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# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



**Mary Fallin, Governor**  
**Chris Bengel,**  
**Secretary of State**  
**Peggy Coe, Editor-in-Chief**

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## Permanent Final Adoptions

### SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

#### 158:50-11-3. License revocation or suspension

(a) The employment and use of unlicensed individuals performing mechanical work, the employment and use of individuals as apprentices without registration, or cheating may be considered justification to suspend or revoke said mechanical contractor's license based upon illegal use of license.

(b) The repeated violation of any of ~~these~~the rules in this Chapter or any provision of the Act, or the violation of a multiple of any of ~~these~~the rules in this Chapter or provision of the Act, may be considered justification to suspend or revoke the licensee's license or registration.

### SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FEES, CODE VARIANCE APPLICATIONS AND FEE, CODE INTERPRETATION APPEALS

#### 158:50-13-3. Code variance applications and fee

(a) Applications for a variance from the standard of installation as described in OAC 158:50-1-4 by an Oklahoma-licensed, mechanical contractor, or other person as stated in ~~statute~~the Act, shall be submitted to the Administrator. An application form and the fifty-dollar (\$50.00) filing fee shall accompany sufficient technical data submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the standard of installation as described in OAC 158:50-1-4, or submitted where a city or town has adopted a more stringent mechanical installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application, and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the Administrator's or the Administrator's designee's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

[OAR Docket #16-425; filed 6-14-16]

### TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #16-420]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. General Provisions

Part 1. General

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

Part 5. Response to Citizen Environmental Complaints

165:5-1-25. Definitions [AMENDED]

Subchapter 3. Fees

Part 1. General Provisions

165:5-3-1. Fees [AMENDED]

Subchapter 7. Commencement of a Cause

Part 5. Public Utilities

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

Subchapter 17. Post Order Relief

165:5-17-1. Within 10 days; motion [AMENDED]

#### AUTHORITY:

Oklahoma Corporation Commission: 17 O.S. § 52, 17 O.S. § 152 *et seq.*, 17 O.S. § 166.1, 17 O.S. § 166.1a, 27A O.S. § 1-3-101, 52 O.S. § 139, 47 O.S. § 1013, Article IX, Sections 18 and 19 of the Oklahoma Constitution, and OAC 165:5-1-7

#### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 21, 2016

#### COMMENT PERIOD:

January 21, 2016, through March 4, 2016

#### PUBLIC HEARING:

March 22, 2016

#### ADOPTION:

March 22, 2016

#### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 31, 2016

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

#### FINAL ADOPTION:

June 9, 2016

#### EFFECTIVE:

August 25, 2016

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The \$5,000.00 transportation network company (TNC) annual permit fee in amendments to OAC 165:5-3-1 is required by 47 O.S. § 1013(B), which provides that the Commission shall issue a permit to each applicant that presents proof, in a form prescribed by the Commission, that the applicant meets the requirements for a TNC set forth in the Oklahoma Transportation Network Company Services Act (Act) (47 O.S. § 1010 through 47 O.S. § 1030), and proof of insurance required by the Act and pays to the Commission an annual permit fee of Five Thousand Dollars (\$5,000.00). Other rules were amended in efforts to update, streamline and clarify existing Rules of Practice, including, but not limited to, procedures for rate change causes and regarding motions filed after an order of the Commission is entered, and to assess filing fees for Oil and Gas Conservation Division transfer of well operator and notification of intent to plug forms. No filing fees are currently assessed for transfer of well operator or notification of intent to plug forms, and revenue generated from filing fees for such forms would assist in providing funding for the Oil and Gas Conservation Division's seismicity department.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

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

(a) Computation of time. In computing any period of time prescribed by statute, or 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.

(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 can not 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. Every order shall contain the language: "Done and performed this \_\_\_\_ day of \_\_\_\_". Periods of time prescribed by the order, or by statute, or by the rules of this Chapter shall run from the "Done and performed" date.

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 or hazardous substance 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.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(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 165:5-3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) 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.

(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 4:00 p.m. to allow for document processing within established hours of operation.

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- (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) 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 - \$1,000.00
- (B) Commercial earthen pit application - \$1,000.00
- (C) Commercial soil farming site application - \$1,000.00
- (D) Commercial recycling facility application - \$1,000.00
- (E) Conservation docket and pollution docket base applications - \$100.00
- (F) Permit to drill - \$175.00
- (G) Emergency walk-thru permit to drill - \$500.00
- (H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant
- (I) Permit for one-time land application of water based fluids - \$100.00
- (J) Emergency walk-through of permit for one-time land application water based fluids - \$200.00
- (K) Application for non-commercial injection or disposal well - \$100.00
- (L) Emergency application on the conservation or pollution docket - \$100.00
- (M) Tax exemption application filed pursuant to OAC 165:10-21 - \$100.00
- (N) Transfers of well operatorship - Forms 1073 and 10731 - single well - \$25.00
- (O) Transfers of well operatorship - Forms 1073IMW and 1073MW - multiple wells - \$250.00
- (P) Notification of intent to plug - Form 1001 - \$100.00
- (2) **Transportation fees.**
- (A) Transportation docket application - \$100.00
- (B) Other transportation fees:
- (i) Intrastate license and certificate fees.
- (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.
- (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
- (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
- (e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer

data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.

(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.

## SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

### PART 5. PUBLIC UTILITIES

#### 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.

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- (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) The Commission Staff, the Attorney General and any intervening party of record shall provide to the utility, thirty (30) days prior to filing responsive testimony, a list of any major issues the party anticipates to raise in connection with the utility's application for a general rate change. Said list of anticipated major issues shall be updated, as necessary, up to five (5) days prior to filing responsive testimony.~~
- (32) 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.
- (43) 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.
- (54) 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.
- (65) 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) **Staff's schedule of auditing and investigation dates.**
- (1) ~~The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date on which the Commission Staff will conduct its field review of that portion of the supplemental package, if required, which is impractical to produce, voluminous and/or confidential, to assess compliance with the Minimum Filing Requirements.~~
- (2) ~~The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date(s) on which the Commission Staff will conduct its field investigation and audit of the rate request.~~
- (hg) **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 the

Commission en banc, since time is of the essence in resolving these disputes.

**(ih) 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 refiling an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

**(ji) 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.

**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. ~~A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record. 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 can be served by regular mail, facsimile, electronic mail or in person.~~

*[OAR Docket #16-420; filed 6-13-16]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 10. OIL & GAS CONSERVATION**

*[OAR Docket #16-421]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Chapter 10. Oil and Gas Conservation [AMENDED]

**AUTHORITY:**

Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. § 180.10, 27A O.S. § 1-3-101, 52 O.S. § 139, 52 O.S. § 317.1, and OAC 165:5-1-7

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 15, 2016

**COMMENT PERIOD:**

January 14, 2016, through March 16, 2016

**PUBLIC HEARING:**

March 22, 2016

**ADOPTION:**

March 22, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 31, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Certain amendments to OAC 165:10-12-9 regarding assistance to an owner of property which has a seeping natural gas occurrence were made to conform to amendments to 17 O.S. § 180.10 in Enrolled House Bill No. 2234 (2015). OAC 165:10-1-7 was amended to provide for use of a new Form 1073IMW for transfers of operatorship involving more than ten underground injection wells pursuant to OAC 165:10-5-10, and new Form 1073MW for transfers of operatorship involving more than ten oil or gas wells pursuant to OAC 165:10-1-15. OAC 165:10-1-7 was also amended to provide for use of a new Form 3000NGS by owners of properties which have seeping natural gas who are required to file an application with the Commission regarding the Commission's investigation and/or abatement of the seeping natural gas pursuant to OAC 165:10-12-9. Other rules were amended in efforts to update, clarify and streamline language and procedures appearing in OAC 165:10, as well as to require monitoring and reporting for wells within areas of interest



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regarding seismicity and address administrative shutdown or other action concerning underground injection wells.

### CONTACT PERSON:

Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occcemail.com.

**DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

### SUMMARY:

OAC 165:10-1-4 is amended to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-7 to update the list of Oil and Gas Conservation Division prescribed forms and to eliminate requirements for the submission of multiple copies of forms to the Commission; OAC 165:10-1-15 regarding transfer of operatorship of oil and gas wells; OAC 165:10-3-1 concerning permits to drill for horizontal wells; OAC 165:10-3-15 regarding the venting and flaring of gas from wells; OAC 165:10-3-16 with respect to operations in hydrogen sulfide areas; OAC 165:10-5-7 to add a provision concerning requested monitoring and reporting within areas of interest regarding seismicity and to address administrative shutdown of underground injection wells; OAC 165:10-5-9 with respect to duration of underground injection well orders or permits, and OAC 165:10-5-10 is amended regarding transfer of authority to inject concerning underground injection wells.

OAC 165:10-5-13 is amended to eliminate surface casing injection of reserve pit fluids; OAC 165:10-7-16 regarding liner requirements for flow back water pits in hydrologically sensitive areas, sampling of monitor wells and leachate collection systems, and the use of flow back water pits by other operators; OAC 165:10-7-20 to eliminate a requirement that applications to permit noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater be submitted in duplicate to the Commission and regarding sampling of monitor wells and leachate collection systems pertaining to such pits; OAC 165:10-7-33 regarding sampling of monitor wells and leachate collection systems with respect to truck wash pits; OAC 165:10-9-1 regarding monitoring by engineers during construction of commercial pits, geomembrane liners installed in such pits and sampling of monitor wells pertaining to such pits; OAC 165:10-9-2 with respect to sampling of monitor wells concerning commercial soil farming; OAC 165:10-9-3 to eliminate a requirement that applications to permit commercial disposal well pits be submitted in duplicate to the Commission, amend requirements regarding geomembrane liners installed in such pits, and approval and sampling of monitor wells and leachate collection systems regarding such pits, and OAC 165:10-9-4 is amended concerning monitoring by engineers during construction of commercial recycling facilities, geomembrane liners installed in pits pertaining to such facilities, and sampling of monitor wells and leachate collection systems regarding such facilities.

In addition, OAC 165:10-10-1 is amended concerning the purpose, authority and applicability of the Brownfield program; OAC 165:10-10-2 regarding Brownfield sites; OAC 165:10-10-3 concerning administration and enforcement of rules pertaining to Brownfield sites; OAC 165:10-10-4 with respect to determination of eligibility for the Brownfield program; OAC 165:10-10-5 regarding the Brownfield program application process; OAC 165:10-10-6 concerning Brownfield site eligibility is revoked; OAC 165:10-10-7 with respect to the Commission's maintenance of a list of Brownfield sites; OAC 165:10-10-8 regarding processing of Brownfield applications is revoked; OAC 165:10-10-9 concerning assessment and remediation of Brownfield sites; OAC 165:10-10-10 with respect to public notice requirements pertaining to Brownfield sites; OAC 165:10-10-11 regarding public meetings and public comments concerning Brownfield sites; OAC 165:10-10-12 with respect to closure of Brownfield sites; OAC 165:10-10-13 regarding issuance of Brownfield certificates by the

Commission, and OAC 165:10-10-14 is amended concerning closures of sites by responsible parties.

