

Russie Garrett

From: State Online Filing System [donotreply@www.ok.gov]
Sent: Friday, September 09, 2016 3:31 PM
To: Russie Garrett
Subject: Your Filing has been submitted successfully (Corporation Commission, Oklahoma - OCC - Filing ID: 5393)
Attachments: RM_201600007,_CH_5,_Emergency_Rule_Document.pdf; RM_201600007,_CH_5,_Rule_Impact_Statement.pdf; RM_201600007,_CH_5,_Attestation.pdf; RM_201600007,_CH_5,_Transmittal_Sheet.pdf

If you are encountering issues opening the attached files, please login to the filing system to view the documents: <https://www.ok.gov/state/filings/logout.php>

Filing ID: 5393

Submission Date: 09/09/2016 15:31:09 pm

Agency Name: Corporation Commission, Oklahoma - OCC
Mailing Address 1: 2101 N. Lincoln Blvd
Mailing Address 2: Jim Thorpe Bldg
City: Oklahoma City
State: OK
Zip: 73105

Type of Filing: Administrative Rules

Rule Type: Emergency

Adoption Date: 09/01/2016

Title Number: 165

Chapter Number: 5

Sub Chapters: 21

Public Comment: No written public comments were submitted or oral comments made for Chapter 5 Emergency Rules.

Rule Impact: The classes of those affected include owners and operators of storage tanks doing business in the state. The proposed emergency rule changes hearing procedures, practices and requirements. The proposed emergency rule will not have an adverse impact on the class of small business tank owners and operators who operate storage tank systems in the state.

Reason for Rule: The single rule change provides for a procedure to administratively approve a variance submitted by a regulated tank owner without the necessity for a court hearing. 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. This new procedure will alleviate the need for a variance applicant to attend court and present evidence demonstrating the need for a variance from Commission rules.

Statutory Authority to promulgate the rules: Corporation Commission; OKLA. CONST. art. IX Â§ 18, 17



O.S. Â§Â§ 301, 306 (12), 307 (A), 322 (4) et seq., 75 O.S. Â§Â§ 250 et. seq., and OAPA.

Reason for emergency: The single rule change provides for a procedure to administratively approve a variance submitted by a regulated tank owner without the necessity for a court hearing. 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. This new procedure will alleviate the need for a variance applicant to attend court and present evidence demonstrating the need for a variance from Commission rules.

Fee Increase? No

**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

INCORPORATION 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.

(1) 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.

(2) 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.

FILED

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA JUL 22 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF AN EMERGENCY)
RULEMAKING OF THE)
OKLAHOMA CORPORATION COMMISSION)
AMENDING OAC 165:5, RULES OF)
PRACTICE)

CAUSE NO. RM 2001600007

RULE IMPACT STATEMENT

This Rule Impact Statement addresses a proposed emergency rule of the Oklahoma Corporation Commission's ("Commission") OAC 165:5 *et seq.*, Rules of Practice. This Rule Impact Statement has been prepared in substantial compliance to 75 O.S. 2013 Section 303 (D).

I. PURPOSE OF RULE PROPOSAL

The single rule change provides for a procedure to administratively approve a variance submitted by a regulated tank owner without the necessity for a court hearing. Administrative approval by Commission staff will alleviate the need for a variance applicant to attend court and present evidence demonstrating the need for a variance from Commission rules.

II. CLASSES OF PERSONS WHO WILL MOST LIKELY BE AFFECTED BY THE PROPOSED EMERGENCY RULE, INCLUDING CLASSES WHICH WILL BEAR THE COST OF THE PROPOSED EMERGENCY RULE, AND INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES

The classes of those affected include owners and operators of storage tanks doing business in the state. The proposed emergency rule changes hearing procedures, practices and requirements.

The Commission in its Notice of Proposed Emergency Rulemaking has requested that business entities that are expected to incur an increase in the level of costs as a result of compliance with the proposed emergency rulemaking provide written comments stating cost impact information to the Commission. All registered storage tank owners were mailed a post card advising of the Notice of Proposed Emergency Rulemaking. However, as of the date of preparation of this Rule Impact Statement, the Commission has received no cost impact statements from any private or public entity. If any such comments are received by the Commission, they will be considered by Staff at the technical conference on July 28, 2016, and by the Commission *en banc* at the hearing on September 1, 2016.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED EMERGENCY RULE

The classes benefiting from the amendment include owners and operators of storage tanks seeking a variance from Commission rules.

