

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE)
OKLAHOMA CORPORATION)
COMMISSION AMENDING)
OAC 165:30, MOTOR CARRIERS,)
PRIVATE CARRIERS AND)
TRANSPORTATION NETWORK)
COMPANIES)

CAUSE RM NO. 201700015

FILED
JAN 30 2018

COURT CLERK'S OFFICE - OKG
CORPORATION COMMISSION
OF OKLAHOMA

AMENDED PROPOSED RULES
January 30, 2018

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-8. Review of Applicants for safety fitness [REVOKED]

~~(a) Applicants for an intrastate household goods certificate, for hire motor carrier license, intrastate private carrier license, hazardous waste registration or permit, renewal of a certificate or a license shall be reviewed for compliance with rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto. Areas to be reviewed are based upon, but not limited to, the following:~~

- ~~(1) The carrier's USDOT safety rating (if any).~~
- ~~(2) The number of vehicle inspections performed.~~
- ~~(3) The time frame in which the vehicle inspections were performed.~~
- ~~(4) The out of service ratio for the applicant's vehicles.~~
- ~~(5) The out of service ratio for the applicant's drivers.~~
- ~~(6) Review of applicant's driver qualification files.~~
- ~~(7) Review of applicant's vehicle maintenance records.~~
- ~~(8) Verification of applicant's drug/alcohol testing program.~~

~~(b) Compliance with the Federal Motor Carrier Safety Regulations and all other requirements shall result in a certificate or license application being approved administratively, unless a protest is timely filed in accordance with OAC 165:5.~~

~~(c) Applicants may be required to attend an Educational Compliance Workshop produced by the Transportation Division.~~

~~(d) Failure to attend a scheduled Educational Compliance Workshop or produce documentation which reflects compliance with the Federal Motor Carrier Regulations may result in denial or delay of the relief sought.~~

~~(e) Results of safety reviews may be addressed in a hearing to obtain or renew an intrastate license or an intrastate household goods certificate, or be addressed in a separate hearing before an Administrative Law Judge.~~

~~(f) Violations of the Federal Motor Carrier Safety Regulations are considered contempt of the Commission and subject to a fine in accordance with the rules and regulations of the Department of Public Safety in OAC 595:35.~~

165:30-7-9. Compliance reviews [REVOKED]

~~(a) The Commission shall set forth a procedure to audit intrastate motor carriers for compliance with the federal motor carrier safety regulations as adopted by the Department of Public Safety in OAC 595:35.~~

~~(b) The procedure to select motor carries for a compliance review shall be as similar as practical to the Federal Motor Carrier Safety Administration (FMCSA) Safestat list or upon individual motor carrier request.~~

~~(c) A compliance review will result in a safety rating. Such safety ratings will be made available to shippers, insurance companies and the general public.~~

~~(d) Fines or penalties issued by the Commission regarding violations of safety regulations shall be consistent with those issued by the Department of Public Safety, follow federal guidelines, or as set forth in standard contempt proceedings of the Commission.~~

165:30-7-10. Civil assessments [REVOKED]

~~(a) Motor carriers operating in interstate or intrastate commerce in violation of federal motor carrier safety regulations that result in a critical, acute or out of service violation may be assessed a civil penalty.~~

~~(b) Civil penalties assessed by the Commission shall be consistent with those issued by the Department of Public Safety, following federal guidelines, or as set forth in standard contempt proceedings of the Commission.~~

SUBCHAPTER 12. UNIFIED CARRIER REGISTRATION

165:30-12-1. Unified Carrier Registration

(a) The Commission shall comply with the provisions of the procedures adopted by the UCR Board.

(b) An interstate motor carrier, freight forwarder, leasing company or broker subject to UCR shall be known as a UCRant.

(c) A UCRant shall pay its applicable UCR fee to its base state, in accordance with the UCR procedures. The applicable UCR fee may include amounts owed for prior years as well as the fee for the current year.

(d) UCR fees, once paid, will not be refunded unless provided for in the Unified Carrier Registration Agreement issued pursuant to 49 U.S.C.A. § 14504a.

~~(d)~~(e) Failure of a UCRant to pay its applicable UCR fee to its base state shall subject the UCRant to contempt complaint proceedings.

~~(e)~~(f) Interstate carriers excluding vehicles operating intrastate only from the UCR fee must comply with 165:30-10-45.