Further, OAC 165:10-11-4 is amended to eliminate a requirement that notification of intention to plug forms be submitted in duplicate to the Commission; OAC 165:10-11-7 to eliminate a requirement that plugging record forms be submitted in duplicate to the Commission; OAC 165:10-12-3 to change the reference to the statute authorizing the Commission to promulgate and enforce rules and issue and enforce orders relating to seeping natural gas; OAC 165:10-12-6 regarding notice requirements for seeping natural gas occurrences; OAC 165:10-12-8 concerning procedures for the Rapid Action Assessment Team pertaining to gas surface seeps; OAC 165:10-12-9 regarding assistance to an owner of property which has a seeping natural gas occurrence and in accordance with 17 O.S. § 180.10 and amendments thereto in Enrolled House Bill No. 2234 (2015), and OAC 165:10-15-17 is amended to eliminate a requirement that initial production test forms regarding excessive water exempt oil projects be submitted in duplicate to the Commission.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at <http://www.occeweb.com>.

*[OAR Docket #16-421; filed 6-13-16]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

*[OAR Docket #16-526]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
  - 165:15-1-2. Definitions [AMENDED]
  - 165:15-1-3. Application of rules [AMENDED]
  - 165:15-1-4. Application of motor fuel rules [AMENDED]
  - 165:15-1-6. Fuel Specialists' Identification Requirements [AMENDED]
- Subchapter 3. Fuel Specialists. Testing, Accessibility, and Assistance
  - Part 1. General Authority
    - 165:15-3-1. Authority to enter and/or stop for inspection [AMENDED]
    - 165:15-3-2. Authority to lock or seal for violation [AMENDED]
  - Part 3. Motor Fuels and Antifreeze
    - 165:15-3-11. Testing methods [AMENDED]
  - Part 5. Liquid Measuring Devices
    - 165:15-3-15. Fuel Specialist's duty [AMENDED]
    - 165:15-3-16. Inspection for compliance [AMENDED]
  - Part 7. Storage Tanks and Ancillary Equipment
    - 165:15-3-20. Water in storage tanks [AMENDED]
    - 165:15-3-21. Containment of petroleum products [AMENDED]
    - 165:15-3-23. Marina inspections [AMENDED]
    - 165:15-3-24.3. ~~Farm~~UST inspections at farms [AMENDED]
  - Part 9. Large Volume Meters
    - 165:15-3-25. Testing and inspection of large volume meters [AMENDED]
- Subchapter 7. Specifications, Standards, and Labeling for Motor Fuels
  - 165:15-7-5. Diesel fuel [AMENDED]
- Subchapter 9. Description of Motor Fuel
  - 165:15-9-1. General representation: lettering [AMENDED]
- Subchapter 13. Labeling of Tanks and Product Lines
  - 165:15-13-1. General identification and color coding requirements [AMENDED]
  - 165:15-13-2. Underground tanks [REVOKED]
  - 165:15-13-3. Aboveground storage tanks [REVOKED]
- Subchapter 15. Liquid Measuring Devices
  - Part 9. Equipment and Operations
    - 165:15-15-54. Wholesale devices [AMENDED]
  - Subchapter 19. Violations and Contempt
    - 165:15-19-1. Penalty: violations and contempt [AMENDED]
    - 165:15-19-2. Enforcement procedure [AMENDED]

165:15-19-3. Notices of Violation [AMENDED]

**AUTHORITY:**

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321, 52 O.S. § 325, 47 O.S. §466.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

**COMMENT PERIOD:**

October 22, 2015 to January 15, 2016

**PUBLIC HEARING:**

February 3, 2016

**ADOPTION:**

February 3, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 9, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The adopted rules clarify certain ambiguities that arose during the calendar year and remove obsolete or incorrect references. The adopted rules update current practices to align with changes in the fuel industry.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**165:15-1-2. Definitions**

The following words and 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 any stationary tank not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol.

**"Aboveground storage tank system"** means an above-ground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

**"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 an underground storage tank.

**"Approval seal"** means an inspection label or tag pasted on the face of a dispenser indicating its official approval, showing day, month, and year.

**"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.

**"Change in service"** means discontinuing the use of a storage tank system for purposes regulated by the Commission.

**"Commission"** means the Corporation Commission of Oklahoma.

**"Computing type"** means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

**"Diesel fuel"** means a hydrocarbon or biodiesel fuel suitable for use in a diesel engine.

**"Digital type"** means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

**"Director"** means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

**"Division"** means the Petroleum Storage Tank Division of the Corporation Commission.

**"Dry hose type"** means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.

**"Face of the pump"** 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

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digitally. It is the side of the pump where the unit price, volume dispensed, and dollar amount of the sale appear.

**"Fuel"** means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.

**"Fuel Specialist"** means any field inspector employed by the ~~Fuel Inspection and Compliance~~ Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

**"Gasoline"** means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

**"Gravity type"** means a type of device designed for discharge by gravity.

**"Gum"** means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

**"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 pump that signifies the amount relative to a quantity measured by a measuring device.

**"Isooctane"** means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.

**"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, burning 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 ether for use as a component in gasoline.

**"Manufacturer"** means any person engaged in the manufacture of gasoline, motor fuel, kerosene, aviation gasoline, diesel fuel, burning oil, or oxygenate offered for sale or use in the State of Oklahoma, whether such products are manufactured by the method of processing crude petroleum or natural gas or collecting natural or drip gasoline or the blending or mixing of any two or more products obtained from these processing methods. Blending or mixing, as used in this Chapter, does not include the multi-blend pumps at service stations.

**"Measuring device"** or **"meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

**"Motor fuel"** means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

**"NACE"** means the National Association of Corrosion Engineers.

**"N-heptane"** means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

**"Octane", "octane number", or "octane rating"** means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

**"Owner or operator"** means the person responsible for and in control of a facility's day-to-day operations, whether the person actually possesses a title to the facility or controls it as a lessee or by any other agreement. The term also includes a past operator at the time of a release or a violation of state statutes or Commission rules.

**"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 products"** means antifreeze, motor oil, gasoline, kerosene, ethanol, diesel and biodiesel fuel and aviation gasoline.

**"Primary indicating elements" or "recording elements"** means those principal visual indicating elements and recording elements that may be used by the 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 as a fleet and commercial facility.

**"Private airstrip"** means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

**"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. It does not include compressed natural gas, liquid natural gas and propane.

**"Retail device"** means a measuring device or mechanism designed for single deliveries of motor fuels to individual land, air, and water vehicles.

**"Retail level"** means all places of business where gasoline, motor fuel, kerosene, diesel fuel, or aviation gasoline is dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consigning agents, distributors, or jobbers.

**"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, but not removed, with the intent to 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 regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers and ancillary equipment.

"Unleaded gasoline" means a refined gasoline to which no lead has been intentionally added during the refining or blending process.

"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.

"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.

**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 petroleum product, motor fuel, oxygenate, or blend of products.
  - (3) ~~All persons who use liquid measuring devices in the sale or distribution of motor fuel.~~
- (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 the metric equipment must be equivalent to those specified in English units for similar equipment.

**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 ~~petroleum product~~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.

**165:15-1-6. Fuel Specialists' Identification 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.

**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 ~~this Chapter~~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.

**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 pump, delivery device, receptacle, or container tank used in the sale, distribution or storage of regulated substances in Oklahoma when the rules in this Chapter, Chapter 25, Chapter 26, or a Commission order are being violated.

**PART 3. MOTOR FUELS AND ANTIFREEZE**

**165:15-3-11. Testing methods**

- ~~(a)~~ 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.
- ~~(b)~~ ~~Though Fuel Specialists are not required to test the octane in motor fuel dispensed at fleet or commercial facilities at which a company dispenses fuel for its own use, they may, time permitting check fuel octane as a courtesy to an owner or operators' request.~~

**PART 5. LIQUID MEASURING DEVICES**

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### 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.

### 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 by the Fuel Specialist no more than 10 million gallons of use, or more often if the Fuel Specialist 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.

(g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair 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 Petroleum Storage Tank Division Director or the Director's designee; or

(3) Order of the Commission.

~~(h) For a fleet or commercial facility where fuel is dispensed for internal use by the company or its agents, there is no requirement that a Commission Fuel Specialist check the calibration of that facility's dispensers. However, a Fuel Specialist may do so time permitting as a courtesy for an owner or operator.~~

## 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.

(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).

(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 lines and/or the storage tanks 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 problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

### 165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent releases.

(1) **Spill and overfill protection.** Fuel Specialists must ensure that appropriate spill and overfill 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 Chapter 25 and Chapter 26 of Commission rules.

(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 ~~fuel should have been~~ shall be reported to a Commission ~~hydrologist~~ Project Environmental Analyst by telephone at ~~(405) 521-6575~~ (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 operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 units/ppm should have been shall be reported. If this has not been reported, the Fuel Specialist shall 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 30 days on the appropriate OCC form.
- (iv) Any indication of product discovered ~~should have been~~ shall be reported to a Commission ~~hydrologist~~ Project Environmental Analyst by telephone at ~~(405) 521-6575~~ (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 operator, agents, Monitor Well Technicians, or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist shall report it.

(C) **Tank system tightness testing with monthly inventory control.** When performed in accordance

with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

(i) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The test must be performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(ii) **Inventory control.**

(I) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

(II) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(III) 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").

(IV) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(V) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(VI) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(VII) 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 a month.

(VIII) Use of OCC Monthly Inventory Reconciliation Form or an electric equivalent is required.

(D) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.

(ii) The tank must be equipped with a drop tube and measured for water at least monthly.

(iii) Records must be submitted to a certified SIR vendor for monthly evaluation.

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(iv) Results of monthly SIR analysis must be on premises no later than the last day of the following month.

(E) **Automatic tank gauging (ATG).**

(i) The ATG must be in operating condition. It must perform a monthly test 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, monthly 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.

(F) **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 Chapter 25 or Chapter 26 of Commission rules. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons.

(G) **Interstitial monitoring.** Sampling or testing must be capable of detecting a release monthly in accordance with the manufacturer's instructions.

(H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission 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 Chapter 25 and Chapter 26 of Commission rules. All pressurized piping must have electronic/automatic or mechanical line leak detectors capable of detecting a three 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 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 month; 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 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and the OCC approved monitoring well site assessment must be made available to the Fuel Specialist.

(iii) Wells must be properly monitored and the results recorded every 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 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 60 days and kept on site for review.

**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 ~~must~~ 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.

**165:15-3-24.3. Farm UST inspections at farms**

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm ~~petroleum~~ 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 ~~should have been~~ shall be reported to a Commission ~~hydrologist~~ Project Environmental Analyst at ~~405-521-6575~~ (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.

**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 ~~Fuel Inspection and Compliance and Inspection~~ Department in advance of the calibration so a Fuel Specialist can witness it, and for mailing a copy of test results to the ~~Fuel Inspection and Compliance and Inspection~~ Department within ten (10) working days of completion of the test.

**SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS**

**165:15-7-5. Diesel fuel**

The standard classification of diesel fuel ~~oil~~, as described in ASTM D 975 ~~and biodiesel as described in 52 O.S. §325,~~ must be used, ~~with the exceptions as noted in the following paragraphs:~~



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(1) **Characteristics.** Diesel fuel must be a hydrocarbon fuel, essentially free from suspended water and sediment, and must be suitable for use as a fuel in a diesel engine.

(2) **Classification.** Diesel fuel is classed as follows:

(A) **Grade No. 1-D.** This fuel comprises the class of volatile fuel oils from kerosene to the intermediate distillates. Fuel within this classification is applicable for use in high-speed engines in service involving frequent and relatively wide variations in loads and speeds. This fuel is used where low fuel temperatures are encountered.

(B) **Grade No. 2-D.** This fuel covers the class of distillate gas oil of lower volatility. These fuels are applicable for use in high-speed engines in service involving relatively high loads and uniform speeds.

