers or major water consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.
- (6) Commission notification through the CSD Director and the Commission's Emergency Liaison to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated CSD individual(s) and the Commission's Emergency Liaison may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:
 - (A) An initial contact to notify Staff of outages which involve a major utility substation or facility, may cause a high degree of public interest or concern, or which have a duration of four (4)

hours or more and involve one percent (1%) or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

[Source: Added at 23 Ok Reg 1681, eff 7-1-06; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-3. Plant records

Each utility shall keep a record of the input and output of its plant in gallons of water per month.

165:65-9-4. Records of service complaints; investigation

(a) Each utility shall make a full and prompt investigation of every complaint made to it by a consumer, either directly or through the Commission. It shall keep a record of all such complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof. This record shall be open at all times for inspection by the Commission or its representatives.

(b) In the event of a dispute between the consumer and the utility respecting the accuracy of a metering device, the utility shall make such investigation as shall be required by the particular case, and report the result thereof to the consumer. In the event that the complaint is not reconciled, the utility or the consumer may make application to the Commission for review of the complaint.

(c) When a utility has been notified that a complaint regarding meter accuracy has been referred to the Commission, the questioned meter set assembly shall not be changed in any manner without prior authorization of the Commission. Violation of this provision will be considered as substantiation of the complainant's contentions.

(d) Whenever a special meter reading is required following a complaint by a consumer the utility shall not make a charge for the special meter reading whether or not its tariff authorizes a charge for a special meter reading.

(e) The utility shall provide each consumer a local telephone number and mailing address where either oral or written complaints may be received by the utility. If the utility utilizes electronic notification any such address(es) shall also be provided to all consumers of the utility.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-9-5. Record of meter and meter test

(a) Whenever any service meter is tested, the original tests records shall be preserved, including the information necessary for identifying the meter, the reason for making the test, the reading of the meter, the reason for making test, the reading of the meter before and after the test, together with all data taken at the time of the test in sufficiently complete form as to permit the convenient checking of the method employed and the calculations. On removal from service, only the record of the latest test need be preserved.

(b) A record shall be made for each meter owned or used by any utility, showing the date of acquisition, a record of the use, repairs, and the most recent test to which it has been subjected, and its present location. The record shall be retained until six (6) months after the meter is permanently retired from service.

165:65-9-6. Record of accidents [REVOKED]

[Source: Revoked at 16 Ok Reg 2380, eff 7-1-99]

165:65-9-7. Filing of rate schedules, contracts, agreements, and rules

(a) It shall be unlawful for a utility to furnish, charge for, or receive payment for water service except strictly in accordance with a tariff or rate schedule on file with and approved by the Commission.

(b) No tariff or rate schedule shall be added, deleted, changed, closed or discontinued after the effective date of the rules in this Chapter except pursuant to order of the Commission upon application of the utility and after notice and hearing.

(c) A utility shall not demand or accept payment for service of any kind of a sum greater or less than specified in an approved tariff.

(d) A special contract or agreement other than a filed tariff under which water service is furnished to one or more consumers shall be deemed a tariff for purposes of this Section. From and after the effective date of the rules in this Chapter, no service shall be furnished pursuant to such a contract that has not been filed with and approved by the Commission. Any special contract for water service made after the effective date of the rules in this Chapter shall not become effective except after approval by order of the Commission.

(e) The utility shall maintain and furnish to a member of the public on request:

(1) A copy of every tariff and rate schedule under which water service is being furnished to consumers within the area serviced by that local office or agent.

(2) A copy of the approved Water Service Utilities rules.

(3) A copy of this Chapter, and all amendments thereto.

(f) A certified copy of every franchise, agreement or permit granted a utility by any municipality shall be filed with the Commission.

(g) A utility shall not sell water to any consumer for resale, except pursuant to a tariff on file with and approved by the Commission which authorizes resale and the consumer has on file with and approved by the Commission tariffs, rate schedules rules and regulations covering such resale or is exempt by law from such requirement.

[Source: Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-8. Filing of maps

Each utility shall provide upon request within ten (10) business days to the Commission suitable, detailed maps, a size and media as agreed by the utility and the PUD Director, of its general system and shall maintain suitable, detailed maps of its entire system, which shall be made available to the Commission on request. The general system maps may be provided by sections or counties where necessary to meet size requirements. Such maps shall be brought up to date annually, not later than ninety (90) calendar days after the end of the utility's fiscal year.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-9. Cost of services, material, or facilities for other types of business or subsidiaries

(a) When a utility is engaged in any type of non-utility business or operations, through subsidiaries or otherwise, or in any business not considered in the

ratemaking process, and personnel, material, equipment, or any facility of the utility is supplied for the operation of such other type of business or subsidiary, the utility shall keep an accurate account or allocation of all of the cost of personnel, services, material, equipment, or any facility between utility and non-utility operations. There shall be a written accounting thereof between utility and non-utility operations on a monthly basis. This accounting will clearly delineate company's utility and non-utility expenses and revenues for the purposes of accurate ratemaking.

(b) The cost of keeping the records and any other expense caused by furnishing such services, materials, or facilities shall be charged to the recipient thereof. "All of the cost" in this Section shall mean actual cost plus any direct or indirect charges related to the cost of services, materials, or facilities calculated on the same basis used in allocating direct and indirect charges to the utility operations.

(c) Records of and reports on services, materials, or facilities to other types of business or subsidiaries referred to in this Section shall be available to PUD or its representatives.

[Source: Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-10. Accounting

(a) The "Uniform System of Accounts" applicable to water utilities published by the National Association of Regulatory Utility Commissioners (NARUC) or other uniform system acceptable to the PUD shall be adopted by a utility.

(b) All water utilities that have multi-state operations shall maintain records in such detail that the costs of property located and business done in the State of Oklahoma in accordance with geographic boundaries can be accurately and readily ascertained.

(c) No change in or departure from the system used by the utility will be permitted except upon order of the Commission after notice and hearing.

(d) Every water utility shall file with the PUD an annual report on a form furnished by the PUD, the amount of property, revenues, expenses, taxes, depreciation, etc., utilized in or incurred from the furnishing of utility service in the State of Oklahoma. Any cost allocations necessary in developing results of operations for the State of Oklahoma separately shall be accomplished on a basis acceptable to the PUD. The annual report form may be changed by the PUD Director or designee upon notice being given by posting on the Commission's website the proposed changes, provided such changes must be posted no later than December 31 of the year for which the proposed changes are to be effective.

(e) The results of operations reported by each water utility in its annual report to the PUD shall be reconciled with the results of operations shown on its books, records, and in its other reports to the Commission.

(f) Each utility shall report to the PUD at the end of the utility's fiscal year, on summary sheets furnished or approved by the PUD, the book value of its utility plant. These reports and annual reports required by (d) of this Section shall be delivered to the PUD not later than one-hundred twenty (120) calendar days after the end of the fiscal year, provided that the PUD may grant an extension for good cause shown.

(g) Each utility shall make special reports at such time and in such form as the PUD may from time to time require.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-11. Relief from rate increase requirements

(a) Water utilities, having less than \$400,000 in annual gross revenue within the state, shall not be subject to the requirements of OAC 165:70-7-4 rate regulation as prescribed in Chapter 70, the general rate regulation requirements, unless a water utility proposes an increase in rates and charges which exceeds a fifteen percent (15%) annual increase in revenue, based on the previous twelve (12) months gross revenue generated by the existing water usage rates.

(b) A water utility may not submit more than two (2) consecutive annual submissions using the provisions of this Subchapter, nor may a water utility submit more than three (3) submissions within the most recent five (5) year period using the procedures set forth in this Subchapter.

(c) Each water utility desiring to increase its water rates pursuant to this section shall provide notice to its water customers in no less than two (2) billing cycles with the second notice being given at least sixty (60) calendar days before the effective date of the proposed rate increase. Notice shall be made by regular mail or personal service and be included with each customer's regular bill. Notice to the water utility's customers shall include the following:

- (1) Existing rate and proposed rate;
- (2) Average dollar increase per customer per rate class;
- (3) Percentage of total company regulated revenues increase; and
- (4) The procedure necessary for a customer to petition the Commission to examine and determine the reasonableness of the proposed rate increase, pursuant to Section (h) of this Subchapter.

(d) Each water utility desiring to increase its water rates pursuant to this section shall notify the Commission at least seventy-five (75) calendar days before the effective date of the proposed rate increase. Notice to the Commission shall include the following:

- (1) A copy of the notice to be provided to its customers;
- (2) Verified statement showing the total number of customers of the water utility as of the date of the most recent billing;
- (3) Verified statement showing the water utility's total gross revenue for the previous twelve (12) months;
- (4) The date of the water utility's last rate increase, the cause number and the final order number, if applicable;
- (5) Any anticipated growth or decline in the water utility's customers which is expected to occur during the first twelve (12) months following the proposed rate increase;
- (6) The types of customers the water utility serves;
- (7) A copy of the water utility's approved tariff sheet showing the existing rates and proposed new rates;
- (8) The date of the most recent annual report in accordance with OAC 165:65-9-10(d)-(g).

(e) If, thirty (30) calendar days prior to the effective date of this proposed increase in rates and charges, the Commission has received petitions from fewer than fifteen percent (15%) of the affected customers, requesting that the Commission examine the proposed increase in rates and charges, the Commission shall notify the water utility that the rate increase may be implemented on the proposed effective date and shall apply to all bills normally rendered on and after the effective date.

(f) If, thirty (30) calendar days prior to the effective date of the proposed increase in rates and charges, the Commission has received petitions from fifteen percent

(15%) or more of the affected customers, then the Commission shall notify the water utility that it will examine and determine the reasonableness of the proposed increase in rates and charges and the rate increase may not be initiated until the Commission has completed its determination.

(g) A water utility shall not increase its rates and charges under this Section more than once in any twelve (12) month period. If a water utility is eligible to increase its rates and/or charges pursuant to this Section and desires to increase its rates and/or charges above that which is allowed under this Section, it shall file an application pursuant to the Commission's applicable rules, unless otherwise allowed by law.

(h) A petition submitted to the PUD Director requesting the Commission to examine and determine the reasonableness of a water utility's proposed increase in rates and charges shall be in substantially the following form:

(1) Form: The petition shall be headed by a caption, which shall contain:

(A) The name of the utility seeking an increase in rates and charges;
and

(B) The relief sought.

(2) Body: The body of the petition shall contain the following:

(A) All allegations of facts, without unnecessary detail, explaining why the customers oppose the increase in rates;

(B) A reference that the petition is submitted pursuant to OAC 165:65-9-11;

(C) The name, address, telephone number, and signature of each petitioning customer;

(D) A copy of the notice provided by the water utility and received by one of the customers signing the petition shall be attached to the petition.

(i) Petitions may be signed only by the affected customers of the water utility. Only one signature per meter shall be counted to determine if the fifteen percent (15%) threshold has been met.

[Source: Added at 27 Ok Reg 914, eff 7-1-10; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-9-12. Utility acknowledgement of customer complaint inquiries

If PUD contacts a utility concerning a customer complaint, the utility shall respond to PUD within the following time periods:

(1) Inquiries regarding disconnection, suspension, or termination of service shall be acknowledged by the utility within one (1) business day of receipt of inquiry from PUD.

(2) Inquiries other than for disconnection, suspension, or termination of service shall be acknowledged by the utility within three (3) business days of receipt of inquiry from PUD.

[Source: Added at 36 Ok Reg 718, eff 7-25-19]

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. DEPOSITS AND BILLING

165:65-11-1. Information on bills

The utility shall bill each consumer as promptly as possible following the reading of his meter. The consumers shall receive their bills by mail, or by

electronic notification to consumers who make an affirmative election to receive electronic notification of such information. In no event shall there be a charge for providing a bill through the United States Mail or through different means. The bill shall show:

- (1) The reading of the meter at the end of the period for which the bill is rendered.
- (2) The date on which the meter was read.
- (3) The number and kind of units metered.
- (4) The applicable rate schedule or identification of the applicable rate schedule. If the actual rates are not shown, the bill shall carry a statement to the effect that the applicable rate schedule will be furnished on request.
- (5) The total amount due for water used. In the case of prepayment meters, the amount of money collected shall be shown.
- (6) The date by which the consumer must pay the bill in order to avoid addition of a penalty.
- (7) The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.
- (8) A distinct marking to identify an estimated bill.
- (9) Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors used in determining the bill.
- (10) The name and toll-free telephone number of the Commission's CSD, to which the end-user may direct complaints and questions regarding utility services.

[Source: Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-2. Penalty or charge for late payment of bills

(a) A utility may make a penalty charge in an amount not to exceed one and one-half (1 1/2%) for delay in receipt of payment by the utility past the due date of the bill, unless otherwise ordered by the Commission. The due date shall be stated on the face of the bill and shall not be earlier than ten (10) days after the bill was mailed, except that for residential consumers, it shall not be earlier than twenty (20) days after the bill is mailed or hand delivered.

(b) A utility shall clearly state upon the face of its bills the amount of late payment penalty, and the date on or before which payment must be received in order to avoid paying the late payment penalty. In its billing, the utility shall not use the term "prompt payment discount" or other words of similar import that suggest the consumer will receive a discount or reduction of charges for water service for payment prior to a certain date. The late payment penalty may be applied to any unpaid balance due at each monthly billing period.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-3. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

- (1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (d), and (j).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application for new service. The utility plan may establish other relevant criteria that will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit more than one-sixth (1/6) of the estimated annual bill. The utility may allow smaller deposits to be made, in conformance with relevant, objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) Any utility that fails to maintain an accurate record of any customer's deposit history, pursuant to this section, and in accordance with 165:65-11-3(q), may not require a new deposit from that same customer should the customer request new service.

(e) A utility may require an advance deposit as a condition of service for consumers other than those consumers addressed in (b).

(f) A present consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months or has presented a check that has been subsequently dishonored.

(g) Interest on cash deposits shall be paid by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established on the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January for each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of one (1) year Treasury Security, as referenced in (f) (1) of this Section, for the first year the deposit is held.

(3) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in (f)(1) and/or (2) results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(4) The PUD Director shall calculate the interest rate(s) as pursuant to (f)(1) and (2) of this Section, and shall provide notice to the utility company via mail, email, or posting on the Commission's website by December 15th of each year, pursuant to subsection (f), otherwise the current interest rate(s) will remain in effect.

(h) If refund of deposits is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No

interest shall accrue on a deposit after discontinuance of service.

(i) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(j) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(k) Each consumer posting a cash deposit shall receive a non-assignable receipt in writing at the time of making the deposit or within the ten (10) days thereafter.

When a consumer pays a deposit as a portion of a water service bill, payment of the bill shall serve as a receipt of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of his/her deposit or balance.

(l) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. The utility plan shall provide for the review of all deposits at least annually and shall provide whether refunds will be paid by negotiable instrument, upon request of the consumer, provided, the consumer's bill is not delinquent, or by credit against current billing.

(m) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of the discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(n) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(o) The utility may withhold refund of return of the deposit, pending the resolution of a dispute with respect to charges secured by such deposit.

(p) The utility company shall keep records to show:

(1) The name, account number and address of each depositor.

(2) The amount of the deposit and date received.

(3) Each transaction concerning the deposit.

(q) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.

(r) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the application for transfer a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(s) Deposits shall not include membership fees in cooperatives.

(t) The deposit made by the consumer with the utility at the time of application for water service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

[Source: Amended at 10 Ok Reg 2659, eff 6-25-93; Amended at 11 Ok Reg 3751, eff 7-11-94; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

PART 3. DISCONNECTION OF SERVICE

165:65-11-10. Disconnection of service by a consumer

A consumer may be required to give up to five (5) business days written notice, excluding legal holidays, Saturdays and Sundays, of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day written notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariffs.

[Source: Amended at 12 Ok Reg 2167, eff 7-1-95; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-11. Disconnection of service by a utility

(a) **Sufficient reasons for disconnection of service.** A utility may disconnect service to a consumer for any of the following reasons:

- (1) Nonpayment of all or any portion of undisputed utility bills or a utility bill which is no longer disputed or for which the Commission's dispute process has been completed.
- (2) Failure to comply with the terms and conditions of a settlement agreement or any type of deferred payment agreement or a Commission order.
- (3) Failure to post a deposit as prescribed in OAC 165:65-11-3.
- (4) Failure to make application for service.
- (5) Misrepresentation of identity or facts for the purpose of obtaining service or use of an alias, trade name, business name, relative's name or another person's name as a device to escape payment of an unpaid obligation for utility service provided to the consumer.
- (6) Violation of any rule or regulation of the Commission or Commission-approved rule of the utility.
- (7) Refusal to grant access at reasonable times for the purpose of installation, inspection, maintenance, replacement, or reading of utility equipment installed upon the premises of the consumer, or maintaining any obstruction that would deny access for these purposes.
- (8) Potential adverse effect of the service required by the consumer on the service of other consumers of the utility, provided the consumer has been notified and given a reasonable opportunity to correct the adverse effect.
- (9) A consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement or Commission notification procedure for elderly and/or handicapped consumers.
- (10) Where negligent or wasteful use of water exists on a consumer's premises, which adversely affects the general service, the utility may discontinue the service if the conditions are not corrected. Where such waste threatens the supply to a substantial number of other consumers, service may be discontinued immediately after notice.

- (11) Abandonment of the premises served.
- (12) Upon request of the consumer pursuant to OAC 165:65-11-10.
- (13) Causing injury or threatening to cause injury to an employee of the utility or the family of an employee of the utility or the property of the utility for the purpose of preventing a utility employee from engaging in activities authorized by law or in retaliation for such activities.
- (14) Whenever the utility has reason to believe that continued service will create a condition on the consumer's premises that is dangerous to persons or property.
- (15) Violation of the utility's rules regarding the operation of nonstandard equipment or unauthorized attachments, if the consumer was notified first and given a reasonable opportunity to comply with the rules.
- (16) Violation of federal, state, or local laws or regulations through use of the service.
- (17) Causing damage to utility property.
- (18) A condition exists which poses a health or safety hazard.
- (19) Unauthorized use of water service accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or other utility equipment.
- (20) The utility may disconnect service twenty-four (24) hours after providing notice for violations of (3) through (9) of this subsection.

(b) **Insufficient reasons for disconnection of service.** A utility shall not disconnect service to a consumer for any of the following reasons:

- (1) Failure to pay for a different kind or classification of service from that requested.
- (2) Failure to pay a bill correcting a previous under billing, due to misapplication of rates, unless the utility offers the consumer a deferred payment agreement as provided elsewhere in this Chapter.
- (3) Failure of a previous owner or occupant at the premises or user of the service to pay an unpaid or delinquent account, except where the previous occupant remains an occupant or user of the utility service.
- (4) Failure of a consumer to pay any portion of an estimated billing which the consumer disputes, except where the consumer fails to allow a utility representative access to the meter.
- (5) If a current consumer in good standing who accepts an additional household member owing a previous bill to the utility unless that additional household member is listed on the lease arrangements or another utility service as a responsible party, or unless the household member shared service with the subscriber at a different or same location.
- (6) If a consumer or potential consumer for a previously unpaid account from a different utility beyond the boundaries of the utility's service territory.
- (7) Pending verification, service cannot be withheld or disconnected from a consumer whose name was used to obtain service at another location without the consumer's permission or knowledge.
- (8) Nonpayment of an amount past due for more than three (3) years if the utility cannot substantiate the charges with a copy of the consumer's complete billing history reflecting usage, consumption and relevant charges.
- (9) Failure to pay a past due amount to another utility.

(c) **Effective period of notice.** A utility may disconnect service on the date specified in the notice or within thirty (30) calendar days thereafter, during regular business hours, so long as the disconnection does not occur within the last two (2) hours of the business day; nor shall service be disconnected on a holiday, nor after noon (12:00 p.m.) on Fridays until Monday morning.

(d) **Documentation of reason(s).** The utility shall provide documentation to the consumer indicating the reason(s) that service is being withheld or disconnected.

[Source: Amended at 11 Ok Reg 3751, eff 7-11-94; Amended at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-12. Insufficient reasons for disconnection of service [REVOKED]

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Revoked at 20 Ok Reg 2322, eff 7-15-03]

165:65-11-13. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as otherwise specifically provided for in this Subchapter (OAC 165:65-11-11), service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing, in bolded lettering, and state the reason for the disconnection, the amount due, if applicable, and the utility company's name, telephone number, and contact information. After the utility company's contact information, the notice shall include the telephone number of CSD in a printed size smaller than the print size used for the utility company's contact information, not bolded, and shall include the following statement: "For clarification of statutes and rules governing services, or escalations of disputes, you may contact the Oklahoma Corporation Commission's Consumer Services Division." The utility shall submit a copy of the notice to PUD for approval prior to usage.

(b) **Residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a security deposit after a reasonable time, the utility company shall give at least ten (10) days written notice from the date of mailing to the consumer. Said written notice shall be mailed by the utility company to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the ten (10) days written notice from the date of mailing to the consumer written notice requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" OR "CUT OFF NOTICE" in bold print no smaller than one-fourth inch (1/4") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility company where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility company regarding the disconnection, prior to contacting the Commission's CSD, and should contact CSD if they cannot reach a resolution with the utility.

(H) The address and telephone number of the Commission's CSD, in print size which is smaller than the print size used for the utility company's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/handicapped notification.

(K) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(L) A statement that advises the consumer there are agencies providing assistance to consumers for their utility bills as well as provide the location of pay agents upon the consumer's request.

(3) The utility company shall notify the consumers in writing, at least annually, of the name and address of the authorized payment agencies, if other than the utility company's offices, where consumers may make payments.