SUBCHAPTER 17. HAZARDOUS WASTE TRANSPORTERS

PART 3. APPLYING FOR HAZARDOUS WASTE REGISTRATION AND PERMIT

165:30-17-12. Obtaining a hazardous waste registration and permit

(a) A motor carrier with its principal place of business in Oklahoma, or that designates Oklahoma as its base state, shall register as a hazardous waste transporter with and obtain a permit from the Commission before transporting a hazardous waste in or through Oklahoma. A motor carrier that designates another participating state as its base state shall register as a hazardous waste transporter and obtain a permit from that state before transporting a hazardous waste in or through the state of Oklahoma.

(b) A motor carrier who engages in interstate or intrastate transportation of a hazardous waste and who is required to register its hazardous waste transportation in Oklahoma shall file parts I, II and IV of the uniform application (UPW) with the Commission and pay the prescribed fees for registration and permits for its Oklahoma waste transportation as well as fees for reciprocal states.

(c) Upon a motor carrier's compliance with this Subchapter, the Commission shall issue a Hazardous Waste Registration and/or Permit to the motor carrier within ninety (90) days. Motor

carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11. Failure to do so shall subject the registration or permit to revocation.

(d) The Commission shall not issue a registration or permit to a motor carrier if the Commission determines that a motor carrier's conduct would constitute grounds for suspension or revocation under this Subchapter. The Transportation Division may elect to request additional information from the motor carrier to support the motor carrier's application for registration and/or permit. Additional information requested shall be based upon the motor carrier's compliance with the federal motor ~~motor~~ carrier safety regulations.

(e) A registration is valid for one (1) year and a permit is valid for three (3) years unless the motor carrier fails to renew its registration, the permit is suspended or revoked or there is a substantial change in the motor carrier's operations during the permitting period.

(f) Each motor carrier shall file a Part I - Registration of the uniform application (UPW - Part I) on an annual basis. However, for the first year after the effective date of this Subchapter, the Transportation Division may stagger the registration date for motor carriers. Registration fees shall be apportioned for any quarterly time frame exceeding one (1) year.

(g) Each motor carrier shall additionally file a Part II - Permitting of the uniform application (UPW - Part II) every (3) three years. However, for the first year after the effective date of this Subchapter, the Transportation Division may divide the total pool of applicants to be granted a uniform permit into three (3) classes. The first class may be granted uniform permits with a term of one (1) year; the second class may be granted uniform permits with a term of two (2) years; and the third class may be granted uniform permits for three (3) years. Permit fees shall be apportioned for any permit time not equaling a ~~three-year~~ three (3) year time frame.

(h) Each uniform registration and permit application shall contain certification by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant. Such certification shall contain the following statement, "I certify that, to the best of my knowledge and after due investigation, the information contained in this application is true, accurate, and complete" and shall contain the name, title, and telephone number of the official certifying the application. Such certification must be signed and dated by the official certifying the application.

(i) No registration or permit shall be issued to a motor carrier with outstanding fines owed to another state agency.

(j) A registered and permitted motor carrier shall maintain a copy of its valid registration and permit for Hazardous Waste in each vehicle when transporting a hazardous waste.

(k) The hazardous waste registration and permit are nontransferable.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-2. Definitions

In addition to terms defined in the IRP, the Uniform Operational Audit Procedure Guidelines, and the IRP ~~Polices~~ Policies and Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Applicant**" means any person making an application with the Oklahoma Corporation Commission seeking to register a vehicle or vehicles pursuant to the IRP.

"**Application**" means a filing with the Oklahoma Corporation Commission, seeking to register a vehicle or vehicles with the Commission pursuant to the IRP.

"**Apportioned registration**" means the proportional registration of a vehicle pursuant to the terms of the IRP and this Subchapter.

"**Carrier**" means a fleet operator which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"**Credentials**" means identification plates and cab cards.

"**Established account**" means any prorate account for which a properly completed original application has been received by the IFTA/IRP Section and all corresponding and assessed fees have been paid in full.

"**Grace period**" means two (2) months following the expiration of the registration year.

"**Interstate**" means between or through two (2) or more jurisdictions.

"**Intrastate**" means from one (1) point within a jurisdiction to another point within the same jurisdiction.

"**New operation**" means a vehicle or fleet of vehicles not previously registered pursuant to the provisions of the IRP. "New operation" does not include an existing fleet that is expanding the number of vehicles or area of operation.

