

TITLE 155. OKLAHOMA CONSERVATION COMMISSION

CHAPTER 1. OPERATION OF THE COMMISSION

[**Authority:** 27A O.S., §§ 3-2-101 et seq.]
[**Source:** Codified 12-31-91]

155:1-1-1. Purpose

This Chapter was adopted to set forth the operation provisions of the Commission as prescribed by the Conservation District Act.

[**Source:** Amended at 26 Ok Reg 781, eff 4-25-09]

155:1-1-2. Definitions [REVOKED]

[**Source:** Revoked at 26 Ok Reg 781, eff 4-25-09]

155:1-1-3. Appointment and tenure of members

The Oklahoma Conservation Commission, hereinafter designated "Commission," is comprised of five (5) members appointed by the Governor and subject to confirmation by the Senate for a five (5) year term. One appointment is made from each of the following designated areas of the State derived from the following Conservation Districts:

- (1) area I - Alfalfa County, Beaver County, Blaine County, Central North Canadian River, Cimarron County, Cimarron Valley, Dewey County, East Canadian County, East Woods County, Ellis County, Garfield County, Grant County, Harper County, Kingfisher County, Major County, Texas County, Woods County, Woodward County;
- (2) area II - Arbuckle, Cleveland County, Garvin, Kay County, Konawa, Lincoln County, Logan County, Love County, McClain County, Murray County, Noble County, Oklahoma County, Pawnee County, Payne County, Seminole County, Shawnee;
- (3) area III - Adair County, Caney Valley, Cherokee County, Craig County, Creek County, Delaware County, Mayes County, Muskogee County, Nowata County, Okmulgee County, Osage County, Ottawa County, Rogers County, Sequoyah County, Tulsa County, Wagoner County;
- (4) area IV - Comanche County, Cotton County, Custer County, Deer Creek, Grady County, Greer County, Harmon County, Jackson County, Jefferson County, Kiowa County, Mountain View, North Caddo, North Fork of Red River, South Caddo, Stephens County, Tillman County, Upper Washita, Washita County, West Caddo; and
- (5) area V - Atoka County, Bryan, Checotah, Coal County, Haskell County, Hughes County, Johnston County, Kiamichi, Latimer County, LeFlore County, Little River, Marshall County, McIntosh County, Okfuskee County, Pittsburg County, Pontotoc County, Pushmataha, Talihina, Valliant.

[Source: Amended at 26 Ok Reg 781, eff 4-25-09]

155:1-1-4. Qualifications of Commission members

- (a) Three of said Commission members shall be actively engaged in the practice of farming and/or ranching. If a Commission member disposes of all farming and/or ranching operations during the term of office, these rules shall not be deemed to be retroactive as to that individual, and the individual shall continue as a Commission Member until the term expires, but shall not be eligible for reappointment as one of the three (3) Commission members in the farming and/or ranching category, but will be eligible for reappointment in the other two (2) positions.
- (b) Each member shall be a District Director.
- (c) Each member shall be a resident of the area he/she represents.

[Source: Amended at 26 Ok Reg 781, eff 4-25-09]

155:1-1-5. Commission Meetings

The Commission shall meet monthly on the date, time and location as filed each year with the Office of the Secretary of State and in accordance with the Open Meeting Act.

[Source: Amended at 26 Ok Reg 781, eff 4-25-09]

155:1-1-6. Appropriations [REVOKED]

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

155:1-1-7. Executive Director, technical experts and employees [REVOKED]

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

155:1-1-8. Commission officers; compensation of members [REVOKED]

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

155:1-1-9. Powers, duties and authority of the Commission [REVOKED]

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

155:1-1-10. Commission Operations

(a) **Availability of Records.** All final orders, decisions and opinions, rules and regulations, resolutions, policies and all forms, applications and instructions related to or necessary for gaining access to the Commission's operations included in agency data bases and public files, and other services of the agency shall be made available at the principle office during regular business hours. Copies of all official records not protected from disclosure by law shall be available for inspection in accordance with the Oklahoma Open Records Act, at the principle office during regular business hours.

(b) **Office location; Hours.** The principle office of the Commission shall be at 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma. Unless otherwise directed by the Commission, office hours shall be from 8:00 A.M. to 4:30 P.M., Monday through Friday, inclusive, excepting legal holidays established by statute or by executive order.

[Source: Amended at 26 Ok Reg 781, eff 4-25-09]

155:1-1-11. Public inspection of Commission law; adoption of rules [REVOKED]

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

**155:1-1-12. Bonds of the Oklahoma Conservation Commission
[REVOKED]**

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

**155:1-1-13. Annual audit of the Oklahoma Conservation
Commission [REVOKED]**

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

**155:1-1-14. Newsletter of the Oklahoma Conservation Commission
[REVOKED]**

[Source: Revoked at 26 Ok Reg 781, eff 4-25-09]

CHAPTER 10. CONSERVATION DISTRICTS

[**Authority:** 27A O.S., § 3-3-105(A)(10)(c); 27A O.S., §§ 3-3-101 et seq.]
[**Source:** Codified 12-31-91]

155:10-1-1. Purpose

This Chapter was adopted to set forth the rules and regulations of the Conservation Districts pursuant to Title 27A-3 of the Oklahoma Statutes, hereinafter referred to as Districts.