(c) **Commission as intermediary.** Unless otherwise directed by the CSD, the utility company shall not contact the consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Service of nonresidential customers or other water systems shall be disconnected for nonpayment of all or any portion of an undisputed utility bill or failure to comply with the provisions of a deferred payment agreement only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-14. Commission notification procedure for elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility in writing that they wish to be included in the following notification procedure:

(1) For those who have registered with the utility as elderly and/or consumer with disabilities, the utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional business days upon request of the Commission's CSD.

(2) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they:

- (A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or
- (B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-15. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the NWS issues a local forecast predicting the temperature will drop below 32 degrees Fahrenheit for any time period during the following twenty-four (24) hours, the utility shall suspend its disconnection of service if the water service is used for heating purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(2) If the NWS issues a local forecast predicting the temperature will be 101 degrees Fahrenheit heat index or higher on the day of disconnection, or if the actual heat index is 101 degrees Fahrenheit or higher, the utility shall suspend its disconnection of service activity if the service is used for cooling purposes. The utility must obtain the most recent local forecast for the customer's location from the NWS reports between the hours of 6:00 a.m. and 8:00 a.m. on the morning of the day that the customer's shut-off is scheduled. If the NWS issues an updated forecast on the day of disconnection, then such updated forecast shall be used in place of the earlier obtained forecast.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of

disconnection, it shall delay disconnection of service for a period of at least twenty (20) calendar days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

- (1) The reason for disconnection is for nonpayment of the utility bill.
- (2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.
- (3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.
- (4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed in (e) of this Section.
- (5) Under no condition is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) Deferred payment agreement. The utility shall be required to offer a deferred payment agreement before disconnecting service for any bill or account balance in excess of fifty dollars (\$50.00) when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. If the terms of the deferred payment agreement are agreed to orally, the utility may send confirmation of such agreement by mail or by electronic notification to consumers who make an affirmative election to receive electronic notification of such information. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

- (A) Consideration of the consumer's gross income less employer deductions.
- (B) Size of the delinquent account.
- (C) Consumer's ability to pay.
- (D) Consumer's payment history with the utility.
- (E) Length of time and reasons why the debt has not been paid.
- (F) Other extraordinary expenses of the consumer.
- (G) Loss of income through unemployment or illness.
- (H) Any other relevant factors concerning the circumstances of the consumer.

- (2) The payments under such an agreement need not be equal in amount.
- (3) The consumer shall initiate a renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer, change during the payment period.
- (4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has

not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(f) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life threatening situation, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility. The utility may disconnect service upon the utility providing notice to the customer in accordance with OAC 165:65-11-13(a).

(g) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03; Amended at 31 Ok Reg 1091, eff 9-12-14; Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-11-16. Reconnection of service

(a) A utility shall reconnect service upon the consumer's request as soon as the reason for disconnection of service has been eliminated. The utility shall give precedence to reconnection of service when disconnection was the fault of the utility; the utility shall reconnect service in the normal course of its reconnection workload, as soon as possible but no later than twenty-four (24) hours, after the consumer eliminates the reason for disconnection and requests reconnection, when disconnection of service was the fault of the consumer. If the reason for disconnection is unauthorized use of water accomplished through bypassing the utility's measuring equipment or tampering with the pipes, meters, or other utility equipment, the utility may, prior to reconnecting service, require a reasonable payment for estimated service rendered or may refuse to reconnect service until ordered by the Commission. A utility may require payment of a reconnection charge when disconnection of service was the fault of the consumer, if such a charge is provided in the utility's tariffs.

(b) When the disconnection of service was for nonpayment of service, and disconnection took place on a Friday morning, service shall be restored as soon as possible, but no later than twenty-four (24) hours from when the consumer eliminates the reason for disconnection and requests reconnection, subject to an intervening Act of God.

(c) Once the customer has remedied the disconnection problem, the company shall provide a written statement to the customer of the recommended procedures the customer should undertake to insure the customer has safe and reliable water.

(d) Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03]

165:65-11-17. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either party to the Commission's CSD:

(1) The existence of elderly or handicapped status.

- (2) The question of financial assistance or guarantee of payment by a federal, state or local social service agency.
 - (3) The provisions of a deferred payment agreement.
 - (4) The terms and conditions of payment of any part of a bill as rendered.
 - (5) The proper interpretation of this Chapter.
- (b) The CSD shall review the matter and issue an informal review decision in writing setting forth the terms and conditions for continued service, disconnection of service, or deferred payment plan agreement. If it is the desire of the consumer, they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.
- (c) If the CSD is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a complaint with the Commission for final determination.
- (d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the CSD. Upon written complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 20 Ok Reg 2322, eff 7-15-03]

165:65-11-18. Commission review

The utility's disconnect notice, service violation disconnection notice, and any notice or form used by the utility to comply with the requirements of this Subchapter shall be submitted to the Commission for approval. Upon approval, the forms or notice shall become a part of the utility's approved tariff.

[Source: Added at 12 Ok Reg 2167, eff 7-1-95; Amended at 20 Ok Reg 2322, eff 7-15-03]

165:65-11-19. Utilities encouraged to keep current lists of utility assistance programs

(a) **Compilation.** The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal water assistance programs. The list should also include public/private charitable organizations offering or known to offer water payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall give a copy of this list to any consumer who asks for such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, in order for the utility to better assist its consumers. Failure of the consumer to gain funding in full or in part, from any of the proffered

resources under this Section shall not result in any liability to the utility.

[Source: Added at 20 Ok Reg 2322, eff 7-15-03]

PART 5. CHARACTER OF SERVICE

165:65-11-20. Temporary service

A consumer requiring temporary service shall pay the regular rates applicable to the class or classes of service rendered for all. In addition, the consumer shall pay the installation and removal cost, less salvage value, of facilities installed by the utility to furnish temporary service to the consumer. The utility may require a deposit of such cost in advance.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-11-21. Service to mobile or modular homes and parks

(a) No utility shall be required to furnish water service to a mobile home park until the utility has been furnished, at no cost to the utility, the necessary easements. Such easements may terminate when the property ceases to be used as a mobile home park if the utility no longer needs the easement to maintain service to other consumers adjacent to or beyond the park.

(b) A mobile home shall be served by an individual meter under the same terms as a single residence. Service to mobile home parks existing on or before the effective date of this Chapter may continue to be provided with a single or multiple meter.

(c) Mobile home parks shall be served under the same terms and conditions as residential subdivisions.

(d) Where mobile or modular homes or parks are being served in any manner other than provided in this Section upon the effective date of the rules in this Chapter, the utility shall immediately take whatever steps are necessary to comply with this Chapter.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99]

165:65-11-22. Change in character of service

(a) Each utility shall, upon request, give its consumers such information and assistance as is reasonable in order that consumers may secure safe and efficient service.

(b) No change in the characteristics of the water service that may impair the safe and efficient utilization of the water shall be made.

(c) In order to protect itself against serious and unnecessary waste or misuse of water, the utility may meter any flat rate service connection and apply the regularly established meter rates where the consumer continues to waste or misuse water two (2) business days after the utility has notified him in writing to discontinue such practice.

(d) The utility may require water saving devices to be installed on air conditioning and refrigeration devices of over three (3) tons.

(e) If a change in service to a consumer is required for the convenience or benefit of the utility, the utility shall pay such part of the cost of changing the consumer's equipment as determined by mutual agreement, or by the Commission in the absence of such an agreement, including the cost of making the necessary change in consumer piping.

[Source: Amended at 16 Ok Reg 2380, eff 7-1-99; Amended at 36 Ok Reg 718, eff 7-25-19]

SUBCHAPTER 13. PROMOTIONAL POLICIES AND PRACTICES

165:65-13-1. Provisions governing promotional policies and practices [REVOKED]

[Source: Revoked at 16 Ok Reg 2380, eff 7-1-99]

165:65-13-2. Promotional practices prohibited

The following practices, whether or not commonly considered promotional practices, are specifically prohibited:

- (1) The furnishing of utility service, or the furnishing or installation of wiring, piping, appliances or equipment to any person at no cost, or at less than cost; or the furnishing of repair, modification, or maintenance of appliances, equipment, wiring, or piping to any person at no cost or at less than cost; except in accordance with the terms and conditions of service on file with an approved by the Commission and this Chapter governing the furnishing of utility service.
- (2) The guarantee of a maximum cost of utility service to any person or for any premises or installation.

165:65-13-3. Promotional practices permitted

The following practices, whether or not commonly considered as promotional practices, are specifically permitted:

- (1) Providing emergency service, inspection and adjustment of appliances, and repair and maintenance or similar benefits or services all in accordance with the terms and conditions of service on file with and approved by the Commission and in accordance with the Chapters of the Commission governing such services.
- (2) The installation of all pipes, lines, service, and equipment appropriate to provide adequate utility service to the consumer at the point of delivery.
- (3) Providing exhibitions, demonstrations, instruction, tests or experiments to schools, fairs, communities, religious, and charitable functions.
- (4) Normal sales and consumer relations activities, including:
 - (A) Contacting customers and potential customers.
 - (B) Advice and consultation with customers.
 - (C) Investigation and correction of complaints, and efforts to improve service.
 - (D) Collection of accounts.
 - (E) Securing compliance with terms and conditions of service.
 - (F) Technical, informational, and educational assistance (not otherwise prohibited by this Chapter) to customers on the use of energy, the planning or design of utility service to be offered, or the use of maintenance of appliances or equipment.

165:65-13-4. Advertising expenditures prohibited

- (a) Expenditures for advertising in support of or in opposition to governmental action of any kind; or in support of or in opposition to the selection or appointment of any person to a position in government is specifically prohibited.
- (b) For the purposes of this Subchapter, advertising shall include display, classified, and any other advertising in printed publications, broadcast advertising by radio or television, outdoor advertising, direct mail advertising, bill inserts, and personal

contact or solicitation of conversion from one form of energy to another.

165:65-13-5. Advertising expenditures permitted

The following expenditures for advertising shall be permitted without limitation as to amount:

- (1) Consumer advertising, which is advertising designed primarily to inform the consumer of available rates for utility service, benefits for prompt payment, deposit and billing practices, safety inspection and meter reading practices, and similar terms and conditions of service to consumers; procedures to be followed in emergencies, proper use of equipment and appliances, safety precautions, and similar matters of benefit to customers; and other services and benefits available to the consumer in connection with utility service; provided that advertising designed to attract new customers, or to encourage greater consumption, or to encourage the use of one form of energy in preference to another, which advertising is prohibited by OAC 165:65-13-4 shall not be permitted by this Section.
- (2) Conservation advertising, which is advertising designed primarily to inform the consumer of means whereby energy may be conserved and energy consumption reduced, and urging the adoption of those means by consumers.

[Source: Amended at 31 Ok Reg 1091, eff 9-12-14]

165:65-13-6. Contributions

(a) All gifts, donations, and contributions made by the regulated utility shall be treated as "below the line" expenses and excluded from operating expenses allowable for rate making purposes; including, but not limited to the following:

- (1) Contributions to charitable, religious, or educational institutions or associations.
- (2) Contributions to civic, community, social, or public welfare organizations or associations.
- (3) Payments to cities or towns in excess of franchise taxes or charges that the regulated utility is obligated to pay pursuant to an enforceable written contract or franchise.

(b) Dues and fees paid to industry, scientific, and professional organizations which in amount bear a reasonable relationship to benefits received from membership therein shall not be restricted in this Section, and may be eligible for recovery.

[Source: Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-13-7. Submission of promotional practices

The utility shall submit an annual submission of current promotional practices by May 1, and as programs are updated, to PUD. The report shall include a list and description of all promotional practices and activities. Although submission by the utility shall not assume approval by PUD, it will allow PUD and the utility to review and dialogue as to the appropriateness of the promotional practices, whether or not the expenses should be recovered through rates, and ensure that the promotional practices are provided on a nondiscriminatory basis.

[Source: Amended at 36 Ok Reg 718, eff 7-25-19]

165:65-13-8. Exceptions; prior conditions and rules

(a) This Subchapter shall not apply to affiliated or subsidiary corporations except where a regulated utility, for its own purposes and benefit, undertakes to perform any act through an affiliated or subsidiary which would violate the provisions of this Subchapter if performed by the utility itself, the act will be deemed the act of the regulated utility.

(b) This subchapter shall supersede all previous orders and Chapters by the Commission to the extent in conflict herewith and shall supersede all promotional practices on file with and approved by the Commission to the extent in conflict herewith; except that this Subchapter shall not amend or supersede the terms and conditions of service of any utility on file with and approved by the Commission or prior rules of the Commission relating to terms and conditions of service except as to provisions thereof relating to promotional practices.

(c) For good cause shown, the Commission may grant an exception to this Subchapter upon application of the utility or an interested party and after notice and hearing.

CHAPTER 70. MINIMUM STANDARD FILING REQUIREMENTS IN SUPPORT OF A REQUEST BY A PUBLIC UTILITY DOING BUSINESS IN OKLAHOMA FOR A PROPOSED GENERAL RATE CHANGE

[Authority: OKLA, CONST. art IX, § 18; 17 O.S., §§ 151 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:70-1-1. Purpose

The purpose of this Chapter is to define the specific financial and statistical information required to be filed and made available with a request by a utility as defined herein (See "Utilities", 165:70-1-2) with regard to an application for a general rate change. This Chapter is not intended to establish any new ratemaking principles or to modify any provision of the existing laws of the State of Oklahoma. It is intended to define the information required to be filed and made available in connection with a proposed general rate change in order to facilitate an investigation of and hearing on such rates. This Chapter does not preclude the filing or provision of any additional data, information, or calculations not herein specified. This Chapter is not applicable to proceedings relative to the establishment or continuation of the fuel adjustment clause.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-1-2. Definitions

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

"Accounting method" means the accounting method prescribed by the applicable uniform system of accounts for Class A and B utilities or as published by the National Association of Regulatory Utility Commissioners for Class C and D utilities or other accounting methods approved by the Commission.

"Annual operating revenues" means those revenues which are recorded as revenue in the accounts of the utility, resulting from all sales of commodities or services or from other uses of the utility property.

"Application package" means the required schedules and testimony filed by a Class A or B utility to initiate a general rate change. See 165:70-3-1 and

165:70-5-4.

"Attorney General" means the Attorney General of the State of Oklahoma.

"Combination utility" means a utility which provides more than one commodity or service (e.g. electric and water, gas and water, etc.). For combination utilities, departmental operating revenues shall be used for classification purposes.

"Commission" means the Oklahoma Corporation Commission.

"Confidentiality agreement" means the formal agreement executed by the utility, the Staff, and other parties when necessary to protect information provided pursuant to this Chapter.

"Cost of service" means the cost of providing service to a defined segment of customers, class of service or service category.

"DSC" means the commonly-used acronym for debt service coverage which is a financial ratio computed as: (Net Margins + Interest on Long-term Debt + Depreciation) divided by (Interest on Long-term Debt + Principal payments on Long-term Debt).

"Days" mean calendar days unless specifically defined otherwise; this applies to #-day periods (e.g. 45-day period) as well.

"Deficient filing" means a filing which does not substantially comply with the formal or procedural requirements of this Chapter.

"Department" means a responsibility center within a combination utility where revenues and costs are accumulated by a commodity or service rendered.

"Depreciated original cost" means the cost of property when first devoted to public service, less the depreciation reserve, which shall include accrued depreciation and amortization. Depreciated original cost shall not include any goodwill, going concern value or payments in excess of the actual cost of the property.

"Director" means the Director of the Public Utilities Division of the Oklahoma Corporation Commission.

"Exhibit" means one or more schedules and/or testimony which supports a rate filing in a rate proceeding.

"Filing" means the required appropriate application package filed by a utility to initiate a general rate change. See 165:70-1-1, 165:70-3-1, 165:70-5-1 and 165:70-7-1.

"General rate change" means a change in rates and charges which exceeds three percent (3%) based on the previous twelve (12) months revenue generated by the existing rates for an association or electric cooperative subject to the Commission's jurisdiction pursuant to 17 O.S. Section 158.27 et seq; or a change in rates resulting in more than a one percent (1%) increase in a utility's jurisdictional annual gross operating revenues unless otherwise allowed by law. A change mandated by regulation or legislation, a change in the terms and conditions of service, a request for a special contract, or a request for a new and/or optional service does not constitute a general rate change.

"Last test year(-end)" means the test period used in the utility's last general rate change before the Commission.

"NARUC" means the National Association of Regulatory Utility Commissioners.

"Notes payable" means an interest-bearing certificate of debt containing a formal written promise to pay a specified sum at a fixed future date and to pay interest periodically with a maturity exceeding one year.

"Notice of intent" means the formal notification provided by a utility of its intent to make an application for a general rate change. See 165:70-3-7.

"OCC" means the Oklahoma Corporation Commission.

"Original cost" means the actual cost of the property at the time when it was first dedicated to public service whether by the utility or by its predecessors in title.

"Outstanding obligation" means any delinquent payment due for a utility's fee assessment in Oklahoma or unpaid OCC fines.

"Preceding or prior year" means the normal reporting period, fiscal, or calendar year, or a twelve-month period preceding the test year utilized in the filing.

"Pro forma adjustments" means adjustments made to test year results and balances for known and measurable changes to obtain a normal or representative relationship between revenues, expenses, and rate base.

"Pro forma income statement" means a utility income statement after pro forma adjustments that reflects the results of adjusted and normalized revenues and expenses, for the test year and the annualized income effect of the proposed rate adjustment(s).

"Pro forma rate base" means rate base after pro forma adjustments.

"REC" means rural electric cooperative.

"Rate class" means a service or group of customers as defined in the utility's tariffs.

"Rate schedule" means a schedule of rates, charges, and conditions for a specific classification of customer or for other specific services.

"Staff" means the Staff of the Commission or its designated representatives.

"Staff response" means the formal declaration by the Commission Staff that a utility's application either satisfies the Commission requirements or is deficient. See 165:70-3-1.

"Subsequent event" means any occurrence transpiring after the end of the test year utilized in a utility's application.

"Supplemental package" means the set of schedules, exhibits or other documentation which supports the application package. See 165:70-5-20 and following.

"TIER" means the commonly-used acronym for times interest earned ratio which is a financial ratio computed as: $(\text{Margins} + \text{Interest on Long-term Debt})$ divided by Interest on Long-term Debt.

"Tariff symbols" means the following tariff symbols to be used for all proposed rate schedules:

- (A) "AT" - Addition to text
- (B) "C" - Correction
- (C) "CP" - Change in practice
- (D) "CR" - Change in rate
- (E) "CT" - Change in text
- (F) "DR" - Discontinued rate
- (G) "FC" - Change in format lettering or numbering
- (H) "MT" - Moved text
- (I) "NR" - New rate
- (J) "RT" - Removal of text

"Test year" means the twelve (12) month period used in determining rate base, operating income and rate of return.

"13-month balances" means the end of the month balance in an account for each of the twelve (12) months of the test year plus the month immediately preceding the beginning of the test year.

"Uniform System Of Accounts (USOA)" means the system of accounts as currently prescribed by the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), the Rural Electrification Administration (REA), those systems as published by the National Association of Regulatory Utility Commissioners (NARUC) or other accounting methods approved by the Commission.

"Utilities" means companies which are subject to OCC regulation under the following statutes: Title 17, Sections 131 et seq, 151, 152, 158.27 et seq, 160.1 et seq, and 181, Oklahoma Statutes, as amended, and shall, for purposes of this Chapter, include public service and transmission companies, rural telephone cooperatives, and all other entities which now or in the future are placed within the jurisdiction of the Commission for the purpose of regulation of their rates and charges for public service.

"Working capital" means the average investment required to fund daily operating expenditures and a variety of nonplant assets that are necessary to sustain ongoing operations of the utility.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-1-3. Applicability of rules

(a) This Chapter shall apply to all electric, gas, telephone, and water utilities and rural electric cooperatives under the jurisdiction of the Commission. This Chapter is applicable to all filings made after the effective date of this Chapter, except as otherwise provided in this Chapter. This Chapter is not intended to prohibit a utility from providing additional schedules, exhibits and other documents which may be material to the rate proceeding nor is it intended to prohibit the Commission from considering such additional schedules, exhibits, or other materials relevant in making its determination. A waiver of compliance regarding any requirements of this Chapter must be obtained as outlined in 165:70-3-6.

(b) Applications by utilities to reduce rates shall be exempt from the requirements of this Chapter, provided that a utility seeking to reduce rates shall provide adequate documentation to justify the reduction requested.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-1-4. Classifications of utilities

(a) **Class divisions.** All utilities shall be divided into classes as prescribed in this Section. These classes conform to the Federal Energy Regulatory Commission (FERC), National Association of Regulatory Utility Commissioners (NARUC), and Federal Communication Commission (FCC) classifications, except for rural electric distribution cooperative classifications, which are provided by Title 17, Section 158.27:

(1) Gas and Electric Companies:

- (A) Class A - \$2,500,000 or more annual gross operating revenue
- (B) Class B - \$1,000,000 or more but less than \$2,500,000 annual gross operating revenue
- (C) Class C - \$150,000 or more but less than \$1,000,000 annual gross operating revenue
- (D) Class D - Less than \$150,000 annual gross operating revenue

(2) Telephone Companies:

(A) Class A - \$100,000,000 or more annual revenues from regulated telecommunications operations

(B) Class B - Less than \$100,000,000 annual revenues from regulated telecommunications operations

(3) Water Companies:

(A) Class A - \$500,000 or more annual gross operating revenue

(B) Class B - \$250,000 or more but less than \$500,000 annual gross operating revenue

(C) Class C - \$50,000 or more but less than \$250,000 annual gross operating revenue

(D) Class D - Less than \$50,000 annual gross operating revenue

(4) Rural Electric Cooperatives: Class A - All

(b) **Determination of class.** For utilities whose classification is based upon annual gross operating revenues, the class to which any utility belongs shall be determined by the annual gross operating revenues for each of the three (3) immediately preceding years. For any utility whose classification is based on revenues from regulated telecommunications operations, the class to which it belongs shall be determined by the revenues from regulated telecommunications operations for each of the three (3) immediately preceding years.