(3) **Flash point.** The following limits for flash point shall apply:

(A) 1-D minimum flash point of 120°F using D 56.

(B) 2-D minimum flash point of 125°F using D 56.

(4) **Distillation test.** The limits of the distillation test must be as specified in Appendix C of this Chapter.

(5) **Viscosity test.** The test used to determine the viscosity will be ASTM D 445. The limits at 104°F, in centistokes, must be as follows:

(A) For 1-D, the minimum kinematic viscosity is 1.3 and the maximum is 2.4.

(B) For 2-D, the minimum kinematic viscosity is 1.9 and the maximum is 4.1.

### 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, pump, 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 1/4 to 1/2 inch text letters that are easily legible for from at least 5 feet.

### 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 motor fuel they contain in accordance with API Recommended Practice 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals".

(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 motor fuel: 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) Biodiesel: bronze with yellow and 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 motor fuel: 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) Biodiesel: bronze with yellow and black border around lid.

(d) Products containing extenders (oxygenates) such as ethanol shall be designated by the addition of a black border around white symbols and a white border around other colored symbols a black "X".

(e) Vapor-recovery connections and manholes shall be marked with orange circles.

(f) Observation and monitoring wells shall be marked with a black triangle on a white background.

(g) 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.

(h) 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.

#### 165:15-13-2. Underground tanks [REVOKED]

~~At all service stations or bulk storage areas with underground tanks, there must be a tag, label, or color code marking on, adjacent to, or around each fill pipe. The tag, label, or color code marking must be visible to anyone adding or delivering a motor fuel to the storage tank. The colors described in this Chapter must be used when color coding is used.~~

#### 165:15-13-3. Aboveground storage tanks [REVOKED]

~~At a bulk storage area or a service station with aboveground storage tanks, each product line used to fill the tanks must be marked with a tag, labeling, or color coded marking at~~

the end where the truck driver attaches his hose to transfer the motor fuel. Each outlet used to transfer motor fuel from the storage tank to a delivery truck or other container must have a tag, label, or color code marking identifying the type or grade of product. This tag, labeling, or color code marking must be at the valve device, switch, or hose at the final point of selection for the grade of product to be dispensed. The color code marking described in this Chapter must be used if color coding is used.

**SUBCHAPTER 15. LIQUID MEASURING DEVICES**

**PART 9. EQUIPMENT AND OPERATIONS**

**165:15-15-54. Wholesale devices**

(a) Wholesale devices must be calibrated by a certified source. The result must be mailed to the ~~Commission Fuel Inspection and Compliance~~ and Inspection Department with a pass or fail rating. Upon receipt of documentation, a Fuel Specialist from the ~~Fuel Inspection and 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 ~~Fuel Inspection and 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.

**SUBCHAPTER 19. VIOLATIONS AND CONTEMPT**

**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 ~~or molests~~ defaces or destroys any sign, label, lock, or seal placed by the Fuel Specialist upon any pump, delivery device, receptacle, container, tank, or service station used in the sale of any motor fuel.

(4) Any person who aids any person in the violation of any rule of this Chapter.

(5) 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.

(6) Any person otherwise failing to comply with the rules, regulations, specifications, ~~or standards,~~ or requirements of the Commission.

(b) Each day on which violation occurs will be deemed a separate and distinct offense.

**165:15-19-2. Enforcement procedure**

In addition to the contempt procedures described in Chapter 5 of Commission rules, the following procedure for violations may be followed:

(1) ~~A Fuel Specialist~~ The PSTD Director or designee may issue in the field a ~~Complaint for Contempt~~ Field Citation for any violation or violations of the rules of

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this Chapter, and/or 17 O.S. §301 et seq., and/or 52 O.S. §321 et seq., and/or 83 O.S. §111 et seq., and amendments thereto.

(2) A copy of the ~~Complaint for Contempt~~Field Citation must be furnished to the owner or operator.

(3) The ~~Complaint for Contempt~~Field Citation must be ~~in the form specified~~authorized by the ~~Commission~~PSTD Director.

(4) ~~After the Complaint for Contempt is verified, it must be filed with the Court Clerk of the Oklahoma Corporation Commission, and a citation directed to the person against whom the complaint is made must be issued and served upon that person, setting the date for hearing on the complaint.~~

(5) ~~Prior to the delivery by the Fuel Specialist of issuing a Complaint for Contempt~~Field Citation to an owner or operator, the approval of the Director of the Petroleum Storage Tank Division must be obtained.

### 165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any statute, rule 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, Chapter 16, Chapter 25 and Chapter 26 of Commission rules.

(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 act as a notification that a ~~Warning or Fine~~Field Citation ~~will~~may be issued or further Commission enforcement action ~~will~~shall occur if the violation is not corrected.

(2) ~~There are some violations that are not eligible for a Warning Citation. For these violations, a Fine Citation will be issued to the tank owner or operator. At PSTD's discretion, egregious violations can be immediately turned over to the Commission's General Counsel's office 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) must be corrected.
- (3) A date by which to request a hearing.
- (4) 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) Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if they are at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOV's, but the Commission must also ~~mail~~send a copy of the NOV to the owner or operator at the last

known address shown by Commission records. The NOV's will be faxed rather than mailed at any company's request.

*[OAR Docket #16-526; filed 6-15-16]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

*[OAR Docket #16-527]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. Definitions [AMENDED]

Part 5. Scope of Rules

165:25-1-23.1. Specified applications [AMENDED]

Part 6. Administrative Provisions

165:25-1-26.2. Public participation [NEW]

Part 9. Notification and Reporting Requirements

165:25-1-41. General reporting requirements [AMENDED]

165:25-1-42. New tank systems [AMENDED]

Part 11. Recordkeeping

165:25-1-53. Availability of records [AMENDED]

165:25-1-54. Repair records [AMENDED]

165:25-1-57. Spill and overfill records [AMENDED]

165:25-1-60. Walkthrough inspection records [NEW]

Part 13. Fees

165:25-1-64. Fees [AMENDED]

Part 15. Shutdown of Operations

165:25-1-67. Shutdown of operations [AMENDED]

Part 19. Operator Training

165:25-1-122. Operator Class designations [AMENDED]

Subchapter 2. General Requirements for Underground Storage Tank Systems

Part 1. Codes and Standards

165:25-2-2. Incorporated codes and standards [AMENDED]

Part 3. Design and Installation

165:25-2-32. Compatibility [AMENDED]

165:25-2-39. Spill and overfill protection [AMENDED]

Part 5. Protection Against Corrosion

165:25-2-53.1. Underground storage tank internal lining requirements [AMENDED]

Part 7. Dispensers

165:25-2-75. Required signs [AMENDED]

Part 11. Repairs to Underground Storage Tank Systems

165:25-2-111. Repairs to underground storage tank systems [AMENDED]

Part 13. Removal and Closures of Underground Storage Tank Systems

165:25-2-131. Tank removal and closure [AMENDED]

165:25-2-133. Temporary removal from service [AMENDED]

165:25-2-135. Permanent closure [AMENDED]

Subchapter 3. Release Prevention and Detection Requirements

Part 2. Release Detection Requirements and Methods

165:25-3-6.22. Tank system tightness testing with monthly inventory control [AMENDED]

165:25-3-6.25. Interstitial monitoring [AMENDED]

Part 3. Release Investigation Requirements

165:25-3-7.1. Release reporting [AMENDED]

Subchapter 18. Inspections, Notices of Violation, and Citations

Part 3. Notices of Violation and Citations

165:25-18-10. Notice of Violation and Citations [AMENDED]

165:25-18-12. Re-inspection and Fine Citation [AMENDED]

### AUTHORITY:

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321, 47 O.S. §466.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

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February 3, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 9, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

165:25-1-11. Definitions: "Financial responsibility", "Financial security", "Lender liability". (EPA)

165:25-1-23.1. Specified applications. (EPA)

165:25-1-60. Walkthrough inspections and records. (EPA)

165:25-2-2.

Incorporated codes and standards (various codes and standards - updated to most current version:

(1) National Fire Protection Association Standards: Standard Number 329, 2010 2015, "~~Underground Leakage~~ Handling Releases of Flammable and Combustible Liquids and Gases;" Standard Number ~~327~~ 326, ~~493~~ 2015, "~~Cleaning or Safeguarding Small~~ Tanks and Containers for Entry, Cleaning and Repair;"

(2) American Petroleum Institute Standards: ASTM E1739-95 (2010) ~~et~~ (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites;"

(3) Code of Federal Regulations: 40 CFR 280

**Incorporating rules:**

165:25-1-11; 165:25-1-23.1; 165:25-1-60; 165:25-2-2.

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Storage Tank Division, 4<sup>th</sup> Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105. (405) 521-2211.

**ANALYSIS:**

The evolution of underground storage tank regulation and use present new problems including meeting new EPA requirements; impermissible activities; and defining limits on what underground storage tanks the Commission regulates. Past rulemakings have overlooked some elements of legislation that needed to be addressed; certain vocabulary/punctuation/statutory/regulatory citations refined. Experience has shown that certain rules need to be clarified to fully set forth achievable time frames for submitting required documents. Codes and standards incorporated in the underground storage tank rules need to be updated to reflect current editions. Experience also brings practical and uniform regulation where none previously existed.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**PART 3. DEFINITIONS**

**165:25-1-11. 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:

"**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 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 gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, 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.

"**Commission**" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"**Construction tank**" means a fuel tank used for twelve months or less at a construction site.

"**Division**" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"**EPA**" means the United States Environmental Protection Agency.

"**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.

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**"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.

**"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.

**"Marina"** means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

**"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.

**"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.

**"PST"** means petroleum storage tank.

**"PSTD"** means Petroleum Storage Tank Division.

**"Public Utility"** means any entity providing gas, electric, water, or telecommunications services for public use.

**"Regulated substance"** means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

**"Release detection"** means 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 property used primarily for dwelling purposes.

**"Retail facility"** means a service station, convenience store or any other facility selling motor fuel 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 which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare 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 but not removed with the intent to return to service.

**"TPH"** means total petroleum hydrocarbons.

**"Underground storage tank"** or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground. Piping is also included in this definition when referring to an airport hydrant system tank.

**"Underground storage tank system"** means an underground storage tank and any connected aboveground or underground piping, dispensers, containment sump, if any, and ancillary equipment or transport truck connected to the storage tank system.

**"Used Motor Oil"** is any spent oil removed from a motor vehicle.

## PART 5. SCOPE OF RULES

### 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 release reporting, investigation, response and corrective action requirements only 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.

## PART 6. ADMINISTRATIVE PROVISIONS

### 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 permissive intervention is allowed by statute, rule or regulation.

## PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

**165:25-1-41. General reporting requirements**

PSTD ~~may require~~ 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 form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. 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 (10) percent ethanol or regulated substances containing greater than twenty (20) percent biodiesel using the PSTD notification form. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

**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 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling notification form and receiving confirmation of the installation from PSTD. If events require a change in the date of installation, PSTD shall be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.
- (b) Upon receipt of the scheduling form 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 will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted to PSTD 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 30 days. The registration form 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 form that the installation of tanks and piping meet the requirements of this Chapter.

**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 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 12 months. Emergency generator tanks at unmanned locations are not

subject required to keep leak detection records requirements at the facility, and may forward any required records to the PSTD office or upon request to the PSTD Fuel Specialist.