[**Source:** Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-2. Definitions [REVOKED]

[**Source:** Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-3. Due notice on District procedures [REVOKED]

[**Source:** Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-4. Board of Directors; qualifications [REVOKED]

[**Source:** Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-5. Elected Directors; election procedures

Notification of election. Three directors shall be elected for a term of three years. The elected positions are numbered 1, 2 and 3 with succeeding terms, so that one term expires each year. A district director will continue to serve until re-elected or a successor is certified by the Commission.

(1) **Date of election.** An election for District Director shall be held each year on the first Tuesday in June; provided there are two or more eligible candidates.

(2) **Notice of Filing Period.** The filing period for the position of District Director shall begin at the start of business on May 1 through the close of business on May 14 of each year. Each District shall give notice of such filing period in all newspapers of general circulation in the District twice, with an interval of seven days, within the first three weeks of April. Such notice shall contain data as prescribed by the Commission. The Commission shall assume the cost of such notice. The District shall send a copy of such notice and certification signed by the newspaper to the Commission office.

(3) **Notification and declaration of candidacy.** To declare as a candidate for District Director, individuals shall fill out a notification of candidacy as prescribed by the Commission. The District shall accept notice from all persons who fill out the notice and shall forward it to the Commission upon the close of the filing period. If the individual does not have a cooperator agreement with said district, an application for cooperator agreement must

be made as prescribed by the Commission.

(4) **Receipt of notification of candidacy.** Upon receipt of the notifications of candidacy, the Commission shall determine eligibility of the candidate(s). The Commission shall notify the appropriate District of its findings of eligibility.

(A) If only one candidate files notification of candidacy, and is determined eligible by the Commission, no election will be held and the candidate will be declared elected to the position.

(B) If two or more candidates file notification of candidacy, and are determined eligible by the Commission, an election shall be held and the District shall prepare for such election.

(C) If no one files notification of candidacy during the filing period, the District shall recommend to the Commission an individual for appointment on a form as prescribed by the Commission to the elected position. However, the current director shall continue to serve until a successor is appointed.

(5) **Board Meeting to prepare for election.** If it is determined by the Commission that two or more candidates are eligible, the District shall hold a special meeting if the regularly meeting has already been held to:

(A) recommend polling places (see Polling Places),

(B) appoint the District Election Committee (see District Election Committee), and

(C) determine the newspapers to publish the Notice of Election.

(6) **Election procedures.**

(A) **Polling Places.** In determining the location of the polling places, the following criteria shall be used and all polling places shall be approved by the Commission:

(i) One shall be in the city/town of the District office;

(ii) Additional locations may be at such sites throughout the District boundaries so as to provide accessibility to all geographic areas in the district.

(B) **District Election Committee; precinct committees.**

(i) The Board of Directors shall appoint a District Election Committee of three to have charge of the election in the District. Members of the District Election Committee shall be responsible only to the Commission and shall be authorized representatives of the Commission. If more than one polling place is approved by the Commission, the District Election Committee shall appoint a Precinct Committee consisting of three members to supervise the election at each additional polling place. The District Election Committee will supervise and be responsible for conducting the

election. The District Election Committee and the Precinct Committees, if needed, shall abide by instructions as prescribed by the Commission.

(ii) The Board of Directors and/or their immediate families cannot serve on either the District Election Committee or the Precinct Election Committee as set out in this paragraph.

(iii) Members of the Committees shall be paid a rate in accordance with the County Election Board and shall receive mileage at the State Travel Reimbursement Act rate.

(C) **Notification of election.** Each District holding an election shall publish such information in all newspapers of general circulation in the district at least two times with an interval of seven days. Such publication should be completed five days prior to the election, and such notice shall contain data as prescribed by the Commission.

(7) **Election results.** Election results shall be sent to the Commission office upon completion of tabulation and on forms as prescribed by the Commission. The Commission will certify the election results and will forward certification to the appropriate District. Ninety days after the newly elected Director is certified by the Commission, the ballots shall be destroyed provided no challenge of election is pending.

(8) **Runoff election.** If two or more candidates receive the same number of majority votes cast, a runoff election will be held within thirty days from the date of the first election and in the same manner as the first election.

(9) **Challenge of election results.** Any candidate can contest the correctness of the announced results by filing a written petition with the District Election Committee before 4:30 p.m. on the Friday following the election.

(A) **Recount of ballots.** Any person demanding a recount of ballots shall deposit with the District Election Committee an amount set forth by the Commission. If a change in the winner is noted, then deposited funds will be returned to the challenger. If no change in the winner is noted, then all expenses shall be deducted from the deposited funds and the balance of said deposit, if any, shall be returned to the challenger.