(c) **Declaration of class.** The utility shall declare its classification in the notice of intent to file.

(d) **Exception.** Rate changes by interexchange carriers are covered by the codified telephone rules of the Commission and are therefore exempt from the rules of this Chapter. Additionally, RECs which have complied with Title 17, Section 158.27 and whose member-consumers have voted to exempt themselves from the jurisdiction of the Commission regarding their rates, are not required to comply with the rules of this Chapter.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-1-5. 180-day review requirement

(a) When any utility as defined in this Chapter shall file with the Commission a request for a review of its rates and charges, such request shall be given immediate attention.

(b) Unless otherwise allowed by law, the following requirements shall apply:

(1) The Commission shall complete any examination of such application within one hundred twenty (120) days from the date such application is filed.

(2) Public hearings on such application shall commence within thirty (30) days of the end of the Commission's examination of such application and in no event shall the conclusion of the Commission's examination of the application and the hearing conducted by the Commission exceed one hundred eighty (180) days from the date the application was filed.

(3) If the Commission's review of the application has not been completed and an order issued within one hundred eighty (180) days from the date of filing of the application, some or all of the request for change in the rates, charges and regulations made in such application shall be immediately placed into effect and collected through new tariffs on an interim basis at the discretion of the applicant utility.

(4) Should the Commission determine upon the completion of its examination and public hearings that a refund regarding the amount of interim relief is appropriate and necessary, the Commission shall order such

refund, including reasonable interest at the one-year U.S. Treasury bill rate accruing on that portion of the rate increase to be refunded, for a period not to exceed ninety (90) days from the effective date of the rate increase which is being refunded.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-1-6. Controversy over the rules of this Chapter

Whenever a controversy exists in connection with the interpretation of this Chapter and the applicability of the requirements set forth herein, or any right or duty imposed thereby, the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-1-7. Severability

If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

SUBCHAPTER 3. APPLICATIONS

165:70-3-1. Application; Staff response; and Waiver

(a) Each utility shall file with the OCC Court Clerk its request for a general rate change, with a complete application package. The utility shall also submit the filing fee with the application, which is set forth in the Commission Rules of Practice. In addition, Class A and B utilities shall submit, at a minimum, fifteen (15) copies of the application package and Class C and D utilities shall submit, at a minimum, six (6) copies of the application package.

(b) On the date of filing, a copy of the application package and the supplemental package, if required, shall be made available to the Public Utility Division. The Director and/or Staff shall review the package(s) for compliance with the rules as set forth in this Chapter.

(c) Within fifteen (15) business days of the receipt of the package(s), the Director shall file with the Commission and provide to the utility a copy of the Staff Response regarding the compliance or deficiency of the application and supplemental packages. The response shall serve as official notification of the acceptance or rejection of the package(s).

(d) If the Director finds the package(s) are not in substantial compliance with the requirements of this Chapter, the Staff Response shall state that the filing is a deficient filing. The deficiencies and the requirement(s) necessary to cure the deficiencies shall be stated in the Staff Response. See 165:70-5-2.

(e) The utility may seek a waiver for any portion of the exhibits, schedules, workpapers or other documentation required by this Chapter, in accordance with 165:70-3-6.

[Source: Amended at 11 Ok Reg 285, eff 10-19-93 (emergency); Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-2. Up-to-date requirements

At the time of filing a request for a general rate change, the filing utility shall have all monthly and annual reports required by Commission order or rule up-to-date and on file, and shall not have any outstanding obligation as defined in this Chapter.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-3. Test period

(a) As a minimum, the utility shall file as the test year a recent historical twelve-month test period which shall be no more than six (6) months old at the time the application package is filed with the OCC Court Clerk. Any waiver of this requirement shall be obtained in accordance with 165:70-3-6.

(b) The pro forma test year shall reflect normalized operations, including pro forma adjustments.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-4. Supporting workpapers [REVOKED]

[Source: Revoked at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-5. Reconciliation of data

If the accounting and statistical data submitted differs from the books of the utility, then the utility shall provide a reconciliation schedule with an explanation describing and reconciling the differences.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-6. Waiver of requirements

(a) At the time the utility files a Notice of Intent, as required by 165:70-3-7, or any time until the application is filed, the utility may request a waiver of compliance with any or all of the requirements of this Chapter, by submitting a written request for waiver to the Director. The Director shall advise the utility that the waiver is granted or denied, within ten (10) days of the request for waiver. If the Director fails to act within ten (10) days, the requested waiver shall be deemed granted. If the Director determines that the request is not reasonable, the request for waiver shall be denied by the Director. The utility may appeal the denial of a waiver to the Commission en banc. If the Commission en banc has not ruled upon the waiver within fifteen (15) days from the date the appeal is filed, the requested waiver shall be deemed granted.

(b) The utility requesting the waiver or appealing the Director's denial of a waiver shall identify the requirements sought to be waived and state the reasonable cause for the waiver.

(c) If the utility appeals a denial of a waiver to the Commission en banc, which is subsequently denied by the Commission, the Commission en banc shall establish the time frame for providing the required information, after considering the arguments of the utility and Staff.

(d) The granting of a waiver pursuant to this Section shall not preclude any party from seeking the information which was the subject of the waiver, by data request.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-7. Notice of intent

(a) A Class A or B utility shall provide forty-five (45) days notice of its intent to file an application for a general rate change. The notification shall be in writing, filed

with the OCC Court Clerk and contain the following information:

- (1) That an application for a general rate change is planned.
- (2) The anticipated date of filing.
- (3) The proposed effective date of the general rate change.
- (4) Identification of the utility's classification as prescribed at 165:70-1-4.
- (5) Any major issues which the utility, at the time of filing the notice of intent, expects to raise in conjunction with its application package, including the expectation that a future test year is to be used.
- (6) The reason a supplemental package will not be included if one is not expected to be provided.

(b) A Class C or D utility shall provide thirty (30) days advance notice of its intent to file an application for a general rate change. The requirements for the notice of intent shall be the same as those described in (a) of this Section.

(c) All notices of intent shall be provided to the Director and the Attorney General contemporaneously with the filing of the notice.

(d) The information provided in the notice of intent shall not be considered in the determination of whether the filing is deficient.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-3-8. Amending an application

(a) A utility may not significantly amend a general rate change filing after it has been docketed by the OCC Court Clerk. An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of 165:70-3-1 and will be subject to the sanctions in 165:70-5-2.

(b) For purposes of this Section, an amendment shall be deemed "significant" if it updates the test year. For Class A and B utilities, an amendment shall also be deemed "significant" if it requests more than a five percent (5%) change in the previously requested increase in revenue or, for Class C and D utilities, if it requests more than a five percent (5%) change in the previously requested revenue requirement, unless such changes are mandated by law.

(c) A utility may incorporate a significant change without refiling an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94; Amended at 15 Ok Reg 3143, eff 7-15-98]

SUBCHAPTER 5. FILING REQUIREMENTS - CLASS A OR B UTILITIES

PART 1. GENERAL PROVISIONS

165:70-5-1. General filing instructions - Class A or B utilities

In preparing the information specified in 165:70-5-4 and following, to the extent required, the following instructions are applicable to Class A or B utilities:

- (1) All schedules shall be mathematically correct and properly cross-referenced.
- (2) All schedules for Class A and B utilities shall be designated as provided in 165:70-5-4 through 165:70-5-37.
- (3) Headings on all schedules shall clearly indicate the utility name, the nature and content of the schedule and the test period covered.

(4) All schedules shall be typed and/or clearly legible.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-2. Deficiency procedure

(a) If the Director finds the application package and/or supplemental package of a Class A or B utility are not in substantial compliance with the requirements of this Chapter, the Staff Response shall state the filing is a deficient filing. The deficiencies and the requirement(s) necessary to cure the deficiencies shall be stated in the Staff Response.

(b) Unless the utility and the Staff resolve a dispute regarding whether the filing is a deficient filing within seven (7) business days of the Staff Response, such dispute may be submitted to the Commission en banc for resolution.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-3. Classification of utilities [REVOKED]

[Source: Revoked at 11 Ok Reg 3753, eff 7-11-94]

PART 3. COMPOSITION OF APPLICATION PACKAGE

165:70-5-4. Application package

(a) An application package shall be comprised of exhibits, schedules, testimony and evidence as set out in this Part. These exhibits, schedules, testimony and evidence shall be assembled under sections with index tabs for referencing convenience.

(b) All exhibits and schedules required in this Part 3, unless otherwise noted, shall contain the following:

(1) Columns in one of the following formats, unless otherwise negotiated with Staff before the application package is filed:

(A) Columns entitled:

- (i) Total Company Per Books
- (ii) Pro Forma Adjustment
- (iii) Total Company Pro Forma
- (iv) Separation/Allocation Factor
- (v) Oklahoma Jurisdiction

(B) Columns entitled:

- (i) Total Company Per books
- (ii) Separation Factor
- (iii) Oklahoma Jurisdiction
- (iv) Pro Forma Adjustment
- (v) Oklahoma Pro Forma Jurisdiction

(C) Columns entitled:

- (i) Total Company Per Books Oklahoma Jurisdiction
- (ii) Pro Forma Adjustment
- (iii) Total Company Pro Forma Oklahoma Jurisdiction

(D) Formats other than s

(2) References by schedule number and title.

(3) A reference to subsequent schedules which are the source of amounts presented.

(4) A reference to the applicable testimony for each adjustment presented.

(c) Any multijurisdictional company shall not be required to provide total company information on any schedule where the utility provides Oklahoma-jurisdictional

information.

(d) All sections shall reflect the form, order, and titles as follows:

- (1) Index of sections: This is to contain a listing of the application and all exhibits, schedules and testimony contained in the application package.
- (2) Section A - Application and testimony: This section shall contain a copy of the application and testimony of witnesses supporting all exhibits, schedules and other documents contained in the application package.
- (3) Section B - Rate base and revenue requirement: This section shall contain schedules which present the elements of rate base for the test year and revenue requirement.

(A) Schedule B-1 - Revenue Requirement: This schedule shall have lines reflecting pro forma rate base, rate of return, revenue requirement, pro forma operating income, return deficiency, the applicable income tax gross-up factor, other applicable gross-up factors and change in revenue. The lines shall contain a reference from the succeeding schedules which are the source of the amounts presented.

(B) Schedule B-2 - Oklahoma Jurisdictional Pro Forma Rate Base/Rate of Return: This schedule shall present the following applicable components of rate base as described in (i) through (iii) of this subparagraph. This schedule shall have columns as defined in 165:70-5-4(b)(1) which reflect the pro forma Oklahoma jurisdictional rate base. (The amounts on this schedule shall correspond to the amounts on succeeding schedules. This schedule shall also reflect the rate of return under present rates, the rate of return after pro forma adjustments and the rate of return after pro forma adjustments utilizing proposed rates.

(i) Plant in service.

- (I) Plant in service.
- (II) Construction work in progress.
- (III) Accumulated depreciation.
- (IV) Plant held for future use.
- (V) Net plant.

(ii) Working capital.

- (I) Cash working capital.
- (II) Prepayments.
- (III) Materials, supplies and fuel inventories.
- (IV) Gas in storage.
- (V) Other.

(iii) Additions and deductions.

- (I) Accumulated deferred income taxes.
- (II) Regulatory assets.
- (III) Regulatory liabilities.
- (IV) Other.

(C) Schedule B-3 - Adjustments to Rate Base: This schedule shall reflect the classifications of the components of rate base as presented in the preceding schedule (Schedule B-2, Adjustment Column) and contain columns as defined in 165:70-5-4 (b)(1). Each proposed adjustment will be numbered and a total of all adjustments included.

(D) Schedule B-4 - Explanation of Adjustments to Rate Base: This schedule shall detail each adjustment by number and provide a brief explanation of the adjustment, the affected classifications as used in the preceding schedules, the workpaper and testimony reference which sponsors or supports the adjustment. (When using format option B or option C in Section 165:70-5-4(b)(1) the explanation shall also present the total adjustment multiplied by the applicable jurisdictional factor and the resulting jurisdictional adjustment.)

(4) Section C - Plant investment: This section shall contain schedules which present the items and amounts of plant investment by the classification appropriate to the utility's industry and by primary account for the test year end.

(A) Schedule C-1 - Plant in Service: This schedule shall contain columns presenting the balances of the utility's plant investment accounts by the industry-applicable primary accounts or by sub-accounts, with functional account or subaccount subtotals, at the test year end, total adjustments and adjusted total amounts.

(B) Schedule C-2 - Adjustments to Plant in Service: This schedule shall reflect the plant investment account classifications as presented in the preceding schedule and contain a column for the adjustment number, a brief description of the adjustment, total of all plant in service adjustments and a reference to the testimony and schedules(s) which support the adjustment. The adjustment totals shall correspond to the applicable plant classifications on Schedule C-1.

(5) Section D - Accumulated provision for depreciation, amortization and depletion: This section shall contain schedules which present the balances in reserve accounts representing provisions for depreciation, amortization and depletion corresponding with the dates of plant investment data submitted under (d)(4) of this Section.

(A) Schedule D-1 - Accumulated Provision for Depreciation, Amortization and Depletion: This schedule shall provide the test year end reserve for plant in service listed on Schedule C-1, the total adjustments by plant in service classification and the total adjusted balances.

(B) Schedule D-2 - Adjustments to Accumulated Depreciation: This schedule shall reflect the plant in service classifications as presented in the preceding schedule and contain a column for the adjustment by number, a brief description of the adjustment, the total of all accumulated depreciation adjustments and a reference to the testimony and schedule(s) which support the adjustment. The total of all adjustments shall correspond to the applicable adjustments on Schedule D-1.

(6) Section E - Cash working capital: This section shall contain Schedule E-1 - Cash Working Capital Calculation. Schedule E-1 shall present the calculation of the allowance for cash working capital being requested.

(7) Section F - Capital and cost of money: This section shall contain Schedule F-1 - Components of Capital. This schedule shall show the components of the capital of the utility outstanding as of the end of the test year. Such schedule shall show the ratios of the various components to the total capital and the effective cost of each component under present and

proposed rates. The utility shall provide testimony and all calculations detailing the utility's determination of a fair return on stockholders' equity and support for the capital structure and debt cost claimed.

(8) Section G - Financial and general data: No schedules are required to be included in the application package under this section. However, supplemental data is requested in the supplemental package under Section G. See 165:70-5-27.

(9) Section H - Test year and pro forma income statements: This section shall contain schedules setting forth test year revenues, expenses and net operating income.

(A) Schedule H-1 - Test Year Actual and Pro Forma Operating Income Statement: This schedule shall contain industry-specific functional classifications of operating revenues and expenses consistent with the format option chosen in 165:70-5-4(b)(1) with additional columns for proposed revenue change and proposed Oklahoma jurisdictional results incorporating the revenue change.

(B) Schedule H-2 - Adjustments to Operating Income Statement: This schedule shall reflect the revenue and expense classifications as presented in the preceding schedule and contain a column for the adjustment number and a descriptive title of the adjustment along with the total of all adjustments.

(C) Schedule H-3 - Explanation of Adjustments to Operating Income Statement: This schedule shall detail each adjustment contained in Schedule H-2 by number, provide a brief explanation of the adjustment, the affected revenue and expense classifications as used in the preceding schedules and workpaper reference, and reference to the testimony which sponsors or supports the adjustment. (When using format option B or option C in 165:70-5-4(b)(1) the explanation shall also present the total adjustment multiplied by the applicable jurisdictional factor and the resulting jurisdictional adjustment.)

(10) Section I - Depreciation and amortization: This section shall contain a schedule showing depreciation rates by the applicable industry-specific classes of plant, depreciation accruals for the test year showing amount charged to operations, clearing accounts, construction, etc. When amortizations appear in the income statements, the source of such amortizations shall also be included in this section. The schedule contained in this section shall be Schedule I-1 - Depreciation Expense. This schedule shall contain the same plant in service classifications as presented in Schedule D-1 and by subaccount where appropriate to allow for depreciation calculation, by jurisdictional amount if applicable, any nondepreciable items if applicable, depreciable plant, rates by classes of plant and total depreciation expense.

(11) Section J - Taxes: This section shall contain the following information:

(A) Schedule J-1 - Calculation of Federal and State Income Taxes: This schedule shall provide the calculations of federal and state income taxes for the test year and the pro forma income based on taxable income determined in Schedule J-2. The calculation shall include itemization of adjustments to tax expense such as investment tax credit amortization and amortization of tax rate changes.

(B) Schedule J-2 - This schedule shall show the determination of state and federal taxable pro forma income itemizing permanent differences. Taxable income determined in this schedule shall be used for the tax expense calculation in Schedule J-1.

(C) Schedule J-3 - This schedule shall provide the current tax component for the cash working capital calculation in Section E, if a lead lag study is performed.

(12) Section K - Jurisdictional separations and allocations/cost of service: This section shall include a summary explanation of the methodologies used to allocate rate base, revenues, expenses and other allocable items among jurisdictions, areas of operation, utility departments, states or other recipients of such allocations.

(A) For telephone companies:

(i) Schedule K-1 - Basis of Allocations: This schedule shall reflect the basis for the jurisdictional separation of rate base, revenue and expense items from total company to the Oklahoma jurisdiction.

(ii) Schedule K-2 - Basis of Allocations: This document shall apply to utilities with allocations other than inter/intrastate separations, i.e. allocations from holding company to utility. For each level of allocations, this document shall include the basis for allocating items of rate base, revenue and expense to the Oklahoma jurisdiction.

(B) For all other regulated utilities:

(i) Schedule K-1 - Total Company Cost of Service: This schedule is required of utilities with Oklahoma jurisdictional operations and shall contain columns presenting the total company pro forma cost of service and the total Oklahoma jurisdictional pro forma cost of service.

(ii) Schedule K-2 - Basis of Allocations: This schedule shall reflect the basis for the jurisdictional separation of rate base, revenue and expense items from pro forma total company to pro forma Oklahoma jurisdiction.

(iii) Schedule K-3 - Basis of Allocations: This document shall apply to utilities with allocations other than inter/intrastate separations, i.e. allocations from holding company to utility. For each level of allocations, this document shall include the basis for allocating items of rate base, revenue and expense to the Oklahoma jurisdiction.

(13) Section L - Rate design cost of service information: This section shall include the summaries and methodologies of the cost of service studies to support rates and charges.

(A) For telephone companies: This section shall include summaries and methodologies of cost studies, as indicated below, which shall be valid for consideration in the process of establishing prices. For tariff services other than those listed below, the most recent available cost studies, if any, shall be provided to the Commission upon request. This section shall include cost studies for the following list of services in addition to any services for which the utility requests a change in rates and such studies shall be no older than thirty-six (36) months from the date of the Notice of Intent:

- (i) Local exchange service.
 - (ii) IntraLATA toll (DDD).
 - (iii) Switched access for local switching and transport.
 - (iv) Digital special access service.
 - (v) Service connection charges.
 - (vi) Directory assistance.
 - (vii) All other tariff services that generate one percent (1%) or more of total annual jurisdictional revenues.
- (B) For gas and electric utilities and RECs: Cost of service studies may utilize accounting and load research data other than the test year provided such studies were completed within twenty-four (24) months of the end of the test year.
- (C) For all utilities and telephone companies: Unless requested by the Director, miscellaneous charges (e.g., returned check charges, meter tampering charges, etc.) do not require cost of service studies pursuant to this Section.
- (14) Section M - Proof of revenue/rate design: This section shall provide supporting data to show that the proposed rates will produce the revenues that the utility states in previous sections by presenting a usage analysis or other analyses.
- (A) Schedule M-1 - Oklahoma Jurisdictional Pro Forma Revenue Summary (for gas and electric utilities and RECs): This schedule shall provide revenue information for the system for the test year in the following tabular form by rate class or service category:
 - (B) Schedule M-1 - Revenue Summary (**for telephone companies**):
 - (i) This schedule shall provide revenue information for the system for the test year in the following tabular form:
 - (ii) This schedule shall have lines for each category of revenue clearly labeled.
- (15) Section N - Proposed rate schedules: This section shall contain the proposed rate and/or charges schedules.
- (16) Section O - Notice: The utility shall provide the exact text of the notice to be published in compliance with the Commission's Rules of Practice OAC 165:5-7-51(a) and a copy of the notice to be provided to customers by mail in compliance with OAC 165:5-7-51(a).
- (17) Section P - Affiliate information: This section shall contain information relating to a utility's affiliates and/or subsidiaries to the extent that such affiliates and/or subsidiaries provide a service for which the utility seeks cost recovery in its rate application.
- (18) Section Q - Additional evidence (and Subsequent Sections): These subsequent sections shall be lettered sequentially from Q and referenced to data deemed pertinent to the application which may not be properly included under the preceding sections. Such additional evidence may be submitted at the option of the applicant or upon the request or order of the Commission.

[Source: Amended at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-5. Cost of service information [REVOKED]

[Source: Revoked at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-6. Separation of non-jurisdictional and non-utility properties, revenues, and expenses [REVOKED]

[Source: Revoked at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-7. Rural electric cooperatives [REVOKED]

[Source: Revoked at 11 Ok Reg 3753, eff 7-11-94]

PART 5. SUPPLEMENTAL PACKAGE

165:70-5-20. General requirements

(a) Class A or B utilities shall, concurrently with filing the application package, provide to the Public Utility Division a supplemental package comprised of workpapers, documents and other evidence which support the schedules in the application package. By prior arrangement between the Director and the utility, voluminous material or material which by its nature is impractical to produce may be provided at locations designated by the utility. Confidential information shall be provided at locations designated by the utility as specified in the Confidentiality Agreement. If the Attorney General has intervened and has requested such in writing, the supplemental package if required by this Chapter, shall be made available to the Attorney General after the execution of a Confidentiality Agreement.