(d) Copies of the following records must be readily available to the PSTD Fuel Specialist:

(1) Tank tightness tests, monthly 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. Statistical inventory reconciliation (SIR) records must demonstrate the following:

(A) Report a quantitative result with a calculated leak rate;

(B) 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; and

(C) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(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 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) 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 (10) percent ethanol or twenty (20) percent biodiesel. These records must be maintained at the facility for as long as the tank system is used to store these substances. Additionally, the documents that prove compatibility must be submitted to PSTD within thirty (30) days of the owner or operator receiving the records.

(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 an 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 must be maintained on forms specified by the Commission.

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### 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 or submitted to PSTD 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.

### 165:25-1-57. Spill and overfill 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 overfill.

(b) On new installations, records must be maintained that document overfill 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 overfill 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 overfill 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.

### 165:25-1-60. Walkthrough inspections and records

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. In addition, airport hydrant systems must meet the additional walkthrough inspection requirement in 40 CFR 280.252(c). All walkthrough inspection records must be maintained for three (3) years.

## PART 13. FEES

### 165:25-1-64. Fees

This Chapter requires the following fees according to the schedule set out in Chapter 5 of Commission rules.

- (1) Owners or operators of all underground storage tank systems in use during the fiscal year. Tank permit fees are exclusive to the tank(s) being permitted.
- (2) Licensed UST Installers, UST Removers, Environmental Consultants, and Monitor Well Technicians who become licensed pursuant to the provisions of this Chapter.

## 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 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 take corrective action.
  - (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 take corrective action.
  - (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.
  - (7) Failure to have a Class A, B, or C operator on premises during business hours.
  - (8) Tampering with equipment.
- (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 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 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 -15 cubic inches per every 5 gallons.
  - (7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is/are not corrected.
- (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 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) Owners, operators, or any persons who remove 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, 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; or
- (2) Verbal or written permission from the Manager of Compliance and Inspection; 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.

## PART 19. OPERATOR TRAINING

### 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.

## SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

### PART 1. CODES AND STANDARDS

#### 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, 2015, "Flammable and Combustible Liquids Code".

(B) Standard Number 329, ~~2010~~2015, "~~Underground Leakage Handling Releases~~ of Flammable and Combustible Liquids and Gases".

(C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids".

~~(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".~~

~~(E) Standard Number 327~~326, ~~1993~~2015, "Cleaning or Safeguarding Small Tanks and Containers for Entry, Cleaning and Repair".

~~(F) 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, Sixth Edition".

(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, Third Edition".

(D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks".

(E) Recommended Practice 1621, (R2001), "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, 2010, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, Fourth Edition".

(J) Publication 2015, 2001, "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 RP 0184-94, "Repair of Lining Systems".~~



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- (C) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".
- (D) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines".
- (4) Underwriter's Laboratory Standards:
- (A) Standard UL58, 9th Edition, 1996, "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 (2010) ~~et(2015)~~, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".
- (B) ASTM G158-98 (2010), "Three Methods of Assessing Buried Steel Tanks".
- (6) Petroleum Equipment Institute:
- (A) PEI/RP 100 (2011 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems".
- (B) PEI/RP 400-02 (2012 Edition), "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment".
- (C) PEI/RP 500-05 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment".
- (D) PEI/RP 900-07 (2008 Edition), "Recommended Practices for the Inspection and Maintenance of UST 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".
- (8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks".
- (9) Factory Mutual 1920, "Flexible Pipe Couplings".

(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection".

(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".

(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)".

(13) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera".

### PART 3. DESIGN AND INSTALLATION

#### 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 (10) percent ethanol or twenty (20) percent 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, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

#### 165:25-2-39. Spill and overfill protection

(a) Owners and operators of underground storage tank systems, 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) Tight fill connections must be used on all deliveries made to underground storage tanks.

(c) Tampering with overfill 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.

(d) 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) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

(A) A drop tube with overfill 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 overfill 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 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.

(e) 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 25 gallons at one time.

(e) 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.

(f) 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.

(g) 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.

## PART 5. PROTECTION AGAINST CORROSION

### 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 available on OCC website at [www.occeweb.com](http://www.occeweb.com).

(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 by submitting the PSTD scheduling form.

## PART 7. DISPENSERS

### 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) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. ~~Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.~~

(c) If two different types of gasoline are being dispensed from a single hose, e.g., 100% gasoline and 10% ethanol blend gasoline, a sign must be displayed in close proximity to the 100% gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of 100% gasoline.

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(d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

### 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.

### 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 14 days prior to the removal or 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 48 hours notice of 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 to be closed in place. Tank systems that are removed from the ground must be transported from the site and 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.

(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.

#### 165:25-2-133. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:

(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 release detection and release detection testing as required by this Chapter;

(3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and

(4) Notify PSTD of a change in service on the prescribed form.

(b) Release detection is not required as long as the underground storage tank system is empty. The underground storage tank system is empty when all regulated substances have been removed so that no more than 1 inch (1") of residue remains in the tank.

(c) Tanks must be permanently closed if they do not meet PSTD requirements as set forth above.

#### 165:25-2-135. Permanent closure

All systems out of service for more than 12 months must be removed or closed in place in accordance with a variance by Commission order if they do not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134. A closure in place variance will be accomplished by an application for variance and an administrative review by PSTD. The variance applicant will be notified prior to a hearing whether the variance application is approved or disapproved by staff. If the application for variance is approved, no further action by applicant is necessary. If the variance application is disapproved by staff, staff will notify applicant of disapproval in sufficient time for the applicant to present evidence supporting the variance at a Commission hearing.

**SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS**

**PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS**

**165:25-3-6.22. Tank system tightness testing with monthly inventory control**

When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed. This will expire June 30, 2018.

- (1) **Tank tightness testing.** Tank tightness testing must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank.
- (2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.
- (3) **Inventory control.** Monthly inventory control must be conducted to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly 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) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.
  - (E) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.
  - (F) 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 a month.
  - (G) Use of PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

**165:25-3-6.25. Interstitial monitoring**

- (a) For double-walled underground storage tank systems, the sampling or testing method must detect a release monthly 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 and 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. 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.

**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 Chapter 29 of Commission rules, 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 any of the following events to PSTD by telephone at (405) ~~521-6575~~(405) 521-4683 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, ~~a detailed message must be left on PSTD's answering machine~~ call the PSTD emergency number at (405) 823-0994) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.

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(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).

(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, or an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced ~~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 months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 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 within 24 hours of the owner/operator discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator discovering the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.

(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 24 hours of the owner/operator or any of his or her employees at the facility discovering the monitoring results. Within 10 days, the owner/operator must submit to PSTD all vapor monitoring well data for the last 12 months. 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 monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring and it must be reported to PSTD within 24 hours of the owner or operator or any of his or her employees at the facility 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 ~~the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~

(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 25 gallons need not be reported, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD by telephone within 24 hours of discovery, with a written confirmation to PSTD within 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 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 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 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions above are not reported within 24 hours, the owner/operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

### SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

#### PART 3. NOTICES OF VIOLATION AND CITATIONS

##### 165:25-18-10. Notices of Violation and Citations

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 ~~Inspection and Compliance~~ and Inspection to issue citation(s) 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 citation will allow petroleum storage tank owners and operators to quickly address and correct storage tank violation(s).

**165:25-18-12. Re-inspection and Fine Citation**

(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) Issue a new NOV and refer the violation to the ~~Inspection and Compliance and Inspection~~ Manager for enforcement action; and/or
- (2) The storage tank facility may be shut down pending a correction of the problem or a PSTD hearing on the issue.

*[OAR Docket #16-527; filed 6-15-16]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 26. ABOVEGROUND STORAGE  
TANKS**

*[OAR Docket #16-528]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
  - Part 1. Purpose and Definitions
  - 165:26-1-2. Definitions [AMENDED]
  - Part 3. Scope of Rules
  - 165:26-1-21. Overview of applicability [AMENDED]
  - Part 4. Administrative Provisions
  - 165:26-1-26.1. Public participation [NEW]
  - Part 5. Standards and Codes
  - 165:26-1-31. Codes and standards [AMENDED]
  - Part 6. Financial Responsibility
  - 165:26-1-36. Financial responsibility [AMENDED]
  - Part 7. Notification and Reporting Requirements
  - 165:26-1-42. New tank systems [AMENDED]
  - 165:26-1-44. Tank closure or change in service [AMENDED]
  - Part 11. Fees
  - 165:26-1-70. Fees [AMENDED]
  - Part 13. Shutdown of Operations
  - 165:26-1-90. Shutdown of operations [AMENDED]
- Subchapter 2. General Requirements for Aboveground Storage Tank Systems
- Part 3. Secondary Containment
- 165:26-2-31. Double-walled tanks [AMENDED]
- Part 4. Requirements for Corrosion Protection Systems
- 165:26-2-40. Corrosion protection [AMENDED]
- Part 13. Miscellaneous Safety Provisions
- 165:26-2-132. Required signs [AMENDED]
- Part 21. Removal and Closure of Aboveground Storage Tank Systems
- 165:26-2-210. Tank removal and closure [AMENDED]
- Subchapter 3. Release Prevention and Detection
- Part 4. Release Detection
- 165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping [AMENDED]
- Part 14. Release Reporting Requirements
- 165:26-3-77. Release reporting [AMENDED]
- Subchapter 4. Inspections, Penalties, and Field Citations
- Part 5. Notices of Violation, Warning Citations and Fine Citations
- 165:26-4-17. Re-inspection and Citation [AMENDED]

- Subchapter 16. Requirements for Aboveground Storage Tank Systems Utilized by Emergency Generators
- Part 1. General Application and Compliance Provisions
- 165:26-16-1. Application [REVOKED]
- 165:26-16-2. Timeframes for registration and compliance with rules [REVOKED]
- Appendix J. Table Establishing Permeability Rates for Secondary Containment [REVOKED]
- Appendix J. Table Establishing Permeability Rates for Secondary Containment [NEW]

**AUTHORITY:**

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

**COMMENT PERIOD:**

October 22, 2015 to January 15, 2016

**PUBLIC HEARING:**

February 3, 2016

**ADOPTION:**

February 3, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 9, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

165:26-1-21. Overview and applicability: (New editions of National Fire Protection Association ("NFPA") 30 and NFPA 30A supersede all previous editions):

(1) National Fire Protection Association Standards: Standard Number 30, 2015, "Flammable and Combustible Liquids Code;" Standard Number 30 A, 2015 "Automotive and Marine Service Station Code."

165:26-1-31. Codes and standards (various codes and standards are updated to most current version):

(1) American Society for Testing and Materials ("ASTM") Standards: ASTM E1739-95 (2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

(2) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169 2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(3) Underwriter's Laboratory (UL) Standards: Standard UL842, 2015, "Valves for Flammable Fluids;" Standard UL971, 2011, "Nonmetallic Underground Piping for Flammable Liquids."

165:26-2-40. Corrosion protection (various codes and standards are updated to most current version):

(1) National Association of Corrosion Engineers Standards: SP0169-2013, "Control of External Corrosion of Underground or Submerged Metallic Piping Systems;" SP0285-2011, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

**Incorporating rules:**

165:26-1-21; 165:26-1-31; 165:26-2-40

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Storage Tank Division, 4<sup>th</sup> Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105. (405) 521-2211.

