



*Mary Fallin*  
Governor

**NOTIFICATION FROM GOVERNOR MARY FALLIN  
REGARDING SUBMITTED AGENCY RULES**

On September 1, 2016, the Oklahoma Corporation Commission, pursuant to its legal authority to adopt rules found at OKLA. CONST., Art IX, § 18 and 17 O.S. §§ 301, 306(12), 307(A), 322(4), and 75 O.S. § 250, adopted rules through emergency rulemaking.

On September 9, 2016, the rules and all necessary documentation required by Section 253 of Title 75 of the Oklahoma Statutes were submitted to the Office of the Governor for approval or disapproval.

On September 30, 2016, I hereby approve the following rules submitted:

165:5-21-3.1.

**FILED**  
OCT 07 2016

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

Mary Fallin, Governor of the State of Oklahoma

Attest:

Chris Bengé, Secretary of State

**FILED**  
OCT 05 2016

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

ACCEPTED 10/7/16

Office of Administrative Rules  
Oklahoma Secretary of State

Docket # 16-760

OAR/cert CN

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

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 21. Procedure for the Petroleum Storage Tank Docket  
165:5-21-3.1. Applications to Close a Storage Tank in Place. [NEW]

**AUTHORITY:**

Corporation Commission; OKLA. CONST. art. IX § 18, 17 O.S. §§ 301, 306 (12),  
307 (A), 322 (4) *et seq.*, 75 O.S. §§ 250 *et seq.*, and OAPA.

**COMMENT PERIOD:**

July 12, 2016 through August 19, 2016

**PUBLIC HEARING:**

July 28, 2016 and September 1, 2016

**ADOPTION:**

September 1, 2016

**EFFECTIVE:**

Immediately upon Governor's approval.

**EXPIRATION:**

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

On September 1, 2016 the Commission en banc acknowledged the need to remedy a rule conflict immediate to the benefit of tank owners seeking a variance. Variances vary from year to year and may number as many as forty (40) in a given year.

**ANALYSIS:**

The emergency rule is necessary because the Agency promulgated an administrative process for the regulated community that replaced the former rule that required formal hearing before an administrative law judge ("ALJ"). Unfortunately, the existing rule allowing a variance requiring formal hearing was not changed to allow for the administrative process. The end result is the Agency had a rule providing for an informal administrative review without hearing, but the root rule requiring formal hearing before an ALJ was still effective, thus causing a conflict with the rule amendment. At this point, the regulated community cannot avail themselves of the informal administrative process but must spend the time, effort and money to present their case to an ALJ.

**CONTACT PERSON:**

Jeffrey P. Southwick, Deputy General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73105, telephone (405) 522-4457, j.southwick@occcemail.com.

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

**SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET**

**165:5-21-3.1. Applications to close a storage tank in place**

**(a) Administrative review.** For an application for a variance to close a storage tank in place, the Petroleum Storage Tank Division shall review the application administratively without the necessity of a hearing and it shall report its findings to the Commissioners to determine whether the variance and/or other relief, if any, should be granted.

**(b) Remedies after denial or modification.** If the Petroleum Storage Tank Division denies the relief requested by the application, or the Petroleum Storage Tank Division cannot agree to a modification, the applicant may withdraw its application or file a notice of hearing before an Administrative Law Judge and present their application for a recommendation on the merits of the variance sought. If the application for the variance is denied by the Administrative Law Judge, the Applicant may file exceptions as more fully defined under OAC 165:5-13-5.

**ATTESTATION**

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to OAC 165:5, Rules of Practice, which was adopted by the Oklahoma Corporation Commission on September 1, 2016, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

I, the undersigned do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.



Lindsay LaFevers Archer  
Rulemaking Liaison  
Oklahoma Corporation Commission  
September 9, 2016