(b) The workpapers, documents, and other evidence in the supplemental package shall be assembled under topical sections with index tabs for convenience of references and, unless otherwise noted, shall conform with the sections of the application package prescribed at 165:70-5-4.

(c) The following instructions are applicable to all workpapers, documents and other evidence required in this Part 5:

(1) Each workpaper shall be referenced by workpaper number and name, unless otherwise noted.

(2) If a schedule in the application package does not require supporting information or the supporting information is being provided in another workpaper, no workpaper is necessary for those schedules and those schedule numbers will be skipped in the supplemental package.

(3) The numbering for additional schedules and/or documents which are required but which do not specifically correspond to and/or complement a schedule in the application package shall begin with the first available number after the last one used in the application package, unless otherwise specified in this Part.

(4) Additional schedules which are provided by the utility shall conform to the format as used in this Part.

(5) All items shall be self-explanatory or additional information, cross-references or explanatory footnotes shall be presented on the workpapers.

(6) Careful attention shall be given that copied material is legible.

(d) All amounts which are from the utility's books shall have the applicable USOA general ledger account number references included. The account number references shall reflect the appropriate USOA designations. If an amount presented is the total of several accounts or subaccounts, a workpaper shall be provided which indicates all amounts with the appropriate USOA account or subaccount numbers included in the total.

(e) If the utility omits any statement, schedule or document required by this Part in the belief that it is not applicable, a written explanation for the omission shall be submitted in lieu of the required statement, schedule or document. If any information required cannot be furnished in the format required, the utility shall contact the Director or the Director's designee to discuss an alternate format for furnishing the information rather than responding only that the information is not available.

(f) Diskettes of any workpapers, documents or other evidence which was prepared on computer shall be made available to the Staff upon request. If the electronic data to be provided is not compatible with software used by the Staff, the utility and the Director or the Director's designee shall discuss an alternate method for furnishing the information.

(g) Workpapers shall be in the form, order and titles as prescribed in this Part 5. An index shall be prepared and contain a listing by number and name of all workpapers and other supporting documentation submitted in the supplemental package.

(h) A Class A or B utility shall not be required to provide or make available a supplemental package if the utility meets all of the following conditions:

- (1) The utility's application for a general rate change requests a rate increase of less than \$3 million annually; and
- (2) Either the utility serves less than 20,000 meters in Oklahoma or the original cost of the utility's facilities located in Oklahoma constitutes less than one percent (1%) of the total original cost of all of the utility's facilities located everywhere it provides utility service; and
- (3) The utility is subject to the jurisdiction, regulation, supervision and control of a regulatory agency existing under the laws of any state bordering upon Oklahoma; and
- (4) The utility certifies to the Commission that a regulatory commission of a bordering state has asserted jurisdiction, regulation, supervision and control over its utility operations.

(i) Class A or B utilities to which subsection (h) of this Section is applicable are still subject to responding to data requests following the filing of an application package.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-21. Section A

No workpapers or other supporting documentation is required in Section A of the supplemental package.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-22. Section B - Rate base

Section B - Rate Base of the supplemental package shall contain workpapers and documentation as follows:

- (1) W/P B-1 and W/P B-2: Separate workpaper support for Schedule B-1 and B-2 in the application package is not generally required, due to the summary nature of Schedules B-1 and B-2.
- (2) W/P B-3 - Adjustments to Rate Base: Workpapers which provide the underlying computation(s) of each adjustment presented on Schedule B-3 in the application package. The workpapers shall be referenced beginning with W/P B-3-1 for adjustment number 1 and proceeding through all adjustments, i.e., W/P B-3-2 for adjustment number 2, W/P B-3-3 for adjustment number 3, etc.

- (3) W/P B-4: Separate workpaper support labeled W/P B-4 is not generally required, because workpapers for Schedule B-4 in the application package are itemized into the components of Schedule B-3 or set out in W/P B-5 through W/P B-9.
- (4) W/P B-5 - Materials, Supplies, Fuel Inventories and Prepayments Balances: A schedule of the 13-month balances of materials, supplies, fuel inventories and prepayments for the test year by category.
- (5) W/P B-6 - Customer Deposits and Advances For Construction Balances: A schedule of the 13-month balances, for customer deposits and customer advances for construction.
- (A) W/P B-6-1 - Policy on Refunding Customer Deposits: A copy of the utility's policy on refunding of customer deposits.
- (B) W/P B-6-2 - Analysis of Customer Deposits: A schedule presenting the calculation of test year interest on customer deposits.
- (6) W/P B-7 - Tax Collections Payable and Deferred Credits Balances: A thirteen-month analysis, by account or sub-account, of the industry-applicable account(s) for tax collections payable and other deferred credits.
- (7) W/P B-8 - Miscellaneous Deferred Debits Balances: A schedule of the 13-month balances, by account or sub-account, of the industry-applicable account(s) for miscellaneous deferred debits. All miscellaneous deferred debits, the balance or amortization of which is the subject of a Commission order, shall be identified by cause and order number, and described.
- (8) W/P B-9 - Operating Reserves and Accrued Liabilities: A schedule of operating reserves and accrued liabilities for the thirteen (13) months of the test year, including, but not limited to, any reserve for self-insurance, the reserve for uncollectible accounts and the accrued balances for compensated absences.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-23. Section C - Plant in service

Section C - Plant in service of the supplemental package shall contain workpapers and documentation as follows:

- (1) W/P C-1 - Test Year End Plant in Service: A schedule which provides the balances by industry-applicable major account or functional account for the test year and the first preceding year.
- (A) W/P C-1-1 - Changes to Plant in Service: A schedule of major additions, reclassifications or adjustments to plant during the test year and the first preceding year, by functional classification and including a brief description of the item.
- (B) W/P C-1-2 - Reconciliation: A schedule which contains an annual reconciliation, with additions and retirements presented separately, for the plant in service balances from the accounts reflected in the test year in the last rate case to the amounts included by the utility in the current application.
- (2) W/P C-2 - Adjustments to Plant in Service: Workpapers which provide the underlying computation(s) of each adjustment presented on Schedule C-2 in the application package. The workpapers shall be referenced beginning with W/P C-2-1 for adjustment number 1 and proceeding through all adjustments, i.e., W/P C-2-2 for adjustment number 2, W/P C-2-3 for adjustment number 3, etc.
- (3) W/P C-3 - No workpaper is required for this label.

(4) W/P C-4 - Construction Work in Progress (CWIP) Analysis: An analysis of the test year end balances that indicates, by project, the amounts spent at test year end, the actual amounts for completed projects, and the actual or estimated completion date. Also provide the functional account classification and distribution for the CWIP project, if available. To the extent rate base treatment of CWIP is requested in the current application, the quantifiable impact, if any, the project is anticipated to have on operating income (excluding rate base and depreciation expense) shall also be provided. (For telephone companies, the workpapers for this section shall be entitled "Telephone Plant Under Construction (TPUC)".)

(A) W/P C-4-1 - Canceled/Delayed/Abandoned Projects: An analysis of all projects that have been canceled, delayed and/or abandoned since the end of the test year.

(B) W/P C-4-2 - Preliminary Survey and Investigation Charges: A description of the accounting procedures relating to preliminary survey and investigation charges and the procedures followed when such projects or surveys are abandoned or discontinued. If applicable, identify where these projects are included in rate base.

(C) W/P C-4-3 - Reimbursable Projects: A listing of all reimbursable projects, both billed and unbilled, at test year end.

(5) W/P C-5 - Sale of Utility Plant: A schedule identifying and listing any major sales of land or other utility plant during the test year and the first preceding year. Include the date of the transaction, a brief description, the amount of the sale, the net book value of the property, and a copy of the journal entry recording the sale.

(6) W/P C-6 - Utility Property Sold: A schedule identifying and listing any major utility property sold, or committed to sell, subsequent to test year end. Include, if available, the date of the transaction, a brief description, the amount of the sale, the net book value of the property, and a copy of the journal entry recording the sale.

(7) W/P C-7 - Property Devoted to Utility Use: A listing of all major purchases of property which was previously devoted to utility use since the last test year end. To the extent the information is available, include the name of the seller, the purchase price, the original cost of the property at the time the property was first devoted to public service, the accumulated depreciation recorded by the previous owner, a complete description of the facilities, any securities assumed, the transaction date, and the accounts charged.

(8) W/P C-8 - Calculation of Allowance for Funds Used During Construction (AFUDC) or Interest During Construction (IDC): This schedule shall include a complete statement of the methods and procedures followed and the calculations used in capitalizing the allowance for funds used during construction (or interest during construction). The information provided shall include a listing of the capitalization rates for each year since the last test year end.

(9) W/P C-9 - Reimbursements of Cost: A schedule of reimbursements and their amortization, if applicable, for any highway relocations and/or other construction cost reimbursements.

(10) W/P C-10 - Plant Leased to Others: A listing of all major plant leased to others. The listing shall include a description of each item, the lessee, the account in which the property is recorded and the revenues and expenses,

by lessee, for the test year.

(11) W/P C-11 - Plant Leased from Others: A listing of all major utility plant leased from others. The listing shall include a description of the property, the transaction date, the lease expense for the test year and the lease term. In addition, for capitalized leases, include the accounting entries which initially record the asset value and the related liability for the lease obligation and the amortization of the leasehold rights and obligations.

(12) W/P C-12 - Vehicle Policy: A statement of the utility's policy regarding personal use of utility vehicles, whether the vehicles are utility-owned or leased.

(13) W/P C-13 - Property Held for Future Use: A schedule of all property held for future use if included in rate base. The schedule shall include, for each item, a description, the amount and account in which the property is recorded, the date of acquisition/completion, the date the property is expected to be placed in service and the specific plans for use.

(14) W/P C-14 - Physical Inventory: A workpaper providing the dates, results and accounting entries for the latest physical inventory, if applicable.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-24. Section D - Accumulated provision for depreciation, amortization and depletion

Section D - Accumulated provision for depreciation, amortization and depletion of the supplemental package shall contain workpapers and documentation as follows:

(1) W/P D-1 - Reconciliation of Accumulated Depreciation Accounts: A schedule which contains an annual reconciliation of the accumulated depreciation balances from the accounts reflected in the test year in the last rate case to the amounts included by the utility in the current application. The reconciliation shall include each year's reserve accrual and any adjustments and retirements.

(2) W/P D-2 - Adjustments to Accumulated Depreciation: Workpapers which provide the underlying computation(s) of each adjustment presented on Schedule D-2 in the application package. The workpapers shall be referenced beginning with W/P D-2-1 for adjustment number 1 and proceeding through all adjustments, i.e., W/P D-2-2 for adjustment number 2, W/P D-2-3 for adjustment number 3, etc.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-25. Section E - Cash working capital

Section E—Cash working capital of the supplemental package shall contain all calculations of cash working capital, including the results derived from the methodology utilized by the utility. The reasonableness and applicability of the utility's cash working capital calculation methodology must be explained and supported.

[Source: Amended at 15 Ok Reg 3143, eff 7-15-98]

165:70-5-26. Section F - Capital and cost of money

Section F - Capital and cost of money of the supplemental package shall contain workpapers and documentation as follows (to the extent such information is contained in the application package, these workpapers shall only contain a cross-

reference to such information):

(1) For investor-owned utilities (including Class A telephone companies):

(A) W/P F-1 - Weighted Average Cost of Capital: A schedule providing the utility's claimed overall rate of return as a weighted average of each class of capital based upon the utility's capitalization at the end of the test year along with any pro forma adjustments. The cost of debt capital, preferred stock capital, the claimed return on stockholders' equity, and the component amounts of each class of capital shall be presented.

(B) W/P F-2 - Weighted Average Cost of Preferred Stock: A schedule providing the weighted average cost of preferred stock capital. List each stock issue for each class and series of preferred stock outstanding according to the balance sheet as of the end of the test year. Preferred stock issued since the end of the test year, but prior to filing, shall be included in the schedule and footnoted. The cost of money calculated will be the dividend rate divided by the net proceeds as a percent of par value or stated value for issues not subject to mandatory redemptions and issues with variable dividend rates. For fixed-rate preferred stock issues with mandatory redemption, the cost of money shall reflect the yield to maturity method (YTM) for each issue. The YTM shall be calculated based on the issuance date, redemption date, sinking fund requirements, dividend rate, the par value or stated value, and net proceeds at issuance.

(i) W/P F-2-1 - Sinking Funds: A schedule for each issue of preferred stock requiring mandatory redemptions specifying the date and amount of each redemption.

(ii) W/P F-2-2 - Accounting Method: A workpaper providing a description of the accounting method used to record issuance expenses, premiums or discounts at issuance, gains or losses on stock redemption and annual amortization of such amounts for ratemaking purposes as well as financial reporting purposes.

(C) W/P F-3 - Weighted Average Cost of Debt: A schedule of the weighted average cost of long-term debt capital. List each debt issue for each class and series of long-term debt outstanding as of the end of the test year. Debt issued since the end of the test year, but prior to filing, shall be included in the schedule and footnoted. Capital lease obligations shall only be included if the recovery of lease payments is not being requested through operating expense. The balance of any capital leases removed from the debt structure shall be footnoted. For variable-rate debt issues, the cost of debt is the interest rate divided by net proceeds as a percent of par value. For capital lease obligations, the cost of debt shall be the effective annual rate as determined in accordance with generally accepted accounting principles. This schedule shall not include notes payable to affiliated entities, unless claimed in the utility's revenue requirement.

(i) W/P F-3-1 - Sinking Funds: A schedule for each debt issue requiring mandatory redemptions specifying the date and amount of each redemption.

(ii) W/P F-3-2 - Gains or Losses on Reacquired Debt: A listing of gains or losses on reacquired debt that are not associated with a particular refunding issue, with an appropriate adjustment to the unamortized balance of the gain or loss.

(D) W/P F-4 - Notes Payable: A schedule providing information pertaining to the utility's notes payable, even if notes payable are not included in the capital structure provided in W/P F-1. The schedule shall contain a listing of notes outstanding at the end of the test year, including each note's maturity date, face amount, and interest rate. The calculation of the cost of notes payable shall reflect the yield to maturity (YTM) for all fixed-rate issues. The YTM shall be calculated based on the issuance date, maturity date, interest rate, principal amount, and net proceeds at issuance. For variable-rate notes payable, the cost of the note shall be the effective annual interest rate divided by net proceeds as a percent of the principal amount of the issue. This schedule shall not include notes payable to affiliated entities, unless claimed in the utility's revenue requirement.

(i) W/P F-4-1 - Weighted Average Cost of Notes

Outstanding: A workpaper providing the calculation of the weighted average cost of notes outstanding at test year end.

(ii) W/P F-4-2 - Notes Payable Outstanding by Quarter: A schedule of the amount of notes payable outstanding at the end of each quarter for the past two years.

(E) W/P F-5 - Security Issuance Restrictions: A schedule providing a description and calculation of the most restrictive financial tests as of the end of the test year pertaining to the issuance of securities or the maintenance of banking lines of credit. For each class of securities (first mortgage bonds, unsecured debentures, commercial paper, preferred stock, etc.) or line of credit, provide a description of these financial tests (interest coverage, fixed charge coverage, maintenance of shareholders' equity, etc.) and copies of the relevant language contained in the governing documents (mortgage agreements, articles of incorporation, credit agreements, etc.). For each financial test, provide a calculation of the relevant financial ratio as of the end of the test year and the most recent fiscal year, including all supporting data.

(F) W/P F-6 - Rating Agency Reports: A copy of all credit rating analyses or investment reports on the utility and its parent company, if applicable, published during the most recent twelve-month period and in the possession of the utility. If unable to provide a copy due to copyright law restrictions, provide the date and source of the report. This shall include, but is not limited to, reports by Moody's, Standard & Poor's, Fitch Investor's Service, and Duff and Phelps.

(G) W/P F-7 - Quarterly Dividends: A schedule of quarterly dividends paid during the test year, and the first preceding year, by per share amount, total amount and date. Any borrowings which were made to maintain the level or growth of dividends shall also be noted.

(2) For rural electric cooperatives and Class B telephone companies:

(A) W/P F-1 - Times Interest Earned Ratio (TIER): A schedule which provides the calculation of the actual test year TIER on a net and an operating basis. Separate pro forma net and operating TIERS shall be calculated based upon inclusion of the requested rate change.

(B) W/P F-1-1 - Supporting Documentation: Workpapers which support the basis and provide an explanation for the requested pro forma TIER levels.

(C) W/P F-2 - Capital Credit Allocation from Generation and Transmission Cooperatives: A schedule which identifies the level of capital credit allocation received from generation and transmission cooperative(s) of which the utility is a member for the test year and the first preceding year.

(D) W/P F-3 - Capital Credit Rotation Requirements: A schedule which identifies the capital credit rotation requirements for the test year, for the first preceding year and the projections for the next subsequent year.

(E) W/P F-4 - Capital Credit Rotation Policy: A statement of the current capital credit rotation policy.

(F) W/P F-5 - Debt Service Coverage (DSC) Ratio: A schedule which provides the calculation of the actual test year DSC on a net and an operating basis. Separate pro forma net and operating DSCs shall be calculated based upon inclusion of the requested rate increase.

(G) W/P F-6 - DSC Supporting Documentation: Workpapers which support the basis and provide an explanation for the requested pro forma DSC ratios.

(H) W/P F-7 - Long-term Debt: A schedule which provides the balance at test year end for each loan. Include the lender, the dates of origination and maturity and the interest rate for each loan.

(i) W/P F-7-1 - Principal and Interest Payments: A schedule, by lender and by loan, which provides all principal and interest payments made during the test year. Include copies of the quarterly statements from each lender for all loans.

(ii) W/P F-7-2 - Long-term Debt Principal Payment Requirements: A schedule which provides the long-term debt principal payments made during the test year, and the requirements for the next subsequent year, for each loan in effect during the test year.

(I) W/P F-8 - Pending Loan Applications: A schedule of the details of any loan application pending before the REA or any other lending organization.

(J) W/P F-9 - Drawdowns During Test Year: A schedule of loan drawdowns occurring during the test year. Each loan advance shall be identified by the date and amount of each draw, the interest rate associated with each draw and the lender.

(K) W/P F-10 - Drawdowns Projection: A schedule showing the estimated drawdowns in the current period since the test year end and for the next year.

165:70-5-27. Section G - Financial and general data

Section G - Financial and general data of the supplemental package shall contain information applicable to the test year as follows:

- (1) W/P G-1 - Organizational Chart: A copy of the utility's organizational chart.
- (2) W/P G-2 - Chart of Accounts: A copy of the utility's chart of accounts.
- (3) W/P G-3 - General Ledger: A copy of, or access to, the general ledger and sub-ledgers.
- (4) W/P G-4 - Annual Report: Two copies of the annual stockholders' reports or audited financial statements for the most recent year and the first preceding year.
- (5) W/P G-5 - Independent Auditor's Adjustments: Copies of the audit adjustments made as a result of the audit completed by the independent auditor for the most recent year end and the first preceding year.
- (6) W/P G-6 - Comparative Trial Balances: A schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
- (7) W/P G-7 - Monthly Financial Reports: Copies of the monthly financial reports for the 14-month period beginning one month prior to the test year and ending one month after the test year end.
- (8) W/P G-8 - Regulatory Financial Report: Copies of the applicable federal and/or state regulatory agency's required annual report for the most recent year and the first preceding year.
- (9) W/P G-9 - Audit Report: A copy of the latest applicable federal regulatory agency's audit report.
- (10) W/P G-10 - Tax Return: A copy of the utility's latest federal tax return.
- (11) W/P G-11 - IRS Revenue Agent Reports: Copies of all Internal Revenue Service Revenue Agent Reports for the most recent year.
- (12) W/P G-12 - SEC 10-K Report: Two copies of the Form 10-K reports for the most recent year and the first preceding year and the Form 10-Q reports for the test year.
- (13) W/P G-13 - Minutes: The approved minutes of the meetings of the Board of Directors since the last rate review through the latest meeting.
- (14) W/P G-14 - Internal Auditors' Reports: A list of topics addressed in the internal auditors' reports for the test year and the first preceding year.
- (15) W/P G-15 - Monthly Summary of Customers: A summary of the number of customers, by month, for the 14-month period beginning one month prior to the test year and ending one month after the test year end.
- (16) W/P G-16 - Recurring Journal Entries: A listing of recurring journal entries shall include the entry number and a description. The list shall specifically include the amortization of deferred debits and deferred credits (including regulatory assets and regulatory liabilities).
- (17) W/P G-17 - Overhead Capitalization: A schedule detailing the overheads capitalized for the test period and the first preceding year.
- (18) W/P G-18 - Clearing Accounts: Workpapers which provide the following:
 - (A) A narrative which explains the utility's clearing account utilization policy. The explanation shall set forth the basis used for clearing account distribution to capital and expense accounts.

(B) A schedule of monthly activity that includes the beginning balances, the charges to and distributions from the accounts and the ending balances for the test year and the first preceding year.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-28. Section H - Test year actual and pro forma operating income statements

To the extent not provided elsewhere in the supplemental package, the workpapers and other supporting documentation submitted in Section H - Test year actual and pro forma operating income statements shall, unless otherwise specified, be entitled in a manner which will reasonably reflect their content and shall be numbered in accordance with 165:70-5-20.

(1) W/P H-1 - Summary of Operating Revenues: A schedule of monthly revenues and sales volumes for the test year. This schedule shall depict all types of revenue and sales volume by rate code or service category.