**ANALYSIS:**

Rulemaking is an evolutionary process. Unfortunately, state agencies are reactive to certain questions that arise. As a result, codes and standards must be updated to make certain the regulated community and the administering agency are operating out of the same book, so to speak. Consequently, the definitions section regarding regulated substances was expanded to reflect that liquid natural gas (LNG) and propane are NOT regulated by the Commission. Obsolete language and rules were stricken. Fuel ballasting for tank installation

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was further clarified to emphasize that fuel used as a ballasting agent is for testing purposes only, and no fuel sales are allowed during installation and testing. Experience has shown that certain rules need to be clarified to fully explain what staff seeks to comply with the rules. In addition, it is important to set forth warnings within the rules to educate the regulated community with the consequences for not promptly remedying system deficiencies. Practical use also dictates that staff must change the rules to conform to safe industry practices concerning capacity of double walled tanks. It is important for the regulated community to apprise the public when two (2) types of fuel are being dispensed from a single hose. Also, when an emergency/after hours contact number changes, it must be changed in the rules so a release or other emergency situation can be promptly reported. Lastly, Appendix "J" was reenacted to provide updated topological information experienced during the time of regulation.

### CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occcemail.com.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

### SUBCHAPTER 1. GENERAL PROVISIONS

#### PART 1. PURPOSE AND DEFINITIONS

##### 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 any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

**"Aboveground storage tank system"** means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

**"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 discontinuing use of the petroleum storage system for purposes regulated by PSTD.

**"Commission"** or **"OCC"** means the Oklahoma Corporation Commission and includes its designated agents or representatives.

**"Compatible"** means the ability of two 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.

**"Construction tank"** means a fuel tank used for less than 12 months at a construction site.

**"Division"** means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

**"EPA"** means the United States Environmental Protection Agency.

**"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.

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

**"Generation facilities"** means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

**"Impervious barrier"** means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least  $1 \times 10^{-6}$  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 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.

**"Marina"** means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

**"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 telecommunications services for public use.

**"Regulated substances"** means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

**"Release detection"** means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank system.

**"Residential tank"** is a tank located on property used primarily for dwelling purposes

**"Responsible person"** means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

**"Retail facility"** means a service station, convenience store or any other facility selling motor fuel 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 which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare, 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 but not removed with the intent to return to service.

**"Used Motor Oil"** is any spent engine oil removed from a motor vehicle.

**"Vault"** means an enclosure consisting of four 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.

### 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, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, ~~2003~~2015, "Flammable and Combustible Liquids Code" and Standard Number 30A, ~~2003~~2015, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

### PART 4. ADMINISTRATIVE PROVISIONS

#### 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; and



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(3) Not opposing citizen intervention when permissive intervention is allowed by statute, rule or regulation.

### PART 5. STANDARDS AND CODES

#### 165:26-1-31. 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 B31.3-2012, "Process Piping".

(B) ASME B31.4-2012, "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, 1997.

(B) API 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".

(3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 ~~(2010)~~ et(2015), "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-~~2007~~2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(5) National Fire Protection Association (NFPA) Standards:

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code".

(B) Standard Number 30A, 2015, "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, ~~2007~~2015, "Valves for Flammable Fluids".

(C) Standard UL971, ~~2005~~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 42<sup>nd</sup> 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 ~~(NWWA)~~(NGWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.

(8) Underwriter's Laboratory (UL), 333 Pflingsten 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.

### 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) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or 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 event of noncompliance.

(e) An owner or operator may satisfy the requirements of this Subchapter by use of the Indemnity Fund. There is a ~~deductible co-pay~~ for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3. For releases that occurred before June 4, 2004 the ~~deductible co-pay~~ is \$5,000; for releases that occurred after June 4, 2004 the ~~deductible co-pay~~ is 1% of fund expenditures not to exceed \$5,000.

**PART 7. NOTIFICATION AND REPORTING REQUIREMENTS**

**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 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form 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 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form 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 will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted 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 30 days. The registration form 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 form that the installation of tanks and piping meet the requirements of this Chapter.

**165:26-1-44. Tank closure or change in service**

Owners of aboveground storage tank systems must notify PSTD at least 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 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 being used as AST's must be destroyed upon removal and evidence of destruction submitted to PSTD.

**PART 11. FEES**

**165:26-1-70. Fees**

This Chapter requires the following fees according to the schedule set out in Chapter 5 of Commission rules:

- (1) Owners or operators of all aboveground storage tank systems in use during the fiscal year. Tank permit fees are exclusive to the tank(s) being permitted.

- (2) AST Licensees and Environmental Consultants who become licensed pursuant to the provisions of this Chapter.

**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 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 take corrective action.
  - (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 take corrective action.
  - (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.
  - (7) Tampering with equipment.
- (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 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 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 -15 cubic inches per every 5 gallons.
  - (7) If a Fuel Specialist makes two (2) scheduled visits to a facility and the violation(s) is not corrected.
- (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 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) Owners, operators, or any persons who remove 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, permit

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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; or
  - (2) Verbal or written permission from the Manager of Compliance and Inspection; 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.

### SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

#### 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 ~~12,000~~50,000 gallons (~~45,420~~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.

#### 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, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;
  - (2) National Association of Corrosion Engineers Standard RP0193, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;
  - (3) National Association of Corrosion Engineers Standard ~~RP-01-69 (1996 rev.)~~, ~~Recommended Practice~~ SP0169-2013, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;
  - (4) National Association of Corrosion Engineers Standard ~~RP-02-85-95~~, ~~Recommended Practice~~ 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.

#### PART 13. MISCELLANEOUS SAFETY PROVISIONS

##### 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) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. ~~Failure to abide with signage requirements may result in fines, and/or enforcement action.~~
- (c) If two different types of gasoline are being dispensed from a single hose, e.g., 100% gasoline and 10% ethanol blend gasoline, a sign must be displayed in close proximity to the 100% gasoline button advising the customer that small amounts of ethanol may be dispensed in the first five (5) gallons of purchase of 100% gasoline.
- (d) Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

#### 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 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 48 hours notice of 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 PSTD 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.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 4. RELEASE DETECTION

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 monthly visual monitoring for aboveground product piping.
(2) Monthly Inventory Reconciliation. (A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:
(iA) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.
(iB) 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").
(iC) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.
(iD) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.
(iE) 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 a month.
(iF) Use of the PSTD Monthly 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 monthly 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 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 (nwgldc.org).

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 Chapter 29 of Commission rules 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.

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(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at ~~(405) 521-6575~~(405) 521-4683 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a ~~detailed message must be left on the PSTD answering machine call the PSTD emergency phone number at (405) 823-0994~~) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

- (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);
  - (2) Any unusual operating conditions observed by owners and/or operators, 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 consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner or operator 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 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 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 25 gallons.
  - (3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 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 3 years following the date of the event.
- (e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported

within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

### SUBCHAPTER 4. INSPECTIONS, PENALTIES AND FIELD CITATIONS

#### PART 5. NOTICES OF VIOLATION, WARNING CITATIONS AND FINE CITATIONS

##### 165:26-4-17. Re-inspection and Citation

- (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 will:
  - (1) Refer the violation to the PSTD ~~Inspection and Compliance and Inspection~~ Manager for formal enforcement action; and/or
  - (2) If the storage tank facility constitutes an immediate hazard it may be shut down pending a correction of the problem or a hearing on the issue.

### SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

#### PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

##### 165:26-16-1. Application [REVOKED]

- (a) ~~This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in aboveground storage tanks for use in emergency generators at facilities subject to SPCC rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112, (Oil Pollution Prevention).~~
- (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.~~

##### 165:26-16-2. Timeframes for registration and compliance with rules [REVOKED]

~~Tanks that are greater than 110 gallons and subject to regulation and rules specified in 165:26-16-1 that contain fuel for emergency generators must be registered with PSTD. The tanks must have come into compliance with the rules of this Chapter and Subchapter before July 15, 2005.~~

**APPENDIX J. TABLE ESTABLISHING PERMEABILITY RATES FOR SECONDARY CONTAINMENT  
[REVOKED]**

**APPENDIX J. TABLE ESTABLISHING PERMEABILITY RATES FOR SECONDARY CONTAINMENT  
[NEW]**

Substance Classification	If groundwater or bedrock is <b>less than</b> 10 feet from grade or AST is within 100 feet of Class II water*	If groundwater or bedrock is <b>greater than</b> 10 feet from grade and AST is <b>not within</b> 100 feet of Class II water
Type A	At least three feet (horizontal thickness) of soil with a minimum permeability of $1 \times 10^{-5}$ cm/sec	At least three feet (horizontal thickness) of soil with a minimum permeability of $1 \times 10^{-4}$ cm/sec
Type B	At least three feet (horizontal thickness) of soil with a minimum permeability of $1 \times 10^{-4}$ cm/sec	At least three feet (horizontal thickness) of soil with a minimum permeability of $1 \times 10^{-3}$ cm/sec
Type C	At least three feet (horizontal thickness) of soil with a minimum permeability of $1 \times 10^{-3}$ cm/sec	No minimum permeability standard.

(A) Type A substances include gasoline, diesel, aviation fuel, kerosene, antifreeze, motor oil and motor fuel.

(B) Type B substances include jet fuel, fuel oil types 1 through 4, virgin lube oil, used oils and mixtures or blends of these substances with Type C substances.

(C) Type C substances include fuel oil types 5 and 6 and other regulated Substances.

\*Class II (General Use Groundwater): These are groundwaters capable of being used as a drinking water supply with no special treatment or with conventional treatment methods, which have the potential to be used for other beneficial uses and which have a mean concentration of Total Dissolved Solids of less than 3,000 milligrams per liter. [Oklahoma Water Resources Board, Oklahoma's Water Quality Standards, OAC 785:45-7-3(a)(2)]

[OAR Docket #16-528; filed 6-15-16]

# Permanent Final Adoptions

## TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #16-529]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
165:27-1-2. Definitions [AMENDED]  
Subchapter 7. Reimbursement  
165:27-7-1. Reimbursable expenses [AMENDED]  
Subchapter 9. Administrative Provisions  
165:27-9-3. Notices [AMENDED]

### AUTHORITY:

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

### COMMENT PERIOD:

October 22, 2015 to January 15, 2016

### PUBLIC HEARING:

February 3, 2016

### ADOPTION:

February 3, 2016

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2016

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

### FINAL ADOPTION:

June 9, 2016

### EFFECTIVE:

August 25, 2016

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

Due to recent litigation regarding petroleum releases, staff determined that a definition change of two elements of reimbursable expense should be made. In addition the rules were thoroughly reviewed to tighten up any vocabulary/grammatical inconsistencies and change the room number for the Indemnity fund offices.

### CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457. j.southwick@occcemail.com.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in 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.

**"Administrative Application"** means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.

**"Allowable Costs"** means costs that are reasonable, integral and necessary to corrective action.

**"Assignment of Benefits"** means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

**"Assignment of Rights"** (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

**"Associated costs"** means expenses that are not integral to the corrective action and not subject to reimbursement.

**"Chemicals of Concern ("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 SOR or eligible case when the co-pay is paid.

**"Closed file"** means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

**"Commission or OCC"** means the Oklahoma Corporation Commission.

**"Confirmed Release"** means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

**"Contamination"** means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

**"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. ~~The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.~~

**"Eligible Person"** means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

**"Eligible Release"** means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

**"Impacted Party"** means 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 impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

**"Investigation"** means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

**"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.

**"Occurrence"** means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one 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 different tank system locations, are separated by time, or both.

**"Pay for Performance (PFP)"** means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to

reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

**"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 transport 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.

**"Reimbursement"** means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a 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.

**"Remediation"** means the process or technique used to reduce concentration levels of regulated substances 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.

**"Site assessment"** means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

**"Site characterization"** means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by Chapter 29 of Commission rules for such a report.