IV. PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS, INCLUDING ALL FEE CHANGES WITH JUSTIFICATION

It is anticipated that there will be no direct adverse economic impact upon the affected parties. The amendment/addition/revision will not adversely impact other political subdivisions of the state.

The economic impact of the implementation of this proposed emergency rule will be the continued effectiveness of regulation. In addition, administrative handling of a variance application will allow the applicant the opportunity to focus on other business matters as opposed to attending a hearing. The Commission does not consider the proposed emergency rule having an adverse effect on small business; and as such, the rulemaking will comply with the requirements of the Oklahoma Small Business Regulatory Flexibility Act of 2002.

V. IMPACT ON SMALL BUSINESS

Pursuant to 75 O.S. 2002 Supp., Section 303(D)(2)(g), the Commission has reviewed the possible and potential economic impact of the proposed emergency rule amendment according to the requirements of the Oklahoma Small Business Regulatory Flexibility Act of 2002, 75 O.S. 2002 Supp., Section 501 *et seq.* The classes potentially impacted are:

1. Storage tank owners and operators: The proposed emergency rule will not have an adverse impact on the class of small business storage tank owners and operators who operate storage tank systems in the state.

VI. PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY TO IMPLEMENT AND ENFORCE THE PROPOSED EMERGENCY RULE, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED EMERGENCY RULE, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A NET LOSS OR GAIN IN SUCH REVENUES IF IT CAN BE PROJECTED BY THE AGENCY

The Commission anticipated that its current staff is adequate in both number and training to implement the proposed emergency rule, and that there will be no immediate increase in agency expenses as a result of the amendment.

Federal, state or local agencies or jurisdictions that by law enforce their own regulatory authority over petroleum storage tanks concurrently with the Commission,

including but not limited to municipalities, the Environmental Protection Agency, rural fire districts or the Fire Marshal, will not in any way enforce or implement the proposed amendment. Accordingly, there will be no cost to them.

VII. ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR COOPERATION OF ANY POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE THE PROPOSED EMERGENCY RULE

Political subdivisions (as defined in 75 O.S. (Supp. 1998) §250.3) that maintain regulated substance petroleum storage tanks may utilize the provision of the proposed emergency rule.

No cooperation of any political subdivision is required to enforce or implement the proposed emergency rule.

VIII. MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE AND LESS COSTLY OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSES OF THE PROPOSED EMERGENCY RULE

There are no less costly or less intrusive methods for achieving the purpose of the proposed emergency rule.

IX. EFFECT OF THE PROPOSED EMERGENCY RULE ON THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT AND, IF THE PROPOSED EMERGENCY RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENTS, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED EMERGENCY RULE WILL REDUCE THE RISK

The proposed emergency rule embodies the statutory changes of the Petroleum Storage Tank Division to protect human health, safety, the environment and the state economy, and in the proposed form, does so without burden to those regulated.

X. CONFORMANCE WITH FEDERAL STANDARDS

These proposed rules conform to U.S. Department of Commerce standards set forth in the National Institute of Standards and Technology, and are thus no more stringent than federal requirements and recently promulgated rules of the Environmental Protection Agency.

XI. RISK IF NOT IMPLEMENTED

If the proposed emergency rule is not implemented, a minimal risk of harm to tank owners is possible, as they would be required to attend a hearing, (sometimes from great distances). The proposed emergency rule will alleviate the need for a storage tank owner/operator to attend the hearing and allow them to attend to more meaningful business.

XII. DATE

This Rule Impact Statement was prepared on the 22nd day of July, 2016.

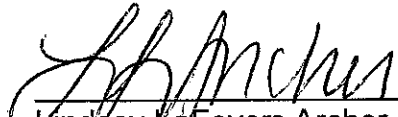
Prepared by:

Jeffrey P. Southwick
Deputy General Counsel
Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, OK 73152-2000
Ph.: 405/522-4457
Fax: 405/521-4150
Email: j.southwick@occcemail.com

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.

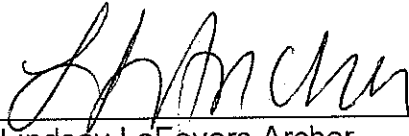


Lindsay LaFavers Archer
Rulemaking Liaison
Oklahoma Corporation Commission
September 9, 2016

NAME OF AGENCY: Corporation Commission
TYPE OF DOCUMENT: Adoption of Emergency Rules

LIAISON VERIFICATION:

I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the Administrative Procedures Act and the rules of the Secretary of State. Additional information may be obtained by contacting me at (405) 521-4259.



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