(A) W/P H-1-1 - Monthly Terms & Conditions Revenues: A detailed schedule of terms and conditions revenues by industry-specific type of revenue and other utility revenue by month for the test year.

(B) W/P H-1-2 - Free Service Summary: A list of any free service recipients including volume and type of consumer. (If customers were billed, provide the rate code or service category.)

(2) W/P H-2 - Adjustments to Operating Income Statement: Workpapers which provide the underlying computation(s) of each adjustment presented on Schedule H-2 in the application package. The workpapers shall be referenced beginning with W/P H-2-1 for adjustment 1 and proceeding through all adjustments, i.e., W/P H-2-2 for adjustment 2, W/P H-2-3 for adjustment 3, etc.

(3) W/P H-3 - Summary of Operating Expenses: A schedule of expenses detailed, by account number and title and by month, for the twelve (12) months of the test year and the corresponding annual totals for the two (2) preceding years. The schedule shall depict the amounts expensed during each month, not year-to-date balances. Also, provide the percentage change between the years.

(4) W/P H-4 - Payroll Expenses: A schedule, by pay period or month, which details the number of full-time employees, the regular pay, the overtime pay and regular hours and paid overtime hours.

(A) W/P H-4-1 - Payroll Description: A narrative on the payroll system, identifying the pay periods and related paydays. Also, describe the payroll accounting system and identify how labor is accrued at the end of the period.

(B) W/P H-4-2 - General Salary Adjustments: A schedule which identifies the annualized effects of salary adjustments granted during the test year. The schedule shall include when pay raises were granted during the test year, the effective date(s), and the level of the raises.

(C) W/P H-4-3 - Part-time Employees: A schedule detailing the number of part-time employees and the amount paid per month during the test year, to the extent not included and specifically identified in W/P H-4, and part-time employee charges for the two (2) preceding years.

(D) W/P H-4-4 - Payroll Distribution: A schedule which provides the test year payroll distribution to each major expense category, to clearing accounts and to capital accounts. Also, explain the labor cost capitalization rate and provide the study or other documentation on which the distribution is based, if applicable.

(E) W/P H-4-5 - Work Force Level Change: An analysis which identifies and explains any change in the work force level during, or after, the test year. A change in the work force constitutes any variance of five percent (5%) of the work force or ten (10) employees, whichever is greater. If any employee reduction program has been implemented or is planned, provide a complete description of the program, including the relevant dates and the dollar impact.

(F) W/P H-4-6 - Wage and Salary Surveys: Copies of all wage and salary surveys considered by the utility during the test year and the two (2) preceding years.

(5) W/P H-5 - Payroll Taxes: Copies of all employment tax returns for the test year which include costs assigned to the Oklahoma jurisdiction. Show the distribution of the payroll taxes by major expense category, clearing accounts, and capital accounts.

(6) W/P H-6 - Accrued Compensated Absences: A schedule which provides the balances of accrued compensated absences for the thirteen (13) months of the test year.

(7) W/P H-7 - Employee Benefits: A schedule, by type, of the amount of all employee benefits for the test year. Identify the information for all active employees and retirees.

(8) W/P H-8 - Monthly Pension Cost Payable: A schedule of the monthly ending balances of pension cost payable for the test year and the first preceding year.

(A) W/P H-8-1 - Pension Cost Accrual Procedure: An explanation of the utility's procedure for accruing and paying pension costs to the plan administrator.

(B) W/P H-8-2 - Actuarial Reports: A copy of the actuarial report which shows the pension funding requirement and accrual accounting for the test year.

(9) W/P H-9 - Directors' Fees & Executive Salaries: A schedule of the fees and salaries paid to directors and the top twenty (20) executives during the test year. Include all benefits including, but not limited to, dues and/or memberships paid, automobiles, insurance premiums and stock options.

(A) W/P H-9-1 - Directors/Executives Expense Vouchers: A schedule of expense vouchers for the directors and the top twenty (20) executives for the test year.

(B) W/P H-9-2 - Executive Salary Surveys: Copies of all executive salary surveys considered by the utility during the test year and the two (2) preceding years, if they are in addition to those provided at W/P H-4-6.

(10) W/P H-10 - Summary of Insurance Expenses: A summary of insurance expenses by type (liability, property, workers compensation, etc.). Provide an analysis, by month, of any prepaid insurance balances which details the beginning balances, payments to vendors, expense accruals, adjustments and the ending balance by month for the test year.

(A) W/P H-10-1 - Insurance Policies: A schedule of major insurance policies in effect during the test year reflecting amount paid, level of coverage and duration.

(B) W/P H-10-2 - Self-Insurance Expense: An analysis of any self-insurance program. The analysis shall provide a monthly summary of self-insurance which shows the beginning balance, debits, credits and the ending balance for the test year and the two (2) preceding years.

(11) W/P H-11 - Legal Contract Settlements: A statement of total amounts of legal settlements for the test year and two (2) preceding years.

(12) W/P H-12 - Outside Services: A schedule of the major expenses for outside services for the test year. The schedule shall include payees, amounts, services performed, and accounts charged. Also provide the annual amounts for the first preceding year.

(13) W/P H-13 - Regulatory Expenses: A schedule of Oklahoma jurisdictional regulatory expenses for the test year and the first preceding year. The regulatory expenses shall identify legal and consulting fees separately and include payee, amounts, accounts charged and the cause number. Also, estimate the additional cost expected for the present cause, excluding labor and labor-related costs, identifying the amounts for legal, consulting and any itemized additional costs.

(14) W/P H-14 - Legislative Advocacy: A schedule which provides a summarization of all payments to individuals registered to lobby in Oklahoma on behalf of the utility (including employees of the utility) during the test year. For each lobbyist, include the following information: identification, account charged, total payments during the test year and the amounts included in the cost of service. Copies of expense reports for the test year shall be provided for all individuals reported in the summarization. This schedule is required only to the extent that the utility has included these expenses in its rate application.

(15) W/P H-15 - Administrative Expenses: Provide supporting documentation showing the transfer of administrative or general office expenses to nonutility functions.

(16) W/P H-16 - Summary of Dues, Donations, Contributions and Memberships: A summary by account of dues and membership fees paid to civic and social organizations and donations and contributions during the test year. This schedule is required only to the extent that the utility has included these expenses in its rate application.

(17) W/P H-17 - Advertising: A schedule of advertising expenses by the account charged. Also provide scripts, proofs, etc. upon request. This schedule is required only to the extent that the utility has included these expenses in its rate application.

(18) W/P H-18 - Taxes Other Than Income Tax: A summary schedule of taxes by type and account numbers.

(19) W/P H-19 - Ad valorem Taxes Paid: A schedule showing the total ad valorem taxes paid and/or owed which relate to the test year and the first preceding year. Provide the balances at the beginning of each of these years for plant in service, material and supplies and, if applicable, gas in storage. Identify any ad valorem taxes which were capitalized in either of these years and identify the related property. Also, identify any payments or refunds applicable to a period other than the test year which were reflected

in the accounts during the test year.

(20) W/P H-20 - Analysis of Bad Debt Expenses: A schedule detailing bad debt write-offs, net of collections, for the test year and the two (2) preceding years, for Oklahoma jurisdiction, if applicable. Also show the applicable gross revenues and provide a copy of the bad debt charge-off policy.

(21) W/P H-21 - Informational/Instructional/Miscellaneous/ Sales Expense: A schedule detailing the expenses charged, labor shown separately, for the following accounts, if applicable or not otherwise provided:

- (A) Informational/Instructional
- (B) Sales expense
- (C) Miscellaneous customer service

(22) W/P H-22 - Large Invoices Excluding Cost of Gas, Fuel and Purchased Power and Taxes: Electric, gas and Class A telephone utilities shall provide a listing of all invoices over \$250,000 for the test year. Rural electric cooperatives and Class B telephone companies shall provide a listing of all invoices over \$75,000 for the test year.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-29. Section I - Depreciation and amortization

Section I - Depreciation and Amortization of the supplemental package shall include the schedules reflecting depreciation rates by classes of plant and depreciation accruals for the test year showing amounts charged to operations, clearing accounts, construction, etc. When items of amortization appear in the income statements, information showing the basis of such items shall also be included in this section. Telephone utilities participating in the three way meeting process are exempt from paragraphs (1), (2) and (4) of this Section.

(1) W/P I-1 - Detail Schedule of Depreciation: A schedule of depreciable items formatted in accordance with Appendix A to this Chapter.

(2) The items set forth in paragraph (1) of this section shall be subtalled by functional group or, in the case of a multi-company utility, by functional group for each company. If available, the account codes, account descriptions, and test year end plant balances shall conform to those provided in the schedules required in Section C of the application package. The test year end balances shall conform to those provided in the schedules required in Section D of the application package. The current and utility-proposed depreciation rates shall conform to those provided in Section I of the application package.

(3) W/P I-2 - General Depreciation Information: A workpaper which provides the following information:

- (A) The date of the last depreciation study performed.
- (B) The Cause and Order numbers approving the depreciation rates currently in effect.
- (C) The procedure and technique used to develop the current depreciation rates.
- (D) The procedure and technique used to develop the proposed depreciation rates.

(4) W/P I-3 - Study of Proposed Depreciation Rates: A copy of the study performed to support the utility-proposed depreciation rates. If no such study was performed, provide a discussion of how the utility plans to support changes in depreciation rates and provide justification on an

account by account basis as necessary.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-30. Section J - Income taxes

Section J - Income Taxes of the supplemental package shall contain workpapers as follows:

- (1) W/P J-1 - Test Year Calculation of Taxes: An analysis showing the separate calculation of current income tax expense and deferred income tax expense.
- (2) W/P J-2 - Reconciliation of Taxes: A reconciliation of per book income and taxable income for the test year.
- (3) W/P J-3 - Deferred Income Taxes: A reconciliation of deferred income taxes recognized for ratemaking purposes and used as a rate base deduction with the recorded deferred income taxes. Identify all differences.
- (4) W/P J-4 - Deferred Income Taxes-Timing Differences Other Than Depreciation: A schedule of deferred income taxes showing the timing differences applicable to differences other than those related to depreciation. Also include a calculation of overstated or understated deferred income taxes related to the above which resulted from changes in income tax rates and the amounts which have been amortized and included in the cost of service or which resulted in refunds to the utility's ratepayers.
- (5) W/P J-5 - Deferred Income Taxes-Depreciation: An analysis of deferred income tax liabilities related to depreciation to the extent they apply as follows:

Plus Net depreciable book basis
Minus Equity allowance for funds used during construction
Minus Investment tax credit basis adjustment
Minus Other identified permanent differences
Equals Net book basis less major permanent differences
Minus Net depreciable tax basis
Equals Difference
Times Current tax rate
Equals Deferred tax liability
Minus Depreciation related to deferred income taxes per books
Equals Difference from recorded deferred income tax liability

- (6) W/P J-6 - Deferred Income Taxes Unrecorded: A list, with explanations, for the unrecorded deferred income tax liabilities identified in W/P J-5 in (5) of this Section. Identify the amount of the unrecorded deferred income taxes that shall be collected from the ratepayers, and provide all documentation and explanations to support that position. Identify the amount of any adjustment that shall be made to deferred income taxes for unrecorded amounts.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-31. Section K - Jurisdictional separations and allocations/Cost of service

Section K - Jurisdictional Separations and Allocations/Cost of Service of the supplemental package shall contain data and workpapers to support a utility's separations and allocation factors.

(1) For gas and electric utilities and rural electric cooperatives:

(A) W/P K-1 - Rate of Return: A summary of each jurisdictional class data which shall include, but not necessarily be limited to, the following information by account code:

- (i) Revenues from sales of electricity or natural gas.
- (ii) Other revenues.
- (iii) Fuel, purchased power or natural gas revenues.
- (iv) Operating & maintenance expenses.
- (v) Depreciation and amortization expenses.
- (vi) Taxes other than income taxes.
- (vii) Provision for income taxes.
- (viii) Gross plant.
- (ix) Reserve for depreciation.
- (x) Construction work in progress (CWIP).
- (xi) Plant held for future use.
- (xii) Materials, supplies and fuel inventories.
- (xiii) Gas in storage.
- (xiv) Cash working capital.
- (xv) Prepayments.
- (xvi) Customer deposits.
- (xvii) Accumulated deferred income taxes (if applicable).
- (xviii) Customer advances.
- (xix) Property insurance (if applicable).
- (xx) Other items as needed.

(B) W/P K-2 - Allocation of Revenue Deductions to Jurisdictions: A schedule which provides all revenue deductions and shall include all deductions from income used to develop return. Additionally, all allocations shall be labeled in such a manner as to identify the basis for each cost allocation, and all allocators shall be thoroughly defined. The schedule shall provide the following as allocated to the jurisdictions:

- (i) Operating and maintenance expense by the applicable regulatory primary account.
- (ii) Depreciation expenses, consistent with the plant presentation contained in 165:70-5-23 and 165:70-5-24.
- (iii) Any other revenue deductions.

(C) W/P K-3 - Allocation of Rate Base to Jurisdictions: A schedule which contains the same information as required in subparagraph (B) of this paragraph as that information pertains to rate base. The schedule shall provide the following as allocated to the jurisdictions:

- (i) Gross plant or net plant by the applicable regulatory primary account.
- (ii) If gross plant was provided in (i) of this subparagraph, accumulated depreciation and amortization by:
 - (I) Industry-specific major function; and,
 - (II) If available, the applicable regulatory primary account.

- (iii) CWP.
- (iv) Materials, supplies and fuel inventories.
- (v) Gas in storage.
- (vi) Cash working capital.
- (vii) Any other rate base items.
- (viii) Prepayments.

(D) W/P K-4 - Classification of Expenses: If the utility classifies expenses (e.g., energy, demand, customer, etc.), it must provide a schedule or other designation by account which provides the separation of expenses by classification. Identify revenue-related and directly-assigned expenses as such. Care shall be taken to ensure that the assignment of all expenses from accounts to classification is identified. This workpaper is not applicable to cost allocations covered by paragraph (3) of this Section.

(E) W/P K-5 - Classification of Rate Base: If the utility classifies rate base (e.g., energy, demand, customer, etc.), it must provide a schedule or other designation by account which provides the separation of expenses by classification. Identify revenue-related and directly-assigned items as such. Care shall be taken to ensure that the assignment of all expenses from accounts to classification is identified. This workpaper is not applicable to cost allocations covered by paragraph (3) of this Section.

(F) W/P K-6 - Allocation Factors: Workpapers which provide the following data:

(i) Allocation factors and associated data which shall include the following information for every factor used to assign costs to each jurisdiction:

(I) The designation of the allocation factor used in Schedules K-1 through K-5 required in (A) through (E) of this paragraph.

(II) A description of the allocation factor if a code designation is used.

(III) The relative (decimal representation of percentages) amounts constituting the allocation factors.

(IV) The absolute amounts constituting the factors. That is, the Kw, kWh, Loss Of Load Probability, Mcfs, MMBtu, contract demand MMBtu, number of customers, or dollars, etc., that are used as the numerators and divisors in calculating the allocation factors in (III) of this unit.

(ii) Workpapers and explanations which support the calculation of each allocation factor listed in (i) of this subparagraph. To the extent that key operating statistics provided in Section M are employed in directly developing the allocation factors, workpapers shall be referenced directly to that data.

(iii) A description of the direct assignment(s) of costs which provide the justification for such assignment.

(G) W/P K-7 - Demand and Energy Factors: A listing which provides the demand and energy loss factors used in the cost of

service study, by jurisdiction and:

(i) The information required in this workpaper shall be detailed by voltage level for electric companies.

(ii) The information required in this workpaper shall be detailed by distribution or transmission service for gas companies.

(H) W/P K-8 - Support for Production Allocation Methodology or Demand Allocation Factors: A workpaper which provides the rationale for the selection of each allocation methodology used in the jurisdictional cost of service or a cross-reference to where such information is otherwise provided. The rationale may consist of a cost justification, a special study, and/or a narrative explanation with supporting workpapers.

(I) W/P K-9 - Summary of Changes in Allocation Factors: A schedule which details the allocation factors which differ from those filed by the utility in the utility's last general rate review.

(J) W/P K-10 - Payroll Expense Distribution: A schedule of the test year adjusted payroll expense by industry-specific functional group and by applicable regulatory primary account, if such information was relied upon by the utility for allocations.

(K) W/P K-11 - Financial Data for Noninvestor-owned Utilities: A schedule which provides total operating margins, times interest earned ratios (TIER) and debt service coverage (DSC) by rate jurisdiction.

(2) For telephone companies: Telephone companies should utilize FCC jurisdictional cost separation procedures to develop and present data requested by subparagraphs A and B below:

(A) W/P K-1 - Separation of Expense and Rate Base - Workpapers which provide expense and rate base columns for total Oklahoma operations, adjustments required to calculate the amount subject to Oklahoma jurisdictional separations, intrastate factors and intrastate jurisdictional amounts. The columnar data should be presented in at least major account level of detail. The test period total of jurisdictional amounts should correspond to amounts presented in Schedules B and H of Section 165:70-5-4.

(B) W/P K-2 - Allocation of Expense and Rate Base: A schedule for each set of factors described in Section 165:70-5-4 Schedule K-2, including a brief description (name or identifier) of the factor, the factor, categories to which it is applied, total amount by category being allocated, and the amount allocated to Oklahoma. If necessary, additional columns should be added to indicate intrastate Oklahoma amounts.

(3) Holding company cost allocations to OCC jurisdictional utilities or allocations from OCC jurisdictional utilities to their nonjurisdictional affiliates: To the extent not otherwise provided, the utility shall provide all cost studies, workpapers, internal policies, procedures and details depicting the amounts allocated, allocation factors, and a description of each allocation methodology.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-32. Section L - Rate design cost of service

Section L - Rate Design Cost of Service of the supplemental package shall contain cost of service studies, workpapers and data necessary to support the studies used to support proposed rates or rate structures.

(1) For gas and electric utilities and rural electric cooperatives:

(A) W/P L-1-Rate of Return: A summary of data for each Oklahoma jurisdictional class which shall include, but not necessarily be limited to, the following information:

- (i) Revenues from sales of electricity or natural gas.
- (ii) Other revenues.
- (iii) Fuel, purchased power or natural gas revenues.
- (iv) Operating & maintenance expenses.
- (v) Depreciation and amortization expenses.
- (vi) Taxes other than income taxes.
- (vii) Provision for income taxes.
- (viii) Gross plant.
- (ix) Reserve for depreciation.
- (x) Construction work in progress (CWIP).
- (xi) Plant held for future use.
- (xii) Materials, supplies and fuel inventories.
- (xiii) Gas in storage.
- (xiv) Cash working capital.
- (xv) Prepayments.
- (xvi) Customer deposits.
- (xvii) Accumulated deferred income taxes (if applicable).
- (xviii) Customer advances.
- (xix) Property insurance (if applicable).
- (xx) Other items as needed.
- (xxi) W/P L-1-1 - Existing Rate Schedules/Existing Rate Classes: Summaries of the rate of return and relative rate of return under existing rate schedules using existing rate classes.
- (xxii) W/P L-1-2 - Proposed Rate Schedules/Existing Rate Classes: Summaries of the rate of return and relative rate of return utilizing the proposed rate schedules and existing rate classes.

(B) W/P L-2 - Allocation of Revenue Deductions to Rate Classes: A schedule which shall provide all revenue deductions and includes all deductions from income used to develop rate of return. Additionally, all allocations shall be labeled in such a manner as to identify the basis for each cost allocation, and all allocators shall be thoroughly defined. The schedule shall provide the following, by allocation to the rate classes:

- (i) Operating and maintenance expense identified by the applicable regulatory primary account.
- (ii) Depreciation expenses, consistent with the plant presentation at Sections C and D.
- (iii) Any other revenue deductions.

(C) W/P L-3 - Allocation of Rate Base to Rate Classes: A schedule which shall provide all rate base allocations. The schedule shall provide the following, by allocation to the rate classes:

- (i) Gross plant or net plant identified by the applicable regulatory primary account.
- (ii) If gross plant was provided in (i) of this subparagraph, accumulated depreciation and amortization shall be provided by industry-specific major function, if applicable, and, if available, by the applicable regulatory primary account.
- (iii) CWIP by the industry-specific major function, if applicable.
- (iv) Materials, supplies and fuel inventories identified utilizing the industry-specific major function type of material and supplies, if applicable.
- (v) Gas in storage.
- (vi) Cash working capital identified by the industry-specific major function, if applicable.
- (vii) Any other rate base items.
- (viii) Prepayments identified by the industry-specific major function, if applicable.

(D) W/P L-4 - Classification of Expenses: If the utility utilizes a specific rate design (e.g., demand, energy, customer, etc.) requiring classification of costs into that particular category, the utility shall provide a schedule which illustrates separation of expenses into such categories. Care shall be taken to ensure that the assignment of all expenses from accounts to classification is identified.

(E) W/P L-5 - Classification of Rate Base: If the utility utilizes a specific rate design (e.g., demand, energy, customer, etc.) requiring classification of costs into that particular category, the utility shall provide a schedule which illustrates separation of rate base into such categories. Care shall be taken to ensure that the assignment of all rate base from accounts to classification is identified.

(F) W/P L-6 - Allocation Factors: Workpapers which provide the following data:

- (i) Allocation factors and associated data which shall include the following information for every factor used to assign costs to each customer class:
 - (I) The designation of the allocation factor used in Schedules L-1 through L-5 required in (A) through (E) of this paragraph.
 - (II) A description of the allocation factor if a code designation is used.
 - (III) The relative (decimal representation of percentages) amounts constituting the allocation factors.
 - (IV) The absolute amounts constituting the factors. That is, the kW, kwh, Loss of load probability, Mcfs, MMBtu, contract demand MMBtu, number of customers, or dollars, etc., that are used as the numerators and divisors in calculating the allocation factors in (III) of this unit.
- (ii) Workpapers and explanations which support the calculation of each allocation factor listed in (i) of this

subparagraph. To the extent that key operating statistics provided in Section M are employed in directly developing the allocation factors, workpapers shall be referenced directly to that data.