**"Suspicion of Release" ("SOR")** means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR is required.

**"Work Plan"** means a proposed scope of work submitted online to implement corrective action.

## 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, and transportation, etc.
- (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 costs that have been paid by the eligible person as set forth in 17 O.S. 356.



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(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.

## SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

### 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) Mailing address: Administrator, Petroleum Storage Tank Indemnity Fund, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.
- (2) Mailing address: Director, Petroleum Storage Tank Division, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000.
- (3) Delivery address: Petroleum Storage Tank Indemnity Fund, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238480~~, Oklahoma City, Oklahoma 73105 (405) 521-4683.
- (4) Delivery address: Petroleum Storage Tank Division, Jim Thorpe Building, 2101 N. Lincoln Blvd., Room ~~238480~~, Oklahoma City, Oklahoma 73105 (405) 521-4683.

*[OAR Docket #16-529; filed 6-15-16]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

*[OAR Docket #16-530]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
- Part 3. Definitions
- 165:29-1-11. Definitions [AMENDED]
- Part 7. National Industry Codes
- 165:29-1-32. Incorporated codes and standards [AMENDED]
- Subchapter 3. Release Prevention, Detection and Correction
- Part 1. Release Prohibition, Reporting, and Investigation
- 165:29-3-2. Release reporting [AMENDED]
- Part 5. Corrective Action Requirements
- 165:29-3-71. General applicability; exception [AMENDED]
- 165:29-3-82. Closure of a case [AMENDED]

### AUTHORITY:

The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on October 22, 2015.

### COMMENT PERIOD:

October 22, 2015 to January 15, 2016

### PUBLIC HEARING:

February 3, 2016

### ADOPTION:

February 3, 2016

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 9, 2016

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

### FINAL ADOPTION:

June 9, 2016

### EFFECTIVE:

August 25, 2016

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

165:29-1-32. Incorporated codes and standards (various codes and standards - updated to the most current version):

(1) National Fire Protection Association Standards: Standard Number 329, 2015, "Handling Releases of Flammable and Combustible Liquids and Gases;" Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."

(2) American Petroleum Institute Standards: Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems;" Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."

(3) American Society for Testing and Materials, ASTM Designation: E 1739-95, 2015, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."

#### Incorporating rules:

165:29-1-32

#### Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Corporation Commission Office of Petroleum Storage Tank Division, 4<sup>th</sup> Floor, Jim Thorpe Office Building, 2101 N. Lincoln Blvd., Oklahoma City, 73105, (405) 521-2211.

#### ANALYSIS:

The definition section was amended to further establish what the Agency does and does not regulate. Also, referenced codes and standards were updated to the current issues so staff and the regulated community are operating on the same page. It was necessary to change the after hours/emergency contact number for accurate public referral. Finally, experience has shown that in certain circumstances waste material was left onsite after a release case closed. To avoid the problem in the future the rule was amended to delay release case closure until all waste material is removed.

#### CONTACT PERSON:

Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occcemail.com.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 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.

"**Abandoned system**" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.

"**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.

"**Beneath the surface of the ground**" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"**Beneficial uses**" means a classification of the waters of the State, according to their best uses in the interest of the public.

"**COC**" means Chemical of Concern.

"**Commission**" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"**Compatible**" means the ability of two 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.

"**Confirmed Release**" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"**Contaminants**" or "**contamination**" means concentrations of regulated substances or dissolved compounds therefrom at levels that may cause adverse human health or environmental effects.

"**Corrective action**" means action taken to assess, monitor, minimize, eliminate or clean up a release from a storage tank system.

"**Corrective Action Plan**" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"**DAF**" means Dilution Attenuation Factor.

"**DEQ**" means the Oklahoma Department of Environmental Quality.

"**DWS**" means Drinking Water Standards.

"**de minimis**" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"**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).

"**Dilution Attenuation Factor**" or "**DAF**" means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"**Director**" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"**Division**" means the Petroleum Storage Tank Division of the Corporation Commission.

"**EPA**" means the United States Environmental Protection Agency.

"**Electrical equipment**" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"**Environment**" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"**Environmental experience**" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a hazardous 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.

"**Facility**" means any location or part thereof consisting of one or more petroleum storage tanks or systems containing regulated substances.

"**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

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prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"**FOC**" means fraction organic carbon content.

"**Fraction organic carbon content**" or "**FOC**" means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"**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.

"**Gathering lines**" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"**Groundwater**" means that part of water that is below the water table.

"**Half-life**" means the time required for the decay or transformation of one half of the amount of a chemical.

"**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  $1 \times 10^{-6}$  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.

"**Maintenance**" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"**Motor fuel**" means any petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or

~~No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.~~

"**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.

"**NPDES**" means the National Pollutant Discharge Elimination System.

"**Occurrence**" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one 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 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.

"**OSDA**" means the Oklahoma State Department of Agriculture.

"**OWRB**" means the Oklahoma Water Resources Board.

"**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.

"**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.

"**Pay-for-Performance (PFP)**" means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled

payments are distributed only as performance-based goals are attained.

**"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 antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

**"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.

**"Pollution"** means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

**"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 (5 percent) 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"** or **"product"** means hazardous substances or petroleum regulated by PSTD antifreeze, motor

oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment.

**"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"** process or technique used to reduce concentration levels of regulated substances 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 hazardous 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.

**"SCL"** means Soil Cleanup Level.

**"STI"** means the Steel Tank Institute.

**"Sacrificial anode"** means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

**"Saturated zone"** means a subsurface zone below which all pore space is filled with water.

**"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.

**"Smear Zone"** Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the

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petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

**"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 regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

**"Storage Tank System"** means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

**"Stormwater collection system" or "wastewater collection system"** means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

**"Surface impoundment"** means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

**"Suspected release (SOR)"** means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have 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 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

**"Temporary out of use" or "TOU"** means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

**"Transporter"** means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another.

**"UL"** means Underwriter's Laboratory.

**"USGS"** means the United States Geological Survey.

**"Usable groundwater"** means fresh groundwater that may be produced from an aquifer for beneficial uses.

**"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.

**"Waters of the State"** means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

### PART 7. NATIONAL INDUSTRY CODES

#### 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, 2015, "Flammable and Combustible Liquids Code."
  - (B) Standard Number 329, ~~2010~~2015, "Underground Leakage Handling Releases of Flammable and Combustible Liquids and Gases."
  - (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
  - (D) ~~Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids."~~
  - (E) ~~Standard Number 327, 1993~~2015, "Cleaning or Safeguarding Small Tanks and Containers Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."
  - (F) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."
- (2) American Petroleum Institute Standards:
  - (A) Recommended Practice 1615, ~~1996~~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, ~~2004~~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, 2010, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines, 4th Edition".

(J) Publication 2015, 2001, "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 SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines".
- (4) Underwriter's Laboratory Standards:
  - (A) Standard UL58, 9th Edition, 1996, "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".
- (5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."
- (6) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006".
- (7) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems".
- (8) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."
- (9) National Water Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."
- (10) American Society for Testing and Materials, ASTM Designation: E 1739-95 (2010) E1-2015, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
- (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).

### SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

#### PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

##### 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 must report any of the following events to PSTD by telephone at 405-521-4683 or 1-888-621-5878 (and if after hours or on weekends or holidays, ~~they must leave a message on the answering machine contact the PSTD emergency number at 405-823-0994~~) within 24 hours of discovering the substances, conditions or monitoring results. ~~Release reports may also be made by telephone to PSTD personnel at the following numbers: 405-522-1437 or 405-522-5266.~~ Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.

(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, ~~or an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced~~ 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.

(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 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, PSTD will advise the owner or operator what action, if any, he or she needs to take.

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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.

(c) Monitoring results, including investigation of an alarm, must be reported within 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 the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(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 non-reportable 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 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 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 3 years following the date of the event.

(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.

(g) Any releases requiring emergency corrective action must be reported immediately to PSTD. After office hours, weekends or holidays, calls must be reported to PSTD's ~~pager~~ 405-575-5255 emergency number at 405-823-0994.

### 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 Chapter 25 and Chapter 26 of Commission rules.

(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 either by telephone, electronic mail or fax. If after hours, contact the PSTD ~~pager~~ at (405) 575-5255 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.

#### 165:29-3-82. Closure of a case

(a) Closure occurs when ~~the~~ 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 ~~Remediation~~ 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.

[OAR Docket #16-530; filed 6-15-16]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 30. MOTOR CARRIERS,  
PRIVATE CARRIERS AND  
TRANSPORTATION NETWORK  
COMPANIES**

[OAR Docket #16-531]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Chapter 30. Motor Carriers, Private Carriers and Transportation Network Companies [AMENDED]

**AUTHORITY:**

The Commission's statutory authority is found in Title 47 O.S. § 1120, Title 47 O.S. § 230.24, Title 47 O.S. § 230.32, Title 47 O.S. § 1013, Article IX, Sections 18 and 19 of the Oklahoma Constitution and OAC 165:5-1-7.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on December 18, 2015.

**COMMENT PERIOD:**

December 18, 2015 to February 16, 2016

**PUBLIC HEARING:**

February 23, 2016

**ADOPTION:**

February 23, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 3, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

September 1, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The rules were adopted in an effort to update language and procedures appearing in OAC 165:30, as well as to address changes in regulatory authority, especially with respect to the International Registration Plan and overweight variance permits. Multiple definitional sections were updated to include new terms and commonly used acronyms. Procedural rules were updated to remove outdated forms and create new ones.

A new subchapter has been written for the implementation of the Oklahoma Transportation Network Company Service Act and the regulation of TNCs. Sections were written to provide how a TNC may obtain, keep, and operate under the new permits. Furthermore, sections were created to implement the various requirements of the Act and to create enforcement mechanisms should the Act be violated.

For the convenience of regulated entities, motor carriers have been given additional methods to verify state residency as well as clarifying the procedure for providing future effective dates on registration. Overweight variance permit rules have been revoked following an authority transfer by Senate Bill 638 in 2015 to a different agency. A new subchapter is included to allow regulated entities to begin filing required documentation online. The sections provide for filing procedures, requirements, and how to proceed should the system be temporarily unavailable. Additionally, wreckers that engage in nonconsensual towing operations will be required to display the Commission-approved nonconsensual towing rates so the public may be aware of any discrepancies being charged.

**CONTACT PERSON:**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2016:

**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.

**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.



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**"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, ~~or~~ fuel 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.

**"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, non-transferable device issued by the Commission to be carried in each and every vehicle.

**"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 as administered by the Commission or other states.

**"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.

**"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.

**"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.

## **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 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, 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 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.

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(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.

### **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) and all supporting documentation a minimum of thirty (30) days prior to the date of the permit's expiration. Each renewal application shall be properly signed.

(b) All TNC Permits renewed by the Commission shall become effective the same date as the prior permit's expiration.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by law or by Commission rule.

(d) A renewal application may be set for hearing at the discretion of the Commission.

(e) 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.

(f) 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.

(g) No TNC permit shall be renewed until all outstanding fines or judgments due the Commission or other Oklahoma state agencies have been satisfied.

(h) No TNC operations shall be performed under an expired permit.

### **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 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.

(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.

**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.

**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 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 address of the principal place of business and 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.

**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.

**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.

**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.

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### **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.