"**Operations**" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"**Proportional registration**" means registration of an apportionable vehicle pursuant to the terms of the IRP and this Subchapter.

"**Records**" means and includes operational records.

"**Registration agent**" means a person hired by an applicant or registrant to prepare and/or file applications, supplemental applications, and other documents required for proportional registration in Oklahoma.

"**Regular business hours**" means 8:30 a.m. to 4:30 p.m. local time.

"**Reporting period**" or "**mileage year**" means the period of twelve (12) consecutive months immediately prior to July 1 of the year preceding the year of registration or license.

165:30-19-4. Title requirements and proof of ownership

(a) Owners of vehicles registered in Oklahoma must possess an Oklahoma title as proof of ownership unless the vehicle has been previously registered in another jurisdiction and engaged in interstate commerce.

(b) Proof of ownership must be submitted for all vehicles being registered through an original or supplemental application. Documents necessary to prove ownership include:

(1) ~~If titled in Oklahoma, a~~ A copy of the front and back of the Oklahoma title, an Oklahoma title receipt or vehicle registration in the owner's name;

(2) If previously registered in another jurisdiction and engaged in interstate commerce, a copy of another jurisdiction's IRP cab card indicating ownership or a copy of the IRP cab card and the front and back of the out of state title; and/or,

(3) A lease-purchase agreement by which the applicant or registrant, under the terms of the agreement, is to become the owner of the vehicle at the end of the lease period for nominal or no additional consideration, and the vehicle is currently titled in the name of the leasing company and has been registered for interstate commerce with another jurisdiction.

165:30-19-13. Amended mileage/adding states [REVOKED]

~~(a) Subsections (a) — (e) of this Section are applicable for registration periods commencing before January 1, 2015. When the operations of a registrant change to include additional states during the registration year, the additional states can be added to the fleet. The states must be added to all vehicles in the fleet. The original mileage percentages cannot be changed. The addition of a state or states will result in a total fee assessment in excess of One Hundred percent (100%).~~

~~(b) To apply to add states, the registrant must complete Schedule B and submit Schedule A or a list of currently registered vehicles. The appropriate space on the form should be marked to show the type of transaction and mileage must be shown for each state added. If there is actual mileage for a state being added, actual miles must be included. If not, estimated must be used.~~

~~(c) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which a state is being added. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior to disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts or brokerage agreements, or both. Alternatively, owner operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Commission.~~

~~(d) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart established by the Commission.~~

~~(e) Once the fees are paid, new IRP cab cards will be issued reflecting the additional state(s).~~

~~(f) For registration periods commencing on or after January 1, 2015, all jurisdictions will be displayed on all cab cards.~~

165:30-19-15. Mileage

~~(a) Subsections (a) — (f) of this Section are applicable for registration periods commencing before January 1, 2015. When an applicant for proportional registration operated for ninety (90) or more days during the mileage reporting period of the preceding year, actual operated miles must be filed. For those jurisdictions where there is no mileage to report, but for which proration is desired, estimated miles must be filed.~~

~~(b) If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be filed for all jurisdictions for which proration is sought.~~

~~(c) Estimated mileage will not be accepted after the first year of prorate registration in Oklahoma. Provided, in cases where actual operation was less than ninety (90) days during the mileage reporting year, estimated mileage will also be accepted for the second year.~~

~~(d) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which proportional registration is being sought. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts and/or brokerage agreements. Alternatively, owner operators may~~

~~provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Commission.~~

~~(e) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart provided by the Commission. The chart shall be developed and updated annually by dividing the total actual miles for each member jurisdiction reported by Oklahoma registrants by the total number of vehicles registered with actual miles for the jurisdiction.~~

~~(f) Failure to provide a full statement of the proposed method of operation, or in the alternative, to submit the application based upon the estimated mileage chart developed by the Commission shall result in denial of the application for proportional registration.~~

~~(g) For registration periods commencing on or after January 1, 2015, any (a) Any actual distance operated during the reporting period must be filed with the renewal application. If no actual distance was incurred in any jurisdiction during the reporting period, then the average-per-vehicle distance per member jurisdiction chart must be used to renew the fleet registration.~~

(b) If a registrant does not travel in more than one (1) jurisdiction for an entire registration year plus an additional six (6) months, the registrant is presumed not to intend to travel in more than one (1) jurisdiction, and therefore does not qualify for apportioned registration. That presumption may be overcome by current documentation of actual out of state travel presented by the registrant, which must be confirmed and approved by the Transportation Division.