(iii) A description of the direct assignment(s) of costs which provide the justification for such assignment.

(G) W/P L-7 - Demand and Energy Factors: A listing which provides the demand and energy loss factors used in the cost of service study, by Oklahoma jurisdictional customer class and:

(i) The information required in this workpaper shall be detailed by voltage level for electric companies.

(ii) The information required in this workpaper shall be detailed by distribution or transmission service for gas companies.

(H) W/P L-8 - Unit Cost Analysis: Schedules which provide the following unit component costs under present rate classes. Component costs refer to classified revenue requirement by rate class. For example, dollars of demand, energy, and customer revenue requirement associated with each rate class. Unit component costs refer to average component costs which are expressed as follows:

(i) Electric companies shall provide costs in dollars per billing kilowatt, costs per kilowatt-hour, and costs per customer.

(ii) Gas companies shall provide costs per Mcf or MMBtu and costs per customer.

(I) W/P L-9 - Support for Production Allocation Methodology or Demand Allocation Factors: A workpaper which provides the rationale for the selection of each allocation methodology used in the class cost of service or a cross-reference to where such information is otherwise provided. The rationale may consist of a cost justification, a special study, and/or an explanation with supporting workpapers.

(J) W/P L-10 - Summary of Changes in Allocation Factors: A schedule which details the allocation factors which differ from those filed in by the utility in the utility's last general rate review.

(K) W/P L-11 - Payroll Expense Distribution: A schedule of the test year adjusted payroll expense by industry-specific functional group and by applicable regulatory primary account, if such information was relied upon by the utility for allocations.

(L) Load Research Data (**for electric utilities, RECs and, to the extent available, for gas companies**):

(i) W/P L-13 - Demand Data by Strata: Schedules which indicate, for any rate class for which hourly demand data (or demand data for intervals other than one hour) is available for each customer in the class, and for each month of the test year, the sum of customer noncoincident maximum demand and rate class peak demand. Distribution utilities which cannot obtain system coincident demand data shall provide estimated contribution to system billing demand.

(ii) W/P L-14 - Demand Estimates Methodology: A description, for the rate classes for which information has not been provided in W/P L-13, of the methodology used to develop demand estimates. Sources of any data used to develop these estimates shall be included.

(iii) The demand data requested in W/P L-13 and W/P L-14 are defined as follows:

(I) Rate Class Noncoincident Peak Demand (NCP) - For each rate class, this shall be the sum of the customers' maximum demand, regardless of the time of occurrence.

(II) Rate Class Peak Demand or Maximum Diversified Demand (MDD) - This shall be the sum of the customers' diversified demands coincident with the time of the rate class peak.

(III) Contribution to System Peak Demand or Coincident Peak (CP) - For each rate class, this shall be the sum of the customers' diversified demands coincident with the time of the system peak.

(M) W/P L-15 - Financial Data for Noninvestor-owned Utilities: A schedule which provides total operating margins, times interest earned ratios (TIER) and debt service coverage (DSC) by rate class.

(2) For telephone companies: W/P L-1 - All workpapers for cost studies which support rates and charges for existing and proposed services in accordance with the provisions of 165:70-5-4(d)(13).

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-33. Section M - Proof of Revenue/Rate Design

Section M - Proof of Revenue/Rate Design of the supplemental package shall provide supporting data to show that the proposed rates will produce the revenues that the utility states in Schedule H-1 of the application package.

(1) For gas and electric utilities and RECs:

(A) W/P M-1 - Fuel or Purchased Energy Factor: A schedule which provides the calculation of the current fuel or purchased energy factor and any proposed factor, if different than currently approved.

(B) W/P M-2 - Proposed Changes in Miscellaneous Charges: A schedule which provides, for each new miscellaneous charge or change in existing miscellaneous charge, a brief description of the charge, the present charge, the proposed charge and the justification for the proposed change.

(C) Rate Class Definition:

(i) W/P M-3 - Present and Proposed Rate Classes: A schedule which provides the present and proposed rate classes and designations. Present rate classes corresponding to proposed rate classes shall be indicated.

(ii) W/P M-3-1 - Justification of Proposed Changes: A workpaper which provides the rationale for any changes in the class structure and/or rate design or a cross reference to where such information is otherwise provided.

(D) Rate Design Analysis Data:

(i) W/P M-4 - Proof of Revenue Statement: A proof of revenue statement (or a pro forma revenue statement) which provides the expected or estimated adjusted billing units, proposed prices, and the resulting base rate revenue and fuel revenue for the proposed rate classes. The statement shall also list other revenue. The result shall set forth total expected revenue by rate class and shall be equal, within rate design limits, to the revenue requested by the utility from each rate class. The sum of the revenue requested from each rate classes, plus other listed system revenue, shall equal the total requested revenue of the total utility, within rate design limits. The total adjusted sales volume used in this proof of revenue shall correspond to the total adjusted sales volume in Schedule H-2.

(ii) W/P M-4-1 - Proof of Revenue/Present Rates: A proof of revenue statement similar to the one required at W/P M-4, using present rates in the revenue calculations.

(iii) W/P M-5 - Bill Comparisons: A bill comparison between present and proposed rates by service category or other classification (e.g. residential, small commercial).

(iv) W/P M-6 - Test Year Data by Rate Class: Schedule(s) which provide the following, by month, for the test year:

(I) Average number of customers.

(II) Year end number of customers.

(III) Test year adjusted number of customers.

(IV) Test year unadjusted sales and nonsales volumes.

(V) Increase or decrease in sales and nonsales volumes adjusted for abnormal weather where applicable.

(VI) Increase or decrease in sales and nonsales volumes adjustment for changes in the number of customers.

(VII) Increase or decrease in sales and nonsales volumes due to other factors.

(VIII) Total adjusted sales and nonsales volumes.

(E) W/P M-7 - Weather Normalization: Statements and/or workpapers which provide the relevant statistical measures along with the statistical modeling method utilized to derive weather normalization adjustment to actual test year data.

(F) W/P M-8 - Historical Sales Data: Schedule(s) which provide 60-month history of customer/sales data, ending with the test year end, for weather-sensitive usage classes only.

(G) W/P M-8-1 - 60-Month Sales & Consumption: A schedule of the sales and consumption by rate class, by month for sixty (60) months ending with the last month of the test year. The data shall be provided by billing cycle, if used by the utility in its weather normalization study.

(H) W/P M-9 - Weather Data: Schedules which provide the actual heating and cooling degree days (gas utilities to provide heating days only) by month corresponding with the 60-month sales by

customer class. The data shall be provided by billing cycle, if used by the utility in its weather normalization study.

(I) W/P M-10 - Normal Degree Days: A schedule which provides the 30-year normal degree days. The data shall be provided by billing cycle, if used by the utility in its weather normalization process.

(2) For telephone companies:

(A) W/P M-1 - Revenue Calculations - Local Exchange: This schedule shall contain details of revenue calculations for local exchange services.

(i) Revenue data of all recurring and nonrecurring services and equipment provided by the company shall be grouped by tariff category using the following format:

(I) Column A - Item of service.

(II) Column B - Annualized number of working units at year end.

(III) Column C - The present rate.

(IV) Column D - Test year revenues using present rates (Columns B times C).

(V) Column E - The proposed rate.

(VI) Column F - Test year revenues using proposed rates (Columns B times E).

(VII) Column G - The total revenue change (Column D plus or minus Column F).

(VIII) Column H - The percent change represented by Column G.

(ii) If other than actual test year units have been used in the calculation of revenue from nonrecurring charges or if other than the end-of-year units have been used in the calculation of revenue from monthly rates, an explanation shall be provided stating what units were used, the derivation of the units used, and the reasoning and support for the use of such units. For any adjustment to test year units based on regression analysis, the following shall be provided:

(I) The functional form including estimated coefficients and their t-statistics.

(II) The corrected R squared and Durbin-Watson statistics.

(III) The number of observations used in the analysis.

(IV) The estimation period.

(V) The sum of squared residual.

(VI) A listing of variables tried but deleted from the final specification.

(iii) Column A shall list service and equipment groups which exist pursuant to OCC tariff. There shall be revenue summaries for each group and a total for all services.

(B) Revenue Calculations - MTS.

(i) W/P M-2: This schedule shall contain details of the revenue calculation for Message Telecommunications Service (MTS) as follows:

(I) A schedule by dollar amount of the company's total intrastate MTS revenue for the test year, whether received through toll settlements or not.

(II) An explanation of the MTS pool agreement with other telephone companies which produces all or a portion of the applicant's intrastate test year MTS revenues. Copies of the agreement presently in use for this purpose shall be attached. The nature of the toll cost studies which were used and the time periods for which studies were made shall be stated and summary sheets from the appropriate studies shall be furnished.

(III) An explanation, with copies of appropriate supporting material, shall be provided for the calculations of the separations procedures used to arrive at the applicant's test year intrastate portions of revenues, investment, expenses, taxes, reserves, and any other items applicable to the case.

(IV) An explanation shall be provided for any adjustments made to separations factors from the cost study.

(ii) The telephone company, unless it concurs in a toll tariff previously approved by the OCC, shall maintain a statistically valid data base and model for the purpose of testing price changes and, upon request of the Staff, will provide the revenue effects of proposed rate scenarios.

(C) Revenue Calculations - WATS:

(i) W/P M-3: This schedule shall contain details of the revenue calculations for Wide Area Telecommunications Service (WATS). The calculations shall show recurring and nonrecurring revenues separately, if available. The schedule shall have the general format described in W/P M-1.

(ii) The telephone company, unless it concurs in another company's previously-approved jurisdictional WATS tariff, shall maintain a statistically valid data base and model for the purpose of testing price changes and, upon request of the Staff, will provide the revenue effects of proposed rate scenarios.

(D) Revenue Calculations - Private Line: W/P M-4 shall be a schedule which contains details of revenue calculations for intrastate Private Line services which are not contained in the Special Access tariff. The calculations shall show recurring and nonrecurring revenues separately, if available. The closed end of foreign exchange service shall be included in this schedule where applicable. The schedule shall have the general format described in W/P M-1.

(E) Revenue Calculations - Access Charges: W/P M-5 shall be a schedule which contains details of recurring and nonrecurring revenue calculations for services contained in the access tariffs. All access revenues must be included, whether received through a pooling process or billed directly. The open and closed ends of

foreign exchange service shall be included in this schedule where applicable. This schedule shall have the same general format described in W/P M-1. Revenue calculations shall list service and equipment groups which exist pursuant to OCC tariff. There shall be revenue summaries for each group and a total for all services.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-34. Section N - Proposed rate schedules

Section N - Proposed Rate Schedules of the supplemental package shall reflect the existing rate schedules clearly marked with the proposed changes to these schedules. Each existing rate schedule shall also contain tariff symbols indicating each change made to the rate schedule. The tariff symbols shall be clearly marked in the margin of the existing rate schedule. A vertical line which clearly identifies the exact number of lines being changed shall also be contained in the left margin between the tariff symbols. The tariff symbols to be used are shown in 165:70-1-2.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-35. Section O - Notice

No workpapers shall be required in Section O - Notice of the supplemental package.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-36. Section P - Affiliate information

Section P - Affiliate Information of the supplemental package shall contain workpapers which provide the following information relating to a utility's affiliates and/or subsidiaries, to the extent that such affiliates/subsidiaries provide a service for which the utility seeks cost recovery in its rate application:

- (1) W/P P-1 - Consolidated Companies and Subsidiaries Balance Sheet.
- (2) W/P P-2 - Income Statements for test year and first preceding year.
- (3) W/P P-3 - Cost Allocation Basis, if applicable.
- (4) W/P P-4 - Affiliate/Subsidiary General Data: Narrative(s) providing:
 - (A) The date of establishment of each affiliate and/or subsidiary;
 - (B) A statement of each affiliate and/or subsidiary's corporate purpose;
 - (C) The utility company resources used in establishment of each affiliate and/or subsidiary;
 - (D) The utility company resources currently being used by each affiliate and/or subsidiary, either directly or indirectly.
- (5) W/P P-5 - Affiliate/Subsidiary Contracts: Copies of any and all contracts with affiliates and/or subsidiaries.
- (6) W/P P-6 - Assets Sold/Transferred to Affiliates/Subsidiaries: A listing, by asset category and net book value, of assets sold or transferred to any affiliate and/or subsidiary since the utility's last rate case.
- (7) W/P P-7 - Services/Products from Affiliates/Subsidiaries: A listing and description of the services and/or products (and related costs) provided by each affiliated and or subsidiary company to the utility for the test period.
- (8) W/P P-8 - Services/Products to Affiliates/Subsidiaries: A listing of any significant utility company facilities and/or resources, whether plant, other assets or personnel, that were used during the test year, by each affiliate

and/or subsidiary. The cost of the resources shall be indicated.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-37. Section Q - Fuels and/or purchased power

Section Q - Fuels and/or Purchased Power of the supplemental package shall contain workpapers and documentation, as appropriate, relating to fuels for electric generation, heat rate, purchased power and/or natural gas for resale, unless an annual fuel audit has been, or is being, performed coinciding with the utility's test year or for any portion of the test year not covered by such annual fuel audit, as follows:

(1) Fuels for electric generation:

(A) Natural gas for electric generation fuel:

(i) W/P Q-G1 - Gas Used: A schedule which provides, by month, the gas used to fire boilers for the test year. The schedule shall include the source (direct purchase, storage on a LIFO basis, withdrawals or exchange) and cost per MMBtu weighted average cost of gas.

(ii) W/P Q-G2 - Journal Entries/Inventory Transfer: Copies of the supporting documentation to record gas usage to the proper fuel expense account(s).

(B) Coal for electric generation fuel:

(i) W/P Q-C1- Coal burned: A schedule which provides, by month, the coal burned to fire boilers for the test year. The schedule shall include the source (direct purchase or inventory LIFO layer usage) and cost per ton and MMBtu.

(ii) W/P Q-C2 - Heat Content: A schedule which provides the determination of heat content (MMBtu/ton ratio).

(iii) W/P Q-C3 - Journal Entries/Inventory Transfer: Copies of the supporting documentation to record coal burned to the proper fuel expense account(s).

(iv) W/P Q-C4 - Test Year Coal Inventory: A schedule which provides, by plant and month, an analysis of the test year coal inventory. The schedule shall include burn, purchase and inventory level maintenance.

(C) Fuel oil for electric generation fuel:

(i) W/P Q-01 - Fuel Oil Used: A schedule which provides, by month, the oil used for the test year. The schedule shall include the cost per gallon and MMBtu.

(ii) W/P Q-02 - Journal Entries: Copies of the journal entries to record fuel oil usage to the proper account(s).

(D) Fuel contracts - Contracts negotiated: A list of all contracts which were negotiated or renegotiated during the test year and all years subsequent to the last completed fuel audit.

(2) W/P Q-HR1 - Heat Rate Calculations (**for electric generation**): A schedule which provides the monthly calculations of heat rate regarding each generation plant during the test year.

(3) Purchased power (**for electric utilities**):

(A) Investor-owned utilities: W/P Q-PP2 - Monthly Purchased Power: A schedule which provides the monthly cost and quantity of purchased power, by source (cogenerator, independent power producer, federal or state power agency, or generation and

transmission company), for the test year.

(B) Rural Electric Cooperatives:

(i) W/P Q-PP1 - Purchased Power Resold: A schedule which provides, by month and total, the cost and quantity of all purchased power for the test year.

(ii) W/P Q-PP2 - Other Purchased Power Information: A schedule which provides, by month and consumer, all special sales and kw credit flow-through from any supplier for the test year.

(4) Natural gas for resale: W/P Q-R2 - Gas Purchases: A schedule which provides gas purchases which correspond to the billing months on W/P H-1. The schedule shall include storage withdrawals on a LIFO basis and exchange balances at the beginning and the end of the test year.

(5) W/P Q-R2 - Sales Programs: A schedule which provides an annualization of fuel, purchased power or gas purchases as appropriate for any special sales programs.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

PART 7. ADDITIONAL REQUIREMENTS

165:70-5-45. Confidentiality agreement

At the time of filing its Notice of Intent, the utility shall submit a proposed Confidentiality Agreement. If the utility and Staff cannot reach an agreement regarding the terms of the Confidentiality Agreement, the dispute will be submitted to the Commission en banc for resolution.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

PART 9. ACCOUNTING PROVISIONS

165:70-5-60. Accounting treatments specifically approved by the Commission

(a) The utility shall identify, by PUD Cause No. and OCC Order No., each instance where the utility has received specific approval from the Commission to adopt a particular accounting treatment related to the deferral and/or recovery of expenses or revenues.

(b) The utility shall identify, by PUD Cause No. and OCC Order No., each instance where the utility has received approval from the Commission to defer, for future recovery consideration, any portion of its plant investment, or where the recovery of a plant investment is subject to a regulatory phase-in plan.

(c) The utility shall identify how the accounting treatment identified in (a) or (b) of this Section is reflected in its current filing.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-5-61. Recent accounting pronouncements

(a) The utility shall identify and explain any new accounting pronouncements that have been adopted by the Financial Accounting Standards Board (FASB) within two (2) years prior to the test year and incorporated in the utility's rate application, which have a material effect thereon.

(b) The financial implication(s) of each new accounting pronouncement identified in response to (a) of this section shall be specifically explained and the financial implication(s) quantified.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

SUBCHAPTER 7. FILING REQUIREMENTS - CLASS C OR D UTILITIES

165:70-7-1. General filing instructions - Class C or D utilities

(a) An application for general rate change by a Class C or D utility shall include all information, forms and schedules described in this Subchapter and conform to the formats depicted in Appendices C through N to this Chapter. In preparing the information specified in 165:70-7-3 and 165:70-7-4, the following instructions are applicable:

- (1) All schedules shall be mathematically correct and properly cross-referenced.
- (2) All schedules shall be designated and in the format as provided in Appendices C through N.
- (3) Schedules submitted shall clearly indicate the utility name, the nature and content of the schedule and the test period covered.
- (4) Dollar amounts shall be rounded to the nearest dollar. No entry shall be left blank. If an amount is zero, enter a zero.
- (5) Careful attention shall be given that all material submitted is clearly legible.

(b) Additional information which the Class C or D utility considers important to the evaluation of the general rate change may be submitted with the application. The additional information shall comply with the requirements of (a) of this Section and be referenced in such a manner as to systematically follow the schedules described in 165:70-7-3 and 165:70-7-4.

(c) The original and six (6) copies of the completed application and required schedules shall be submitted to the Director for review.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-7-2. Deficiency procedure

(a) If the Director finds the application package and/or supplemental package of a Class C or D utility are not in substantial compliance with the requirements of this Chapter, the Staff Response shall state the filing is a deficient filing. The deficiencies and the requirement(s) necessary to cure the deficiencies shall be stated in the Staff Response.

(b) Unless the utility and the Staff resolve a dispute regarding whether the filing is a deficient filing within seven (7) business days of the Staff Response, such dispute may be submitted to the Commission en banc for resolution.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-7-3. Specific required schedules for Class C or D gas companies

(a) Unless otherwise authorized in writing from this Commission, Class C or D gas utilities shall, when filing an application for approval of a general rate change, prepare and submit with its application the following exhibits, schedules and evidence:

- (1) Application: The application shall be in the format depicted at Appendix B to this Chapter or in a comparable format which contains the identical information. The application shall contain a detailed schedule of the rates and charges currently in effect and a detailed schedule of the proposed rates and charges.

(2) Narrative: Provide a typewritten narrative of the purpose for a permanent rate change. The narrative shall include:

- (A) A description of changes in current operations compared to past operations that necessitate the general rate change;
- (B) Descriptions and/or calculations of adjustments which have been made to the utility's books/ledgers to derive the amounts included in the application;
- (C) Significant factors which have had, or will have, an influence on the utility's revenues, expenses and/or rate base (balance sheet);
- (D) Any anticipated growth or decline in customers which is expected to occur in the next two (2) years;
- (E) The amount of anticipated construction necessary to serve additional customers and the plans for financing that construction;
- (F) The types of customers served by the utility, e.g. residential (include what type), small retail business, large commercial, etc.;
- (G) The effort(s) the utility has made to encourage conservation of gas through the proposed rate design or through other means;
- (H) The effort(s) made by the utility to control costs/expenses and/or mitigate the amount of the requested rate change; and,
- (I) Any other factors which are relevant to the request for a general rate change.

(3) Schedule G-1 - Balance Sheet: Provide a balance sheet statement in the format of Appendix C to this Chapter, which has a column for both the beginning and ending of the test year balances per the utility's books.

(4) Schedule G-2 - Utility Plant in Service. Provide a schedule of utility plant in service in the format of Appendix D to this Chapter. The schedule shall have columns for the original cost, the accumulated depreciation and the original cost less accumulated depreciation for each category of plant in service.

(A) Schedule G-2-1 - Plant Additions or (Retirements) by Year: Provide a schedule of plant additions and/or retirements in the format of Appendix E to this Chapter. The schedule shall have lines which correspond to those on Schedule G-2 required at paragraph (a)(4) of this Section and columns for the original cost per the last Commission Order, each year since the last Commission Order and the current test year.

(B) Schedule G-2-2 - Debt: Provide a schedule which details, by each loan, all short-term and long-term debt. Utilize the format of Appendix F to this Chapter.

(5) Schedule G-3 - Comparative Statement of Income and Expense: Provide a schedule of operating revenue, operating expenses, other income and expense and net income before and after income taxes. The schedule shall be in the format of Appendix G to this Chapter and have columns for the prior year and test year per the utility's books and percent of change for the two (2) years.