### **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.

## **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.

### **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.

### **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.

## **SUBCHAPTER 7. PROCEDURAL RULES**

### **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 or Certificate

~~(C) TDF 3 - Application for Change of Name on Intrastate Carrier License or Certificate~~

#### **(2) Intrastate certificate forms.**

(A) MCF 1 - Application For Household Goods Certificate

(B) Form H - Uniform Motor Carrier Cargo Certificate of Insurance

(C) Form J - Uniform Motor Carrier Cargo Surety Bond

#### **(3) Interstate Form - Unified Carrier Registration**

#### **(4) 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)
- (5) **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 C
  - (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
- (6) **Miscellaneous forms.**
  - (A) TDF 3 - Application for Change of Name
  - ~~(AB)~~ TDF 8 - Application for Reinstatement
  - ~~(BC)~~ TDF 14 - Application For a Deleterious Substance Transport Permit
  - ~~(CD)~~ TDF 16 - Application for Identification Devices
  - ~~(DE)~~ TDF 17 - Application for Address Change
  - ~~(EF)~~ TDF 18 - Affidavit of No Operations
  - ~~(FG)~~ TDF 19 - Carrier Identification Update Report
  - ~~(GH)~~ Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance
  - ~~(HI)~~ Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies
  - ~~(HJ)~~ Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond
  - ~~(JK)~~ Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds
  - ~~(KL)~~ TDF 25 - Application for Motor Carrier Rules and Regulations
  - ~~(LM)~~ TDF 26 - Motor Carrier Rules and Regulations Update Notification
  - ~~(MN)~~ TDF 28 - Vehicle Information Request Form
  - ~~(N)~~ TDF 29 - Application for Overweight Variance Permit
- (7) **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

**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 ~~authority-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) 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 ~~or twelve (12) months if an apportioned license application~~. Failure to update the USDOT number may subject the authority to revocation.
- (g) Failure to properly complete any application may result in delay or denial of the relief sought.
- (h) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.
- (i) 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.
- (j) 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.

**165:30-7-12. Revocation, suspension or denial of issuance of ~~motor carrier 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.

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(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.

### **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 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 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.

### **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 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.

### **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.

### **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.

### **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.

**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) Failure of a UCRant to pay its applicable UCR fee to its base state shall subject the UCRant to contempt complaint proceedings.
- (e) Interstate carriers excluding vehicles operating intrastate only from the UCR fee must comply with 165:30-10-45.

**SUBCHAPTER 18. OVERWEIGHT VARIANCE PERMITS [REVOKED]**

**165:30-18-1. Overweight Variance Permits [REVOKED]**

- ~~(a) Applicants for an annual special overload permit, otherwise known as an Overweight Variance Permit, must hold a current vehicle registration.~~
- ~~(b) Commodities that may be transported under a gross weight or an axle weight Overweight Variance Permit are listed in 47 O.S. § 14-109.~~
- ~~(c) Requirements for an Overweight Variance Permit include:
  - (1) Submission of Transportation Division Form (TDF) 29, Application for Overweight Variance Permit;
  - (2) Valid payment of all fees as prescribed by law;
  - (3) Current commercial vehicle registration (a clear unaltered copy of the current registration may be required to be submitted);
  - (4) Valid intrastate authority, if applicable; and,
  - (5) Compliance with interstate requirements, if applicable.~~
- ~~(d) The applicant is also required to ensure the vehicle is registered at the maximum allowable rate, as specified in 47 O.S. § 14-109, prior to submitting an application.~~
- ~~(e) Overweight Variance Permits are issued for twelve (12) months from the date of issue.~~
- ~~(f) The axle or gross variance allowed by an Overweight Variance Permit can only be utilized on Oklahoma roadways~~

~~that are not a part of the National System of Interstate and Defense Highways.~~

- ~~(g) The axle variance allowed by the Overweight Variance Permit does not allow individual axles to exceed the manufacturer's component rating.~~
- ~~(h) Once issued, an Overweight Variance Permit is not valid if the vehicle is not currently registered.~~
- ~~(i) A copy of the Overweight Variance Permit must be carried in the vehicle.~~
- ~~(j) A renewal notice will be emailed to the Overweight Variance Permit holder. Failure to receive such notice does not relieve the Permit holder from its responsibility to timely renew the permit.~~

**SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN**

**165:30-19-3. Registration**

(a) ~~General requirements for registration.~~ 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.
- (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 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 of time 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. §



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7-602). If multiple vehicles are under lease, a letter from the motor carrier listing each vehicle's year, make, model and VIN under lease to the carrier may be provided in lieu of the lease, provided a copy of any and all leases shall be made available to the Commission upon request.

- (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, or the lessee, the motor carrier responsible for safety or an entity contracted by the owner or motor carrier responsible for safety.
- (b) ~~Registration periods.~~ Application for registration may be made at any time during a registration year.
- (c) ~~Where to make application.~~ 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) ~~Incomplete applications.~~ 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) ~~IRP Plan Compliance.~~ 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 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.

### 165:30-19-6. Registration as a resident

- (a) ~~General requirements.~~ 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) ~~Street address.~~ 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) ~~Applicant can be located.~~ The applicant must submit ~~documentation 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) ~~Proof of Oklahoma residency, such as an~~ An Oklahoma-issued driver's license, ~~current Oklahoma income tax filing, proof of an Oklahoma homestead exemption, or other evidence of bona fide residency;~~
  - (2) ~~Ownership of real property in Oklahoma.~~
  - (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) ~~Qualifying determination.~~ 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.

### 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 the unused portion 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 in advance of 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.

(de) If the license plate is lost, an affidavit may be submitted in lieu of the plate.

(f) If the motor carrier is 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 US-DOT number and taxpayer identification number (social security or federal employee).

**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.~~ 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. The temporary registration shall be completed in full by the applicant and validated by the IFTA/IRP Section at the time the application and appropriate fees are presented to the section. The temporary registration should be completed as follows:

(A) ~~Enter the assigned Oklahoma IRP account number or leave a blank if no previous number has been assigned.~~

(B) ~~Mark the appropriate section indicating the type of application on which the vehicle(s) is listed for registration and the date application was filed.~~

(C) ~~List the vehicles being authorized by license plate number (leave blank if not assigned), equipment~~

~~number, year model, make and the vehicle identification number. Unused vehicle listing spaces must be lined out.~~

(D) ~~List jurisdictional weights for the vehicles. A separate form must be completed for vehicles which are not to be qualified at identical weights in the same jurisdiction. State with no entry must be lined out.~~

(E) ~~Enter the registrant's name and business address as reported on schedule A or C application.~~

(F) ~~Jurisdiction and weight information entered on the form must be consistent with those reported on the Schedule A or C form.~~

(G) ~~Temporary registration for established accounts may also be obtained directly from any person that has entered into an agreement with Commission for distribution and issuance of temporary registration. This registration must be completed in the same manner described in paragraph (1) of this subsection. Misuse of any temporary registration may result in denial of temporary registration privileges.~~

(2) ~~Required payment of fees.~~ Temporary registration or credentials may only be issued to new accounts after all required registration fees are paid.

(3) ~~Self issue temporary registration.~~ Self-issue temporary registrations are available only to established Oklahoma-based IRP registrants, and may be used for vehicle(s) added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications to the registrant's account. Self-issued temporary registrations may not be used for renewal vehicles. Self-issued temporary registrations may not be issued by a registrant to another registrant or to an applicant or potential applicant for Oklahoma proportional registration.

(A) ~~Self issue temporary registration.~~ Self issue temporary registrations or authorizations may be issued up to a maximum of twenty five percent (25%) of the registrant's fleet. Any registrant with a fleet of less than six (6) vehicles may be assigned one (1) self issue temporary registration. 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 100 power units in the apportioned fleet.

(B) ~~Application procedure.~~ Properly completed temporary registrations allow for immediate temporary registration for vehicles added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications. Upon issuance, a copy of the temporary registration should be placed in the vehicle, and one copy mailed immediately to

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the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948. Within fifteen (15) days of issuance, ~~another copy of the temporary registration must be submitted, along with a completed Schedule C~~ supplemental application with all required documentation must be submitted for processing

(C) ~~Violations.~~ 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) ~~Issuance of temporary registration.~~

(A) 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.

(A) ~~The fees~~ 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.

### 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.

## SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

### 165:30-21-4. TripFuel permits

(a) In lieu of motor fuel tax licensing under ~~this Agreement~~ IFTA, persons may elect to satisfy motor fuels use tax obligations ~~on a trip-by-trip basis~~ for up to one hundred twenty (120) consecutive hours by purchasing a Fuel Permit.

(b) ~~TripFuel permits are valid for a period of one-hundred twenty (120) hours from the time of issuance~~ the permit is effective, and may be obtained from the Commission or one of the authorized tripfuel permitting services. Once a fuel permit is issued, no refunds will be allowed.

(c) A fuel ~~trip~~ permit effective date shall not be more than ~~72~~ seventy-two (72) hours from the time it is issued.

### 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 ~~Corporation 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 ~~shall~~ 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 ~~shall~~ 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.

## SUBCHAPTER 23. MOTOR LICENSE AGENTS

### 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.

**SUBCHAPTER 26. NONCONSENSUAL  
WRECKER AND TOWING SERVICES**

**PART 3. RESPONSE TO NONCONSENSUAL  
TOWING RATE COMPLAINTS**

**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 Non-consensual 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.

*[OAR Docket #16-531; filed 6-15-16]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 35. ELECTRIC UTILITY RULES**

*[OAR Docket #16-524]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 165:35-1-6. Submission of distribution system mapping [NEW]
- Subchapter 45. Wind Energy [NEW]
- 165:35-45-1. Purpose of this subchapter [NEW]
- 165:35-45-2. Definitions [NEW]
- 165:35-45-3. Annual reporting requirements [NEW]
- 165:35-45-4. Notification of intent to build a wind energy facility [NEW]
- 165:35-45-5. Commission consideration [NEW]
- 165:35-45-6. Determining assessment of fees [NEW]
- 165:35-45-7. Decommissioning of wind energy facilities [NEW]

**AUTHORITY:**

Oklahoma Corporation Commission; 17 O.S. § 152(A), 17 O.S. § 160.22, 17 O.S. § 160.15(A), 17 O.S. § 160.21(A); and Article IX, § 18 of the Oklahoma Constitution

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

January 14, 2016

**COMMENT PERIOD:**

January 28, 2016 through March 3, 2016

**PUBLIC HEARING:**

March 15, 2016

**ADOPTION:**

March 15, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

March 25, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016.

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Rule 165:35-1-6 addresses the need for submission of distribution line location information to the Public Utility Division of the Oklahoma Corporation Commission. This rule establishes a submission date and the format of the data to be provided.

Rules 165:35-45-1 through 165:35-45-7 are applicable to wind energy facilities. The rules establish annual reporting requirements that are in addition to those found in the Oklahoma Wind Energy Development Act. The rules also include several sections impacting plans for development of wind energy facilities and also decommissioning of those facilities once they are no longer in service.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**165:35-1-6. Submission of distribution system mapping**

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 Director of the Public Utility Division using geographic information system data or standards as prescribed by the Director of the Public Utility Division.

**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 Transmission Only Utility.

**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:

"Project description" means a graphic depiction of a wind energy facility's outer boundary, which should adequately

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demonstrate the project's outer perimeter, inclusive of all wind turbines.

### **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 the Public Utility Division. This submission shall provide to the Public Utility Division 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 that the wind energy facility's insurance coverage will be made available for onsite review by the Public Utility Division 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.
- (5) For those wind energy facility components that are otherwise subject to the rules applicable to the annual reports of Transmission Only Utilities, this Subchapter does not require duplicative reporting.
- (6) Electronic submission is preferred; however, all forms of submission will be accepted.