165:30-19-19. Trip permits and hunters permits

(a) A ~~72-hour~~ seventy-two (72) hour trip permit provides full registration to trucks, tractors, trailers, semi trailers, and motorbuses, which are not registered in Oklahoma.

(1) The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.

(2) Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a ~~72-hour~~ seventy-two (72) hour trip permit before proceeding through the State of Oklahoma.

(3) Trip permits are available from the Transportation Division of the Commission and Commission contracted wire services. The cost of the permit is set forth by 47 O.S. § 1124 (B) with any processing fee as set by Commission rule. Trip permits obtained through permit services may have additional fees associated with issuance. Once a trip permit is issued, no refunds will be allowed.

(4) An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.

(5) A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.

(6) Only one (1) copy of a ~~72-Hour~~ seventy-two (72) hour permit receipt will be given to applicant.

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

(b) An unladen permit, otherwise known as a hunters permit, provides temporary registration to an apportionable vehicle at the unladen weight of the vehicle for a period of forty-five (45) days.

- (1) Hunters permits are typically obtained by a vehicle owner to move the vehicle, without any load, to another jurisdiction when apportioned registration credentials are no longer valid due to the severance of a lease with a motor carrier.
- (2) A Hunters permit is recognized as valid registration in all IRP participating jurisdictions at a weight not to exceed the unladen weight of the vehicle or the combined unladen weights of the power unit and trailer, provided however, an unregistered trailer must obtain a separate permit.
- (3) Hunters permits are available from the Commission at a fee as prescribed by 47 O.S. § 1124 (C) with any processing fee as set by Commission rule. Once an unladen permit is issued, no refunds will be allowed.
- (4) The operator of a motor vehicle possessing an expired, altered or undated hunters permit shall be deemed to be in violation of state statutes and the rules of this Commission and shall be subject to full registration and penalty.
- (5) An unladen permit effective date shall not be more than ~~72 hours~~ seventy-two (72) hours from the time it is issued.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-12. Denial, revocation, and reinstatement

(a) The Administrator of the IFTA Section may deny the issuance of a motor carrier's IFTA license based upon the motor carrier's failure to provide IFTA returns and/or remittances to other member jurisdictions, or to prove it is qualified to obtain a IFTA license, or may revoke an IFTA license issued under 68 O.S. § 607 (E) if he determines a motor carrier has:

- (1) Made a knowing falsification of a material fact in a uniform application;
- (2) Failed to timely file a quarterly IFTA tax return;
- (3) Failed to timely pay in full a liability indicated on a quarterly IFTA tax return;
- (4) Failed to timely pay in full a liability determined by an audit of the motor carrier's records;
- (5) Paid any amount due under the IFTA program with a check drawn on an account with insufficient funds;
- (6) Any other just cause to protect the interests of the state of Oklahoma and/or the IFTA member jurisdictions.

(b) The Administrator of the IFTA Section may reinstate or deny reinstatement of an IFTA license if the following conditions exist:

- (1) A suspended motor carrier license may be reinstated if the motor carrier remedies the action that caused the suspension and pays the reinstatement fee of \$100.
- (2) If a bond is required, a suspended motor carrier license shall not be reinstated until the motor carrier has provided said bond.
- (3) A suspended motor carrier license may be denied reinstatement for habitual violations of this Section.
- (4) In lieu of requiring a bond, the Administrator may reinstate a license if the licensee agrees to make future remittances in certified funds.
- (5) A licensee may be suspended for their failure to make remittances under (4) in certified funds.

(c) A motor carrier who wishes to contest a denial, revocation, or a reinstatement denial is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

(d) A motor carrier is subject to a contempt citation when its IFTA License is revoked.

(e) A field contempt citation may be issued to any motor carrier operating with a revoked Oklahoma IFTA license.

SUBCHAPTER 23. MOTOR LICENSE AGENTS ("MLAs")

165:30-23-2. Allowable fees and charges

(a) No fees may be charged to a taxpayer/registrant by a MLA for any service rendered pertaining to the processing of IRP applications other than fees as set forth in 47 O.S. 1141.1, 1143 or any other Oklahoma statute that sets forth a MLA fee.