(6) Schedule G-4 - Gas Sold, Connect & Disconnect Data Sheet: Provide a schedule with columns for monthly Mcfs (or ccfs, as applicable) sold, the number of monthly connections and the number of monthly disconnects for the test year. The schedule shall be in the format of Appendix H to this Chapter.

(7) Schedule G-5 - Bill Count: Provide a schedule of the total number of bills for each level of Mcf (or ccf, as applicable) consumption for the twelve (12) months of the test year. Any individual bill over 1,000 Mcf (or ccf, as applicable) shall be shown separately. The schedule shall be in the format of Appendix I to this Chapter.

(b) A sample package of the schedules in (a)(3) through (7) of this Section shall be available from the Public Utility Division to aid in the preparation of the application and supporting documentation in the prescribed formats.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

165:70-7-4. Specific required schedules for Class C or D water companies

(a) Unless otherwise authorized in writing from this Commission, Class C or D water utilities shall, when filing an application for approval of a general rate change, prepare and submit with its application the following exhibits, schedules and evidence as hereinafter set out.

(1) Application: The application shall be in the format depicted at Appendix B to this Chapter or in a comparable format which contains the identical information. The application shall contain a detailed schedule of the rates and charges currently in effect and a detailed schedule of the proposed rates and charges.

(2) Narrative: Provide a typewritten narrative of the purpose for a permanent rate increase. The narrative shall include:

(A) A description of changes in current operations compared to past operations that necessitate the general rate change;

(B) Descriptions and/or calculations of adjustments which have been made to the utility's books/ledgers to derive the amounts included in the application;

(C) Significant factors which have had, or will have, an influence on the utility's revenues, expenses and/or rate base (balance sheet);

(D) Any anticipated growth or decline in customers which is expected to occur in the next two (2) years;

(E) The amount of anticipated construction necessary to serve additional customers and the plans for financing that construction.

(F) The types of customers served by the utility, e.g. residential (include what type), small retail business, large commercial, etc.

(G) The effort(s) the utility has made to encourage conservation of water through the proposed rate design or through other means;

(H) The effort(s) made by the utility to control costs/expenses and/or mitigate the amount of the requested rate change; and,

(I) Any other factors which are considered relevant to the request for general rate change.

(3) Schedule G-1- Balance Sheet: Provide a balance sheet statement in the format of Appendix C to this Chapter which has a column for both the beginning and ending of the test year balances per the utility's books.

(4) Schedule G-2 - Utility Plant in Service. Provide a schedule of utility plant in service in the format of Appendix J to this Chapter. The schedule shall have columns for the original cost, the accumulated depreciation and the original cost less accumulated depreciation for each category of plant in service.

(A) Schedule G-2-1 - Plant Additions or (Retirements) by Year: Provide a schedule of plant additions and/or retirements in the

format of Appendix K to this Chapter. The schedule shall have lines which correspond to those on Schedule G-2 required at paragraph (a)(4) of this Section and columns for the original cost per the last Commission Order, each year since the last Commission Order and the current test year.

(B) Schedule G-2-2 - Debt: Provide a schedule which details, by each loan, all short-term and long-term debt. Utilize the format of Appendix F to this Chapter.

(5) Schedule G-3 - Comparative Statement of Income and Expense: Provide a schedule of operating revenue, operating expenses, other income and expense and net income before and after income taxes. The schedule shall be in the format of Appendix L to this Chapter and have columns for the prior year and test year per the utility's books and percent of change for the two (2) years.

(6) Schedule G-4 - Water Sold, Connect & Disconnect Data Sheet: Provide a schedule with columns for monthly gallonage sold, the number of monthly connections and the number of monthly disconnects for the test year. The schedule shall be in the format of Appendix M to this Chapter.

(7) Schedule G-5 - Bill Count: Provide a schedule of the total number of bills for each level of gallonage consumption for the twelve (12) months of the test year. Any individual bill over 100,000 gallons shall be shown separately. The schedule shall be in the format of Appendix N to this Chapter.

(b) A sample package of the schedules in (a)(3) through (7) of this Section shall be available from the Public Utility Division to aid in the preparation of the application and supporting documentation in the prescribed formats.

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

SUBCHAPTER 9. STREAMLINED GENERAL RATE CHANGE APPLICATIONS

165:70-9-1. Purpose and applicability of rules

The purpose of this Subchapter is to define the specific terms and conditions under which Class C and D gas utilities and Class B, C and D water utilities, as defined herein (See "Classifications of utilities", 165:70-1-4), may file an application under the Commission's streamlined procedures are intended to make the general rate change procedures. These streamlined procedures are intended to make the general rate change process easier and less costly to the utility. Streamlined general rate change procedures should result in savings to the utility and, ultimately, to its ratepayers. This Subchapter is not intended to establish any new rate making principles or to modify any provision of the existing laws of the State of Oklahoma. It is intended to define the information required to be filed and made available in connection with a proposed streamlined general rate change in order to facilitate an investigation of, and public hearing on, such rates. This Subchapter does not preclude the filing or provision of any additional data, information, or calculations not herein specified. This Subchapter is not applicable to proceedings relative to the establishment or continuation of the fuel adjustment clause. The intent of the streamlined process is to complete the review of uncontested general rate changes within ninety days, however, in no event shall the streamlined general rate change review exceed one hundred-eighty (180) days.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-2. Notice of intent to change rates

(a) The applicant utility shall provide thirty (30) days advance notice of its intent to file an application for a general rate change under the Commission's streamlined rate processing procedure. The notification shall be in writing, filed with the OCC Court Clerk, and contain the following information:

- (1) That an application for a general rate change is planned.
- (2) The anticipated date of filing.
- (3) The proposed effective date of the general rate change.
- (4) Identification of the utility's classification as prescribed at 165:70-1-4.

(b) All notices of intent shall be provided to the Director of the Public Utility Division and the Attorney General contemporaneously with the filing of the notice.

(c) A qualifying applicant utility shall give notice of its proposed rate change by mail, or hand delivery, to all affected utility customers prior to filing its application. Notice shall be provided using the notice form included in the Commission's rate application package and shall contain the following information:

- (1) The utility name and address, current rates, the proposed rates, the proposed effective date of the proposed rate change, and the increase requested over test year revenues as annualized for customer growth during the test year. The increase requested is to be stated as a dollar amount, as an overall percentage increase, and in terms of the impact on the classes of utility customers affected.
- (2) Information on procedures to protest the rate change, the address of the Commission, and the time frame for protests.

(d) Notices may be mailed separately, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, or hand delivered, to the customers prior to the filing date of the application.

(e) Proof of notice in the form of an affidavit stating that proper notice was mailed or hand delivered to customers, and stating the dates of such mailing or delivery, shall be filed with the Commission by the applicant utility as part of the rate change application package. Notice to customers is sufficient if properly stamped and addressed to the customer, at the current billing address, and deposited in the U.S. Mail.

(f) Between the date of the filing of the notice of intent and the actual filing date, the applicant shall conduct one or more public meetings in a location central to the utility's service area. The purpose of the public meeting is to inform ratepayers of the impacts and details of the utility's filing, and the procedures for protesting the proposed filing. Notice of the time and place of each public meeting shall be provided to the ratepayers, the Director of the Public Utility Division and the Attorney General no less than five (5) business days prior to each meeting.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-3. Time between filings

A utility may not file a notice of intent to increase rates using the streamlined general rate filing procedures more than once in a twelve (12) month period. A utility may not file more than two (2) consecutive annual filings utilizing the provisions of this Subchapter, nor may a utility file more than three (3) filings within the most recent five (5) year period utilizing the procedures set forth in this Subchapter.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-4. Revenue increase limits and allocation of requested increase

(a) Revenue increases utilizing the streamlined procedures in this Subchapter are limited to the sum of Paragraphs (1) and (2) herein:

(1) General rate changes requested under the streamlined general rate change filing procedures are limited to a ten percent (10%) increase over existing pro forma test year revenues.

(2) An allowance of one-half (1/2) of one percent (1%) of test year pro forma revenues, but not to exceed five-thousand dollars (\$5,000) annualized expense, will be recognized to cover the total presumed cost of processing a filing made under OAC 165:70-9.

(b) All rate increases requested under the streamlined general rate change procedures must be spread on a uniform basis to all customer classes. However, Staff may recommend modification to this allocation basis.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-5. Affiliated interests

The requirements related to affiliated interests as set forth in 165:70-5-36 are applicable to this Subchapter.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-6. Streamlined general rate change filing; and Staff response

(a) Each qualifying utility choosing to utilize the streamlined general rate change filing procedures shall file its application with the OCC Court Clerk, along with a complete application package, [Appendix SG (gas) or SW (water)] and a copy of the notice the applicant has provided to customers and other affected parties. In addition to the original, the utility shall submit six (6) copies of its complete application package.

(b) The utility shall also submit the required filing fee with its application, as set forth in the Commission's Rules of Practice.

(c) On the date of filing, a copy of the docketed application package shall be delivered to the Director of the Public Utility Division. The Director and/or Staff shall review the package for completeness, required information, and format compliance with the requirements set forth in this Subchapter.

(d) Within fifteen (15) days of the receipt of the package, the Director of the Public Utility Division shall file with the Commission and provide to the utility a copy of the Staff response regarding the compliance or deficiency of the application. The response shall serve as official notification of the acceptance or non-acceptance of the application. If the Director finds that the package is not in substantial compliance with the requirements of this Subchapter, the Staff response shall state that the filing is a deficient filing. The deficiencies and the requirement(s) to cure the deficiencies shall be stated in the Staff response.

(e) The utility has fifteen (15) days from the date of the Director's response in which to cure the deficiencies in its filing. If the filing is still deficient, the application shall be rejected and returned with a formal letter of rejection from the Director.

(f) A utility may appeal the rejection of its streamlined general rate change application within five (5) days of receipt of the formal letter from the Director of the Public Utility Division. Such appeal shall be set for hearing before the Corporation Commission sitting *en banc* as soon as practical unless the parties

agree to another date or the Commission directs otherwise. An order shall issue on the utility's appeal within seven (7) calendar days from the date of hearing. An order affirming the Director's determination renders the utility's application ineligible for streamlined approval. The utility may, however, seek to file a new application for general rate change pursuant to OAC 165:70-1-5. This paragraph shall supersede the Commission's Rules of Practice, OAC 165:5, to the extent that it may be inconsistent therewith.

(g) A finding by the Public Utility Division that the filing is complete and in the required format does not preclude the Public Utility Division from ultimately recommending that the filing be rejected, modified, or processed under the 180-day case processing provisions of OAC 165:70-1-5 as set forth in OAC 165:70-9-9(e).

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-7. Narrative discussion regarding need for streamlined general rate change and exhibits

(a) A utility filing shall present the utility's full and complete position with regard to its current financial situation and needs, expressed on a pro forma basis.

(b) The filing utility shall provide an original and six (6) copies of a clearly written narrative discussing the specific reasons for the requested streamlined general rate change.

(c) The per book data included in the exhibits, schedules and information prepared and submitted as part of the filing shall be reported in the format reflected in the streamlined application package. All such data shall be complete and accurate and mathematically correct. All such data shall be supportable by evidentiary documentation by the utility. All adjustments to per book amounts shall also be shown so that per book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed. Any cost separation and cost allocation between the utility's regulated operations and unregulated operations, if any, shall be fully disclosed and clearly explained. If the accounting and statistical data submitted differs from the books of the utility, then the utility shall provide a reconciliation schedule with an explanation describing and reconciling the differences.

(d) All intervenors or protestants shall file an original and six (6) copies of their prepared testimony and exhibits within the time period specified by the Administrative Law Judge assigned to the cause.

(e) The Public Utility Division shall prefile its recommendation a minimum of seven (7) days prior to the hearing date. This time frame may be modified for good cause shown, by agreement of the parties or after notice and hearing.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-8. Action on notice of rate change

(a) The Commission shall conduct a public hearing on all streamlined general rate change filings.

(b) If, within 45 days after the notice date of the rate change, the Commission receives protests from ratepayers constituting greater than 15% of the notices mailed by the utility, the Commission shall consider the content of said protest in deciding if the matter should be processed under the 180-day case processing provisions of OAC 165:70-1-5.

(c) Notice of hearing of an application for approval of any schedule, rate, charge, classification, rule or regulation which will directly or indirectly alter charges made for service performed, shall be published pursuant to OAC 165:5-7-51, unless the Commission directs otherwise.

(d) If the Commission does not receive the level of customer protests identified in subsection (b), the utility's filing will be reviewed and a public hearing set so as to assure that an Order can issue within a period not to exceed 90 days from the date the cause was filed.

(e) Staff may request additional information from the utility in the course of evaluating the rate/tariff change request, and the utility is required to provide that information within ten (10) business days of receipt of the request. If, at any time, the utility fails to provide the necessary documentation or other evidence that supports the costs and expenses shown in the application, within the designated response time, the PUD may recommend rejection of the filing.

(f) The PUD Staff must make one of the following recommendations with regard to the filing:

(1) Recommend that the requested rate increase be approved.

(2) Recommend that the requested rate increase be approved, but with modification. Such modification shall not exceed a 50% reduction or increase from the proposed level of the rate change requested by the utility, and may be based upon corrections required or omissions discovered.

(3) Recommend that the requested rate increase be rejected.

(4) Recommend that the filing be processed, but under the 180-day processing provisions of OAC 165:70-1-5.

(g) Upon oral recommendation of the Administrative Law Judge, any party may, within three (3) calendar days, advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of its intent to appeal. Any appeals shall be heard by the Commission *en banc* as soon as practical unless the parties agree to another date or the Commission specifies otherwise. An order shall issue on the utility's appeal within seven (7) calendar days from the date of the appeal hearing. This Subsection shall supersede the Commission's Rules of Practice, OAC 165:5, to the extent that it may be inconsistent therewith.

(h) The utility must submit tariffs reflecting the final decisions of the Commission. Such tariffs must be reviewed and approved by the Director of PUD before bills can be issued reflecting the new rates.

(i) If the Commission sets a rate different from that proposed by the utility in its notice to its customers, the utility shall include in its first billing at the new rate a notice to the customers of the rate set by the Commission, including the following statement: "The Oklahoma Corporation Commission, after public hearing, has established the following rates for utility service."

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-9. Up-to-date requirements

At the time of filing a request for a streamlined general rate change, the filing utility shall have all monthly and annual reports required by Commission order or rule up-to-date and on file, and shall not have any outstanding obligation as defined at OAC 165:5-3-20 et seq.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-10. Test period

The utility shall file as the test year a recent historical twelve-month test period which shall be no more than six (6) months old at the time the application package is filed with the OCC Court Clerk. Any waiver of this requirement shall be obtained in accordance with OAC 165:70-9-12.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

165:70-9-11. Waivers

The utility may seek a waiver for any portion of the documentation required by this Subchapter under the provisions of OAC 165:70-3-6.

[Source: Added at 15 Ok Reg 3143, eff 7-15-98]

APPENDIX A. ACCUMULATED DEPRECIATION AND DEPRECIATION RATES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX B. APPLICATION - C OR D UTILITIES

[Figure 1](#)

[Figure 2](#)

[Figure 3](#)

[Figure 4](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX C. BALANCE SHEET

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX D. UTILITY PLANT IN SERVICE - GAS COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX E. PLANT ADDITIONS OR (RETIREMENTS) BY YEAR GAS COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX F. DEBT

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX G. COMPARATIVE STATEMENT OF INCOME AND EXPENSES GAS COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX H. GAS SOLD, CONNECT & DISCONNECT DATA SHEET

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX I. BILL COUNT - GAS COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX J. UTILITY PLANT IN SERVICE - WATER COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX K. PLANT ADDITIONS OR (RETIREMENTS) BY YEAR WATER COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX L. COMPARATIVE STATEMENT OF INCOME AND EXPENSE WATER COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX M. WATER SOLD, CONNECT & DISCONNECT DATA SHEET

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

APPENDIX N. BILL COUNT - WATER COMPANIES

[Figure 1](#)

[Source: Added at 11 Ok Reg 3753, eff 7-11-94]

CHAPTER 75. COTTON GIN UTILITIES

[Authority: 17 O.S., §§ 41 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:75-1-1. Purpose

The Cotton Gin Utilities rules and regulations of this Chapter were promulgated in furtherance of 17 O.S. Section 41 et seq. and adopted by the Oklahoma Corporation Commission through Cause No. 26977, Order No. 175459 (revised General Order No. 13770 in Cause No. 17759) effective October 29, 1980.

165:75-1-2. Definitions

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

"Applicant" means any person, persons, corporation or entity in the State of Oklahoma applying for a cotton gin license or any authority from the Commission under the terms of the Cotton Gin Utilities rules and regulations as set for in this Chapter and pursuant to law.

"Burr extractor" means a machine or device for extracting cotton burrs and other foreign material from seed cotton prior to its being fed into the distributor.

"Commission" means the Oklahoma Corporation Commission.

"Cotton gin utility" means a cotton gin maintained and operated for the purpose of separating lint from seed cotton for the public.

"Emergency" means the result of any unforeseen occurrence or condition such as fire, flood, tornado, or any other act beyond control of the gin operator which would disable the utility and render it incapable of performing proper services.

"Extractor cleaner" means a machine or device which serves as an extractor of foreign material from seed cotton such as an incline cleaner, stick machine, green leaf machine, airline cleaner, etc.

"Extractor feeder" means a machine or device which serves as an extractor of the burr and other foreign material from seed cotton and at the same time feeds the seed cotton into the gin stands.

"Gin battery" means one or more cotton gin stands served by one cotton press.

"License" means authority or permission given by the Oklahoma Corporation Commission to maintain and operate a cotton gin utility in the State of Oklahoma, as well as the evidence of such authority which may be issued by this Commission.

"Lint cleaner" means a machine or device which extracts foreign material from lint cotton.

"Rebate" means any method employed by an owner or operator of a cotton gin utility to evade rates fixed by this Commission as the fair and just charges for the ginning of cotton such as charging less than the rates fixed, the gift of meals, lodging, gasoline for cars or trucks, the use of trucks, trailers, or seed cotton transporters supplied, leased or rented by the gin owners or operators, the improper weighing of seed cotton, lint cotton or cottonseed; the selling of merchandise below cost, and any other similar practice engaged as part of any ginning transaction in any effort to evade rates fixed by this Commission.

"Seed cotton transporter" means any device utilized to transport bulk seed cotton.

"State" means the State of Oklahoma.

SUBCHAPTER 3. APPLICATIONS

165:75-3-1. Filing of application for cotton gin license

A cotton gin license for maintenance and operation of a cotton gin utility and written authority required to be obtained from this Commission by the terms of this Chapter shall be granted or denied only after an application has been filed with the Commission and a hearing held. An applicant shall show in his application and at the hearing the applicable requirements of this Chapter.

[Source: Amended at 20 Ok Reg 2332, eff 7-15-03]

165:75-3-2. Notice

(a) **Notice required upon application for license.** An applicant shall give notice of the filing of an application for a license for maintenance and operation of a cotton gin utility by publication once a week for two consecutive weeks in a newspaper of general circulation in the county in which the cotton gin is to be located. An applicant shall also mail notice to all other cotton gin operators within a thirty (30) mile radius of the applicant's proposed operating location. The notice shall be in a form approved by the Director of the Public Utility Division and shall include the name of the entity seeking a license, the cause number, the relief requested in the application, the area to be served, the phone number of the individual to contact for additional information, and the date, time and place of the hearing on the merits.

(b) **Notice required upon application or letter request of a cotton gin utility to dismantle or go dormant.** An applicant filing an application or submitting a letter request to dismantle or go dormant shall give notice of the request by posting notice in three conspicuous places within the county in which the cotton gin is located. The notice shall be in a form approved by the Director of the Public Utility Division, and shall include the name of the applicant, the relief requested, the date the notice is posted, the name of the individual to contact for additional

information, and the statement that protests or objections must be submitted in writing to the Director of the Public Utility Division of the Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, OK 73152-2000, on or before an identified date. The applicant must allow no less than a thirty (30) day time period for the submission of written objections or protests.

[Source: Amended at 18 Ok Reg 2455, eff 7-1-01; Amended at 20 Ok Reg 2332, eff 7-15-03]

165:75-3-3. Hearings

Hearings held on any applications shall be open to the public and shall be held in the Commission Courtroom, Jim Thorpe Office Building, Oklahoma City, Oklahoma, or at any other place designated by this Commission. Any party desiring to present material, competent and relevant testimony for or against the granting of any application shall be afforded an opportunity to do so at such public hearings.

165:75-3-4. New gins

(a) No corporation, company, firm, or individual shall be permitted to operate and maintain a cotton gin utility without first having secured a license from this Commission after notice and hearing. Separate license shall be obtained for each gin battery.

(b) Applicant seeking a cotton gin license shall satisfactorily show the following primary factors:

- (1) Name of individual, partnership, or corporation and if a corporation, information concerning its organization;
- (2) A complete description of the proposed plant and its facilities, including number of gin stands, number of saws per stand, power, etc., and a statement in full of the cleaning equipment to be used;
- (3) Convenience and necessity for a gin at the proposed location;
- (4) Names and addresses of all corporations, companies, firms, or individuals operating cotton gin utilities within a thirty (30) mile radius of the proposed gin site which are or will be in direct competition therewith;
- (5) Responsibility, reliability, qualifications, and capacity of applicant to perform ginning services and to afford all reasonable facilities, conveniences, and services to the public; and
- (6) Willingness to be governed by this Chapter.