### **165:35-45-4. Notification of intent to build a wind energy facility**

(a) The owner of a wind energy facility shall submit notification of intent to build a facility to the Corporation Commission within six (6) months of the initial filing pertaining to commencement of construction with the Federal Aviation Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA for evaluating the impact a proposed wind energy facility will have on air commerce safety and the preservation of navigable airspace. Such notification shall be submitted to the Director of the Public Utility Division of the Corporation Commission.

(b) The Public Utility Division 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) In the event that an owner of a wind energy facility submits notification of intent to build a facility with the Corporation Commission and files subsequent forms with the FAA, the owner is not required to submit amended or additional notification of intent to build a wind energy facility unless the project layout is expanded beyond the original project description.

(d) The owner of the wind energy facility shall submit 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 filing 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 submitted to the governing body of the municipality within twenty-four (24) hours of filing with the Commission.

(e) 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 Director of the Public Utility Division of the Corporation Commission.

(f) Within sixty (60) days of publishing the notification in a newspaper as provided for in subsection (e) 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 Director of the Public Utility Division of the Corporation Commission. 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.

(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 with the Commission as required in this section, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars (\$1,500) per day following hearing and issuance of a final order of the Commission.

(h) Electronic submission is preferred; however, all forms of submission will be accepted.

### **165:35-45-5. Commission consideration**

(a) The Public Utility Division 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. § 160.21.

(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 or in 17 O.S. § 160.21, the Public Utility Division:

(1) Will determine whether the report or submission is compliant with the annual reporting or notice requirements; and

(2) Will inform the wind energy facility owner or operator of the Public Utility Division's determination within thirty (30) calendar days of receipt of the report or submission. In the event the Public Utility Division determines the wind energy facility's report or submission is not in compliance, the Public Utility Division 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, the Public Utility Division may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.

**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 Staff of the Public Utility Division in wind energy facility causes.
- (b) The Commission shall make a determination of the estimated costs of the Public Utility Division 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.

**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 Director of the Public Utility Division of the Corporation Commission, 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.

*[OAR Docket #16-524; filed 6-15-16]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 55. TELECOMMUNICATIONS SERVICES**

*[OAR Docket #16-525]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 165:55-1-4. Definitions [AMENDED]
- Subchapter 3. Certificates, Reports, and Records
- Part 1. Certificates of Convenience and Necessity
- 165:55-3-1. Certificate of Convenience and Necessity [AMENDED]
- 165:55-3-2. Notice requirements when filing an Application for Certificate of Convenience and Necessity [AMENDED]
- 165:55-3-3. Approval of initial tariffs [AMENDED]
- Part 5. Record Requirements
- 165:55-3-22. Records to be provided to the Commission [AMENDED]
- Subchapter 5. Rates and Tariffs
- Part 1. Tariff Filing
- 165:55-5-1. Tariffs and/or Terms of Service required [AMENDED]
- Part 3. Approval and Notice Requirements
- 165:55-5-10. Tariff approval and revisions to tariffs [AMENDED]
- 165:55-5-11. Types of notices [AMENDED]
- 165:55-5-14. Objections [AMENDED]
- Subchapter 9. Customer Billing and Deposits
- Part 1. Billing and Payment Requirements
- 165:55-9-5. Billing disputes [AMENDED]
- Part 3. Credit Requirements
- 165:55-9-14. Deposits and interest [AMENDED]
- 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 [AMENDED]
- Subchapter 17. Facilitation of Local Exchange Competition
- 165:55-17-3. Designation of service territory [AMENDED]
- 165:55-17-7. Procedures for negotiation, arbitration and approval of agreements [AMENDED]
- 165:55-17-13. Interconnection of networks [AMENDED]
- Subchapter 23. Eligible Telecommunications Carriers
- Part 1. General Provisions
- 165:55-23-2. ETC Designation [AMENDED]

**AUTHORITY:**

Okl. Const. Art. IX, § 18, and 17 O.S. § 131, et seq.; Oklahoma Corporation Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 21, 2016

**COMMENT PERIOD:**

January 21, 2016 to March 24, 2016

**PUBLIC HEARING:**

March 24, 2016

**ADOPTION:**

March 24, 2016

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

April 1, 2016

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 9, 2016

**FINAL ADOPTION:**

June 9, 2016

**EFFECTIVE:**

August 25, 2016

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Permanent Final Adoptions

## ANALYSIS:

The adopted rules change the rule cited, in the definition of Carrier of Last Resort, from OAC 165:55-17-29 to OAC 165:55-13-12; add "Non-regulated" to the definition of "Not regulated service" to ensure the same meaning is given to both phrases; give Staff the authority to dismiss grossly deficient applications seeking a Certificate of Convenience and Necessity ("CCN") which require an unfeasible amount of time and resources for Staff to attempt to rehabilitate along with reducing the amount of data requests issued; codify routine data requests; conform rules to the Oklahoma Statutes; correct spelling and grammatical errors; point Applicants to appropriate notice requirements; correct a citation in a rule; clarify that filed tariffs are required for initial tariffs, switched access services, payphone access services, and E911/911 access services and that changes to tariffs other than these four may be accomplished by posting to the company's website if the company has elected to maintain their tariffs on the website; reduce the amount of copies required for making a tariff submission; remove conflicting filing requirements for interconnection agreements and clarify notice requirements for filing an initial tariff; renumber rules; clarify the rights of an objecting party to a proposed tariff or tariff revision and reduce the amount of time to object; clarify the rights of the parties in a billing dispute; ensure that new CCN's or tariffs shall be filed as separate causes when the parties to an agreement file a Notification of Transaction; give more time for the Commission to act when receiving Notifications of Transactions; give Staff more time to file a Continuance of Review after a party files a Notification of Transaction; allow an applicant to file an initial tariff as part of changing CCN service territory; provide and clarify existing notice requirements for filing Interconnection Agreement ("ICA") related causes; ensure Applicants provide a list of exchanges when seeking an Eligible Telecommunications Carrier ("ETC") designation; align Commission ETC rules with Federal ETC rules.

## CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 25, 2016:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 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, CLFC, 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 165:55-17-29 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.

**"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, 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).

**"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).



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**"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 pre-subscribed 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.

### 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 requesting funding from the Oklahoma Universal Service Fund for the provision of Special Universal Services shall first obtain a Certificate of Convenience and Necessity in the exchange where service is to be provided.

(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.

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(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 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 either provides only data service, or 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 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 ~~is~~, 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 ~~has~~, 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 or 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 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 (g) 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, 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 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 the Commission's Consumer Services Division regarding complaints involving the telecommunications service 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 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

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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 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.

(f) **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. ~~An application for Certificate of Convenience and Necessity filed pursuant to this Section will be deemed granted thirty (30) days after the posting of the notice on the OCC website required by OAC 165:55-3-1(e) or the first day of publication required by 17 O.S. §132 whichever is later, unless an objection is filed in advance of the thirtieth day alleging that a hearing is required. In the event that the application for Certificate of Convenience and Necessity is deemed approved, the Commission shall issue an Order granting the Certificate of Convenience and Necessity within a reasonable time.~~

(g) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To ~~insure~~ 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.

(h) **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.

(i) 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.

### 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.

(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 ~~every proposed service territory of the Applicant~~ 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.

**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(c).

(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(f)~~ OAC 165:55-3-1(g) has been obtained, if applicable.

**PART 5. RECORD REQUIREMENTS**

**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 May 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 May 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

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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, ~~as at~~ 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 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), 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; and,

(E) Tariff issues.

(h) **Other information.** Each telecommunications service provider and IXC shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

## 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.

### 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, ~~three (3) one (1) mark-up copies~~ one (1) mark-up copy of the new or revised tariff pages in legislative format, and ~~three (3) one (1) final copies~~ 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.

**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



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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.

**(de) 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.

**(ef) 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.

**(fg) 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.

**(gh)** 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.

### 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 ~~forty five (45)~~ thirty (30) days after the proposed tariff or proposed tariff revision is filed or Terms of Service revisions—are posted on the telecommunications service provider's or IXC's publicly available ~~web~~ 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.

## SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

### PART 1. BILLING AND PAYMENT REQUIREMENTS

#### 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 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 580W, 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.

(c) When a complaint has been made with the Commission's Consumer Services Division, 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 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 telecommunications service provider may discontinue service.

**PART 3. CREDIT REQUIREMENTS**

**105-2-14. 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 (4)(g).

(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 consumers 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 105-25-11-2 or has presented a check to the telecommunications service provider that was subsequently dishonored.

(e) Interest on such deposits shall be paid by each telecommunications service provider 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 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 paragraph (1) results in a change in interest rate(s) that is or are greater than fifty (50) basis points.

(3) The Director of the Public Utility Division shall calculate the interest rate(s) pursuant to paragraphs (1) of this Section, and shall provide notice to the telecommunications service providers via mail, e-mail or posting on the PUC's website by December 15th of each year, only if a change in the rate(s) is or 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 discontinuation within the meaning of this Part, and no additional deposit may be required unless otherwise permitted by this Subchapter.

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(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.

### 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 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 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 ~~thirty (30) business days~~ 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 ~~thirty (30) business days~~ 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.

## SUBCHAPTER 17. FACILITATION OF LOCAL EXCHANGE COMPETITION

### 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.

### 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

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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 135<sup>th</sup> to the 160<sup>th</sup> 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 (c), 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.*

**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.

(c) When filing an application for approval of an agreement or an amendment to an existing interconnection agreement, a processed file-stamped copy will be provided to the ~~Court Clerk, 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.

**SUBCHAPTER 23. ELIGIBLE TELECOMMUNICATIONS CARRIERS**

**PART 1. GENERAL PROVISIONS**

**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. 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

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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.

*[OAR Docket #16-525; filed 6-15-16]*

### TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #16-442]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 5. Rules of Practice

175:1-5-4 [AMENDED]

175:1-5-15 [AMENDED]

#### AUTHORITY:

59 O.S. § 199.3 (A); State Board of Cosmetology and Barbering

#### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2015

#### COMMENT PERIOD:

December 15, 2015 through January 18, 2016

#### PUBLIC HEARING:

January 18, 2016

#### ADOPTION:

January 25, 2016

#### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 27, 2016

#### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

#### FINAL ADOPTION:

June 9, 2016

#### EFFECTIVE:

September 1, 2016

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The Board is clarifying the procedures for citation and fines as well as deleting specific fines in order to remove subjectivity in the fine process.

#### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE  
DATE OF SEPTEMBER 1, 2016:**

### SUBCHAPTER 5. RULES OF PRACTICE

#### 175:1-5-4. Board sanctions

(a) If it is proven that violations of the Oklahoma Cosmetology Act and Board rules and regulations have occurred, sanctions available to the Board are:

- (1) Revocation of license; or
- (2) Suspension of license; or
- (3) Refusal to issue license; or
- (4) Placing licensee on probation.
- (5) Fines for citations for violations of the Cosmetology and Barber Act or Board rules as in Rule 175:1-5-15. Citations may be issued by the Executive Director or an inspector on forms approved by the Board. The citation shall be served personally or by certified mail return receipt requested. The citation shall state the nature of the violation and the fine assessed. The person or establishment receiving the citation may pay the fine or contest it in a hearing before the Board conducted in accordance with the Oklahoma Administrative Procedures Act. The citation shall state the date and location of the hearing. The citation shall serve as sufficient notice of the hearing. If the fine is paid prior to the date of the hearing then the matter shall be deemed final and not subject to further review.

(b) Such matters of violation may be referred to the District Attorney or to the Attorney General for injunctive or other relief.