(b) All fees assessed a taxpayer/registrant must be documented in the MLA's records so they may be identified as to type, upon inquiry by the affected taxpayer/registrant or the Corporation Commission.

(c) All fees assessed a taxpayer/registrant by a MLA must be itemized and contained on a receipt provided to the taxpayer/registrant upon payment.

(d) Fees assessed for services not included on the IRP invoice shall be separately receipted.

(e) Non-IRP fee receipts shall be retained in the MLA's records and uploaded to the imaged documentation contained with the IRP registration application. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. Each fee must be clearly identifiable and authorized by Oklahoma statutes.

165:30-23-5. Motor license agent conduct

(a) All transactions must be paid by the registrant at the time of processing. A motor license agent shall not process any transaction or release any item on credit before the taxpayer pays the tax and/or fee owed.

(b) A motor license agent shall not engage in any activity that will result in an actual or perceived conflict of interest.

(c) A MLA granted permission to process IRP applications shall service all IRP customers who desire the service. Commission permission given to a MLA to process IRP applications may be rescinded in the event a MLA refuses to process certain IRP applications or violates any provision of this subchapter.

SUBCHAPTER 26. NONCONSENSUAL WRECKER AND TOWING SERVICES

PART 3. RESPONSE TO NONCONSENSUAL TOWING RATE COMPLAINTS

165:30-26-14. Nonconsensual towing rate complaints and audits

(a) The Commission hereby establishes a progressive system of actions to be taken by the Commission, or its designee, to achieve compliance with a Commission nonconsensual towing order. Violations of a Commission nonconsensual towing order may be established as a result of a nonconsensual towing rate complaint investigation or an audit.

(b) For purposes of progressive actions, the date shown on the service invoice serves as the violation date. The dated written notice of a violation issued by the Commission, or its designee, serves as the Violation Notification.

(c) The following stipulations are in place for violations established as a result of a complaint investigation:

(1) A Violation Notification will contain instructions on the proper rate calculation procedure and will be provided to the wrecker service. The Violation Notification will list the violations and remediation requirements. The Violation Notification may require the repayment of the overcharge to the person who paid for the services. The wrecker service shall comply with the written instructions within ~~thirty (30)~~ twenty (20) calendar days of the Violation Notification.

(2) Each subsequent Violation Notification of the same provision of a Commission nonconsensual towing order within an ~~eighteen-month~~ eighteen (18) month period will be treated as a progressive violation.

(A) A violation may progress to the next level only when the date of the second or succeeding Violation Notification is later than the previous violation date.

(B) Each progressive action may consist of a new remediation requirement as well as each of the preceding remediation action requirements.

(3) For the second Violation Notification of the same violation during an ~~eighteen-month~~ eighteen (18) month period, a penalty may be assessed in accordance with (f) of this Section. In addition, the Commission or its designee may recommend the wrecker service be temporarily removed from the Oklahoma Department of Public Safety and/or other political subdivision's rotation log. Any such recommendation for removal will include the justification for such request.

(4) For the third and any subsequent Violation Notification of the same violation during an ~~eighteen-month~~ eighteen (18) month period, the Commission or its designee may recommend to the Oklahoma Department of Public Safety that the license of the wrecker service be suspended or revoked. Any political subdivision with which the wrecker service maintains a contract to provide nonconsensual wrecker or towing services may also be notified of the violation(s) along with the justification for such notification.

(d) Audits of wrecker services may be conducted with or without specific cause. Typically, audits are conducted as a normal part of rate determination and economic analysis, as a result of a nonconsensual towing rate complaint, as a referral from another political subdivision or as a follow up to a previously conducted audit. Audit periods cannot extend beyond the records retention period as required by the Department of Public Safety in OAC 595:25.

(e) Violations discovered as the result of an audit shall be reviewed by the Director of the Transportation Division or his designee. Progressive action remedies in addition to penalties in accordance with (f) of this Section may be assessed or the Commission may issue an order requiring that violations of this Subchapter be corrected. The order may include a fine up to a maximum of \$500.00 for each violation.

(f) For violations established as a result of a nonconsensual towing rate complaint or as a result of an audit, the following penalties may be assessed by the Director of the Transportation Division:

(1) A penalty in an amount up to \$175.00 for the second violation;

(2) A penalty in an amount up to \$375.00 for the third violation; or,

(3) A penalty in an amount up to \$500.00 for the fourth and subsequent violations.