[Source: Amended at 20 Ok Reg 2332, eff 7-15-03]

165:75-3-5. Dormant gins

(a) No corporation, company, firm, or individual in this State shall allow a cotton gin utility to remain dormant during any ginning season without first obtaining written permission and authority from this Commission. Written permission and authority may be granted by the Director of the Public Utility Division, without notice and hearing, if there have been no objections or protests submitted. In the event that a written protest or objection is received by the Director of the Public Utility Division, a hearing before an Administrative Law Judge will be scheduled, and notice of the hearing will be issued by the Public Utility Division. A new request must be made each year.

(b) Any individual or entity seeking authority to allow a gin to remain dormant must show the following primary factors:

- (1) Name of gin, location, and license number;
- (2) Owner of gin;

- (3) Each cotton gin together with name and address of owner within a thirty (30) mile radius;
- (4) A statement of reasons for making application to remain dormant;
- (5) Name and address of ten (10) cotton farmers now patronizing gin; and
- (6) Convenience and necessity does not require operation of gin during coming season.

(c) Such request shall be made by certified mail on or before August 1 each year and shall be accompanied by an affidavit attesting to the six (6) primary factors listed above.

[Source: Amended at 18 Ok Reg 2455, eff 7-1-01; Amended at 20 Ok Reg 2332, eff 7-15-03]

165:75-3-6. Dismantled gins

(a) No corporation, company, firm, or individual in this State shall be permitted to dismantle a cotton gin now licensed to operate without permission and authority from this Commission. Written permission and authority may be granted by the Director of the Public Utility Division, without notice and hearing, if there have been no written objections or protests submitted. In the event that a written protest or objection is received by the Director of the Public Utility Division, a hearing before an Administrative Law Judge will be scheduled, and notice of the hearing will be issued by the Public Utility Division.

(b) Any individual or entity seeking authority to dismantle a gin shall show the following primary factors:

- (1) Name and location of gin;
- (2) Owner of gin;
- (3) Name and address of owner of each cotton gin within thirty (30) mile radius of applicant's gin;
- (4) Name and address of 10 cotton farmers now patronizing gin; and
- (5) Convenience and necessity no longer requires the gin at its present location.

(c) Such request shall be made by certified mail and shall be accompanied by an affidavit attesting to the five (5) primary factors listed above.

[Source: Amended at 18 Ok Reg 2455, eff 7-1-01; Amended at 20 Ok Reg 2332, eff 7-15-03]

165:75-3-7. Change of ownership-lease

(a) No corporation, company, firm, or individual in this State shall sell, or lease nor shall any corporation, company, firm, or individual buy or lease, or otherwise change ownership or control of a cotton gin utility without first securing written permission and authority from this Commission.

(b) Applicant seeking authority for change of ownership or control shall show the following primary factors:

- (1) Name of gin and location;
- (2) Name and address of seller or lessor;
- (3) Name and address of purchaser or lessee;
- (4) Name under which gin will operate;
- (5) Financial responsibility of purchaser or lessee; and
- (6) Willingness of purchaser or lessee to abide by the Cotton Gin Utilities rules and regulations as set forth in this Chapter.

165:75-3-8. Relocating/moving a gin

- (a) No corporation, company, firm, or individual shall be permitted to dismantle a cotton gin now licensed to operate and remove to and operate same at a new location without first obtaining written permission and authority from this Commission.
- (b) Applicant seeking authority to dismantle and move to a new location shall comply with the Cotton Gin Utilities rules and regulations as set forth in this Chapter pertaining to the dismantling of gins as required by 165:75-3-6 and Cotton Gin Utilities rules and regulations as set forth in this Chapter pertaining to building new gins as defined in 165:75-3-4.

165:75-3-9. Forms

- (a) Proper forms for application to meet requirements made in this subchapter may be had on request address to: Oklahoma Corporation Commission Public Utility Division Jim Thorpe Office Building Oklahoma City, Oklahoma 73105
- (b) Proper procedure and detail requirements will be outlined by the Director.

SUBCHAPTER 5. MAINTENANCE AND OPERATION

PART 1. SERVICE REQUIREMENTS

165:75-5-1. General service

- (a) All persons, individuals, or corporations engaged in the business of ginning cotton within the State shall properly equip their gins and hold themselves in readiness to perform such duties, unless for good cause shown, any such person or persons, individuals, copartnerships, or corporations shall be excused therefrom in writing by the Commission as provided in this Order.
- (b) All gins must be equipped with cleaners to properly clean seed cotton. In trade territories where 25% or more of the total cotton ginned over the latest consecutive three (3) year period is bolly, snapped, or machine harvested cotton, the gin shall be equipped with burr extractors, extractor cleaners, and extractor feeder machinery.
- (c) All persons, firms, or corporations operating cotton gins in the State shall perform such ginning service in a proper and workmanlike manner using due care and diligence in producing a clean product and saving for the owner of the cotton the full and fair weight of seed and lint to which he may be fully entitled.

165:75-5-2. Equal service

All owners and operators of cotton gin utilities are hereby required to render similar service to all customers alike. All owners and operators of cotton gin facilities are hereby prohibited from entering into any agreements and practices, or adopting rules tending to monopolize the purchase of cottonseed or seed cotton and are hereby prohibited from entering into any combination with others tending to stifle or limit competition therein, or tending to discriminate against any buyer of seed cotton, cottonseed or bale cotton, and all such owners and operators are hereby required to maintain standard scales.

165:75-5-3. Abandonment of service

All property once devoted to the public service of ginning cotton shall not be abandoned or service discontinued temporarily or otherwise, except in case of emergency, until after permission of authority in writing has been secured from the Commission.

165:75-5-4. Replacements/additions

(a) The Commission shall be notified of destruction, material damage by fire, or tornado, or other causes of all gin utilities provided that nothing herein shall prevent the owner or operator of a gin so damaged or destroyed to replace said ginning facilities prior to the beginning of the next cotton ginning season. If the gin cannot be repaired or rebuilt within the above designated period, the owner or operator shall seek relief under 165:75-3-5.

(b) Additions, replacements, betterments, and repairs in respect to cotton gin plants shall be so defined and classified as follows:

(1) Additions are structures, facilities, equipment, and other property added to those in service at any given time and not taking the place of any property of like kind previously held by the owner or operator and taken into the property accounts. Such additions to the cotton gin utility shall be taken into the property account and shown in the next annual report in the details and particulars and on blanks authorized by the Commission.

(2) Replacements are those installations of plant and equipment which have for their purpose the substitution of one (1) building, structure, piece of equipment, machine or mechanical part for another, which it has become necessary to retire; the substitute, having substantially no greater capacity than the building, structure, piece of equipment, machine or mechanical part retired, shall be credited to the accounts in which it is carried and the cost of the substitute so installed shall be charged to the appropriate accounts.

(3) If such replaced substitute shall be greater capacity or efficiency than the building, structure, piece of equipment, machine, or mechanical part replaced at the time of the latter's previously installation, the excess of cost of such substitute, if any, over the first cost of that removed shall be carried as cost of betterment, and such increase of capacity or efficiency shall be regarded as betterment and the residue of such cost as replacement cost, and all such shall be shown in the annual report of such cotton gin utility in such detail and particulars and upon such blanks as may be authorized by the Commission.

(4) For the purpose of determining what shall constitute repairs, the major parts of all cotton gin utilities, such as gin stands, et cetera, shall be regarded as equipment and each part of such equipment known in the cotton gin trade as a "unit" shall be regarded as divided into a class having determine function in such unit, such as gin frame, gin breast, saw cylinder, brush cylinder, et cetera; and a class having merely contributory such as saws, et cetera; and the substitution of any unit of a mechanical part of a unit having a determinative function shall be regarded as a replacement and not as a repair, and shall be carried, with the determined betterment, if any, under the paragraph (3); but the replacement or correction of any of the merely contributory parts shall be regarded as a repair and be charged to the appropriate operating expense account. Mechanical parts for such substitutes shall be regarded as replacement line and center shafting, line shaft and pulleys, idlers, fan jacks, fans, complete airlines, droppers, separators, vacuum boxes, cleaners, extractor machine distributors, feeders, gin breast, complete saw cylinder, complete brush, gin frames, complete lint flues, condensers, packers, lint cleaners, complete press boxes, ram cylinder, rams, press screws, pumps, scales, complete conveyor elevators,

main drive belting, bull extractors, unloaders, generators, motors, boilers, heaters, engines, engine flywheels, engine cylinders, crank shafts, engine frames or bases. The substitution or repair of any of the minor parts of the foregoing shall be regarded as repair and other mechanical parts not enumerated shall be regarded according the same rule or principle. In the matter of buildings, complete roofs, partitions, complete floors, complete walls, foundations, platforms, and decks and other outside annexes and wells, tanks and complete water lines, etc.; shall be regarded as replacements and that minor corrections or repairs of any one of these and painting shall be regarded as repairs.

[Source: Amended at 10 Ok Reg 2661, eff 6-25-93]

165:75-5-5.¹ Rebate

Rates and charges for service to the owner or operator of any cotton gin utility shall be the rates fixed by Order of this Commission. No cotton gin utility owner or operator shall directly or indirectly offer or give any rebates as that term is defined in 165:75-1-2.

EDITOR'S NOTE: ¹In the initial codification of this agency's rules on 12-31-91, two Sections were numbered as 165:75-5-5, although one of the rules was located in Chapter 70 instead of Chapter 75. Upon discovery of this error, the number of the rule which appeared in Chapter 70 was changed to 165:70-5-5.

165:75-5-6. Pure seed gins

In any community or district where pure cotton of any variety is grown, the ginner may designate particular ginning days upon which such cotton will be ginned exclusively and notice of such days shall be posted at the gin.

PART 3. GINNING REQUIREMENTS

165:75-5-10. Seed cotton transporter

Any device used to transport bulk seed cotton to a cotton gin and/or gin yard shall not be supplied, leased, rented, or furnished to a producer by a cotton gin utility.

165:75-5-11. Out-of-condition seed cotton

Ginners are authorized to delay or refuse to gin seed cotton that is contaminated with any type of foreign material or is out of condition from any cause that would impede or prevent the normal ginning process.

165:75-5-12. Wrapping

All bale cotton shall be wrapped in only specification material that has currently been approved by the Cotton Industry Bale Packaging Committee of the National Cotton Council and Commodity Credit Corporation of the U.S. Department of Agriculture as recorded in the Federal Register.

165:75-5-13. Wet or damaged wrapping

Wet or damaged wrapping shall not be placed on custom ginned cotton.

165:75-5-14. Use of ginning aids

Gin owners or operators shall not, while ginning, use any ginning aids or other substances or devices that will be injurious to the cotton fiber or cottonseed.

165:75-5-15. False plating and packing

Owners or operators of cotton gin utilities shall not false plate or false pack any cotton baled at their respective gins.

165:75-5-16. Tags

It shall be the duty of all owners or operators of cotton gins in this State to brand a number by means of a metal tag and/or paper tag approved by the U.S. Department of Agriculture upon each bale of cotton ginned and baled at their respective gins which brand and number shall correspond with the records as provided in 165:75-5-22.

PART 5. REPORTING AND RECORD REQUIREMENTS

165:75-5-20. Annual reports and accounting practices

Annual cotton gin utility reports for the preceding year shall be filed no later than ninety (90) days following the expiration of the cotton gins utility's fiscal year and shall be made to the Commission in such detail and on such forms as are prescribed and furnished by the Commission. The statements of facts pertaining to the inquiries called for shall be duly signed and certified under oath of the officers or owners of the gin utilities.

[Source: Amended at 10 Ok Reg 2661, eff 6-25-93]

165:75-5-21. Exhibits and petitions

(a) An applicant seeking to establish convenience and necessity as required in any of the Cotton Gin Utilities rules and regulations as set forth in this Chapter shall attach to his application a map embracing an area not less than a thirty (30) mile radius from the applicant's proposed gin. The exact location of applicant's proposed gin shall be shown on said map together with the location of each competitive gin plant within a thirty (30) mile radius thereof. The applicant shall prepare an exhibit from the records of the Commission or from any reliable source showing the exact amount of cotton ginned by each of the competitive gins for the three (3) years next preceding the filing of the application. This exhibit shall show the name and address of the owner of each of such gins, the number of saws, the type of equipment as to gins stands, cleaners, power, and any other such information that may be pertinent. The exhibit shall show the average number of bales ginned by said competitive gins for the past year and shall show the percentage of capacity of existing approved cotton gin facilities to the amount of cotton available for the average of three (3) years and for the past year. In the event the applicant or any party desires to present a petition from the cotton growers of the territory affected, the same shall show the names of the cotton growers, the number of acres devoted to cotton in each of the past three (3) years, the number of bales raised by said petitioner during each of the last three (3) years, and the proposed number of acres to be planted in cotton for the current year. No person or firm not directly growing cotton shall be eligible to sign a petition of this nature. No one growing cotton outside of the thirty (30) mile radius of the gin in question shall be eligible to sign such petition unless there is no gin closer to his land.

(b) A full copy of the information as listed shall be mailed under registered cover to the record owner of each gin within a radius of thirty (30) miles of the proposed gin site and be so stated in the application of the Commission.

165:75-5-22. Gin records

All owners or operators of cotton gin utilities shall cause to be kept at their place of business a book which shall be open for inspection by the public at all reasonable hours in which shall be registered at the time of receiving any cotton, each bale (modified gin flat or Universal Density) of cotton, or load of unginned cotton, giving dates of ginning, the name of persons for whom it is ginned, pounds of seed cotton ginned, bale number, gross weight of bale, and price paid for ginning.

165:75-5-23. Inspector's report

A copy of each gin inspectors inspection report shall be posted near the license (or facsimile) of the gin in the office after each visit.

165:75-5-24. Separate records

If the owner or operator of any cotton gin utility is engaged in carrying on any other business in connection with the operation of said cotton gin he shall keep records that will show distinctly and separately the cost of the operation and gross revenue for each gin.

PART 7. LICENSE REQUIREMENTS**165:75-5-30. License fee**

The fee for a license issued by the Commission for any gin battery shall be five dollars (\$5.00) per gin stand.

165:75-5-31. License posting

The Gin License Certificate or a reasonable facsimile must be posted in the office of the gin for which such license is issued.

165:75-5-32. Expiration of license

If any holder of a license to operate a cotton gin utility allows his gin to remain dormant for five (5) consecutive years, regardless of express authority from the Commission to allow his gin to remain dormant for each of said years, his license to operate, in absence of good cause shown to the contrary, shall be subject to cancellation after reasonable notice and hearing before the Commission.

PART 9. INSURANCE REQUIREMENTS**165:75-5-40. Insurance coverage**

Each licensed cotton gin utility owner or operator shall insure, and at all times, keep insured in his name all seed cotton, baled cotton, and cotton transporting vehicles owned by the cotton producer for the full market value thereof against loss from fire, windstorm, tornado, explosion, collision, and theft while in the custody of the cotton gin utility. Each cotton gin utility owner or operator shall, at his own expense, take the necessary steps to collect any monies which may be due as indemnity for any loss or damage. For the purpose of this Section, full market value shall mean the value used by underwriters in paying losses. The insurance carrier issuing the policy must be licensed in the State of Oklahoma.

165:75-5-41. Fire equipment

Each cotton gin owner or operator shall follow all guidelines established by their insurance carrier with regard to fire fighting equipment and fire prevention policies.

PART 11. VIOLATIONS

165:75-5-50. Violations by managers

The Commission shall have the right after notice and hearing to refuse to allow any owner or operator to continue the operation of a cotton gin who has violated the laws or the Cotton Gin Utilities rules and regulations as set forth in this Chapter.

165:75-5-51. Penalty

Any person, firm, or Corporation that violates any of the rules set forth in this Chapter shall be guilty of contempt and shall be fined not exceeding one hundred dollars (\$100.00) for each violation and in the discretion of the Commission be subject to cancellation of its permit.

CHAPTER 80. WIDE AREA CALLING PLAN (WACP)

[Authority: OKLA. CONST. art IX, §§ 18; 17 O.S., §§ 131 et seq.; 75 O.S., § 302(A)(2)]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

165:80-1-1. Purpose; short title

(a) This Chapter establishes the Oklahoma Corporation Commission Wide Area Calling Plan (WACP) rules and procedures for applications which may be cited by the short title as Oklahoma WACP Rules, adopted by the Commission in Cause No. RM 000049, Order No. 355459, on March 20, 1991, with final adoption on May 23, 1991, pursuant to 75 O.S., Section 308.1(A) with an effective date of June 27, 1991.

(b) This Chapter and procedures herein are intended to provide an orderly, reasonable, fair, and definitive process for the presentation of requests for wide area calling.

165:80-1-2. Jurisdiction

The Oklahoma Corporation Commission (Commission), by virtue of Article IX, Section 18 et seq., of the Constitution of the State of Oklahoma, Title 17, Section 131 et seq., of the Oklahoma Statutes and sundry other enactments of the Oklahoma legislature, has authority and responsibility to supervise, regulate, and control the public service business of telephone companies in Oklahoma, and to enact rules and regulations in connection therewith.

165:80-1-3. Application of rules

This Chapter and procedures herein apply to any application filed by the Commission staff, or any proceeding initiated by the Commission on its own motion, seeking to develop a comprehensive WACP within any major metropolitan area or to any comprehensive WACP between several small communities linked by

virtue of a geographical closeness (geographical region).

165:80-1-4. Scope of rules

Unless otherwise specifically provided in this Chapter, OAC 165:5 shall govern causes brought for WACPs.

165:80-1-5. Interpretation of rules

Where by their context the rules of this Chapter establish standards or objectives, substantial compliance therewith will be deemed compliance with this Chapter. Where by their context the rules of this Chapter imposes an absolute obligation, strict compliance is required.

165:80-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship, excessive expense, or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter, upon application of any interested party.

165:80-1-7. Rules conform to law

This Chapter shall be construed to conform with the Constitution and laws of the State of Oklahoma.

165:80-1-8. Controversy over rules

Whenever a controversy exists in connection with the interpretation of this Chapter, or its applicability, or any right or duty imposed thereby, the Commission, upon application of any interested party and after notice and hearing, will enter such order thereon as it may deem appropriate.

165:80-1-9. Severability

(a) This Chapter will not relieve in any way a telephone company or customer from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

(b) This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person.

(c) The Commission may make exceptions to this Chapter for good cause.

SUBCHAPTER 3. APPLICATION AND GENERAL PROCEDURAL REQUIREMENTS

165:80-3-1. Commencement of proceeding

Commencement of the proceeding may be initiated by the Commission on its own motion.

165:80-3-2. Application for WACP

(a) The applicant shall be the Commission staff.

- (b) The application shall state the general metropolitan area or geographic region for which wide area calling is being requested.
- (c) The metropolitan area or geographic region must be in the same LATA.

165:80-3-3. Filing of application

(a) The original and eight (8) legible copies of the application shall be filed with the Commission's Court Clerk. In addition, a complete copy of the application shall be mailed, postage prepaid, to:

- (1) The local telephone company/companies serving the metropolitan area or geographic region.
- (2) The Office of the Attorney General.
- (3) As directed by the Commission, the County Clerk of the county/counties located within the area to be impacted by the WACP or to the Chief Executive Officers of the towns and cities located within the area to be impacted by the WACP.

SUBCHAPTER 5. CRITERIA FOR WACP ARRANGEMENT

165:80-5-1. Determination of cost, engineering, and rate design

(a) The Commission will order cost, engineering, and rate design studies to be made by the telephone company/companies within a reasonable time. Any interested party may have their own cost, engineering, and rate design studies made for use in the cause, but such studies will be at the expense of that party.

Summaries of the cost, engineering, and rate design studies will be filed with the Commission's Court Clerk within the time ordered by the Commission and a copy sent to all interested parties.

(b) Upon receipt of the cost, engineering, and rate design studies summaries and after appropriate review, the attorney for the Public Utility Division staff will arrange and conduct a technical conference for the purposes of discussing the cost, engineering, and rate design studies and summaries, and considering appropriate rate design and cost recovery methods to be recommended to the Commissioners or their designee. If it appears that the rate design and cost recovery methods for the WACP are cost prohibitive, any interested party may propose alternatives to WACP in writing. At the technical conference, the scheduling of prefiled testimony and responsive testimony dates shall also be determined.

(c) Recovery of the revenue requirement caused by the WACP will be borne by the subscribers benefiting from the plan or as the Commission may so direct.

165:80-5-2. Public input

(a) The Commission may request that the subscribers indicate their interest or support for the proposed WACP. The Commission may choose from options including, but not limited to:

- (1) Polling by telephone or mail.
- (2) Statistically valid sampling methods.
- (3) Resolutions from County Commissioners and/or City Council members in the affected areas.
- (4) Other methods dependent upon the circumstances in the cause.

(b) The results of the request for public input will be advisory and not binding upon the Commission.

165:80-5-3. Hearing process

(a) A hearing will be set before the Commission en banc, unless the Commission directs otherwise. Notice shall be given to all subscribers whose basic local service rates would be increased by the proposed rate design and cost recovery methods in the manner provided in OAC 165:5 or as the Commission may otherwise direct in its Notice of Hearing.

(b) Prefiled testimony and responsive testimony shall be filed prior to the hearing as set forth at the technical conference as provided in 165:80-5-1(b). Prefiled testimony shall include, among other things, the proposed rate design for the calling plan.

(c) The Commission will make its determination following the hearing and issue its order.

165:80-5-4. Intervenor status

(a) Commission Rules of Practice, OAC 165:5, pertaining to intervention will be strictly applied in WACPs in order to focus upon the specific subject matter of each cause. Persons applying for intervenor status will have the burden of showing their interest in the subject matter, and their participation will be limited to the matter set out in the application.

(b) The Attorney General will be granted intervenor status upon request since it is presumed the Attorney General has an interest in any cause involving telephone service and rates.

165:80-5-5. Amendment of application

The right to amend a WACP application to change the metropolitan area or geographic region may be requested by any interested party.