(B) **Certification of voters.** Any person demanding that voters be certified as registered voters within the boundaries of the district shall deposit with the District Election Committee an amount set forth by the Commission. If a change in the winner is noted, then deposited funds will be returned to the challenger. If no change in the winner is noted, then all expenses shall be deducted from the deposited funds and the balance of said deposit, if any, shall be returned to the challenger.

(10) **Taking office.** The newly elected Directors shall assume their duties on July 1st of each year or as soon thereafter as qualified by the Commission for a term of three years and shall be administered a Loyalty Oath and an Oath of Office. Copies of the oaths shall be filed in accordance with state law.

(11) **Vacant elected position.** If a vacancy is created for any reason during the elected term, the Commission shall appoint a successor to fill the unexpired term of such elected Director; however, the elected director shall continue to serve until a qualified successor is appointed.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-6. Appointed Directors

(a) Two Directors from each District shall be appointed by the Commission to serve a term of two years beginning July 1 through June 30. A district director will continue to serve until re-appointed or a successor is certified by the Commission. To be eligible to serve as an appointed district director, an individual must be a registered voter and be a cooperator with the district or has made application to be a cooperator with the district.

(b) **Appointment; reappointment.**

(1) Boards of Directors shall submit a recommendation to the Commission for appointment to the office of district director as prescribed by the Commission.

(2) Upon the expiration of term of an appointed director, the District shall make recommendation to the Commission for appointment or reappointment to the position as prescribed by the Commission.

(3) Appointed Directors are required to attend seventy-five percent of the regularly scheduled meetings throughout their term of office. If the Director did not meet the requirement, the District must submit a letter stating the reason the requirement was not fulfilled in order to be considered for reappointment.

(4) The Commission shall notify the District and the individual of its action after such appointment has been made.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-7. Notification of new officers [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-8. Requirements for District Employment

Conservation Districts shall hire individuals as prescribed by the Commission. Conservation District employees are at - will employees and the District and employee shall be required to complete a terms of employment defining the conditions of employment. In order to qualify and enter into the duties of his or her employment and/or receive compensation, a conservation district employee shall first take and

subscribe to the loyalty oath or affirmation as prescribed by Title 51 Section 36.1 - 36.2A of the Oklahoma Statutes.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-9. Secretary's maintenance of District handbook; Commission rules and regulations [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-10. Public inspection of district records; Maintenance of Records

All official records, data and documents shall be maintained in the offices of each Conservation District. Conservation Districts shall make available all records, data and documents to the public as prescribed by the Open Records Act.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-11. Conservation District Board of Directors Meetings

- (a) Conservation Districts may meet monthly to conduct the business of the district and take official action on plans, programs and functions of the district. Any meeting held by a conservation district shall be conducted in accordance with the Open Meeting Act.
- (b) Three board members shall constitute a quorum of directors.
- (c) The minutes are the official record of the transactions and proceedings of the board of directors and shall be written in a manner prescribed by the Commission.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-12. Annual audit

The Commission shall be notified each year that arrangements have been made by the Conservation District Board of Directors to conduct an annual audit or compilation as prescribed by the Commission.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-13. Advisory committees [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-14. Investigation powers [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-15. Eminent domain

The Conservation District's procedure concerning eminent domain when revolving funds are used shall be as follows:

(1) Such eminent domain procedure shall be used only as a last resort by the Conservation District and such Conservation District shall exhaust all other feasible avenues open to the Conservation District;

(2) The Conservation District, once eminent domain is decided to be the only procedure available, will assume all cost in such proceedings and shall provide an itemized statement of such costs to the Commission once the proceeding has come to an end; and

(3) The Conservation District shall notify the Commission that such eminent domain proceeding is to be used at least ten (10) days prior to the next following monthly Commission meeting.

Such notice shall contain at least:

(A) a statement of facts surrounding the proceeding,

(B) the project in which the proceedings will implement,
and

(C) the reason eminent domain proceedings are being utilized.

155:10-1-16. Maintaining funds for specific projects [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-17. Use of Conservation District monies on non-Conservation District projects [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-18. Cooperative agreements [REVOKED]

[Source: Revoked at 26 Ok Reg 786, eff 4-25-09]

155:10-1-19. Annual report

(a) Each Conservation District shall publish an annual report on a fiscal year basis as prescribed by the Commission.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-20. Resource Conservation Program

(a) **Contents.** Each Conservation District shall complete a long range plan every five (5) years designating it as the "Resource Conservation Program." The Long Range Plan shall be developed in a format prescribed by the Commission. The Long Range Plan shall be submitted to the Commission for approval, rejection, or revision.

(b) After approval by the Commission, Conservation Districts shall give due notice of a public hearing to obtain comment on the Long Range Plan. Notice will be made by placing notice of such hearing in a newspaper of general circulation twice with an interval of seven (7) days between such publications:

(1) The Conservation District shall use that newspaper which has general circulation in their Conservation District and will reach

most of the people within the area.

(2) Each publication of notice shall run for one (1) day.

(3) The Conservation District shall assume the cost of any such due notice by publication, except or otherwise specifically provided.

(4) At least 20 days must elapse between the first publication and the date of the public hearing, except or otherwise specifically provided.

(5) The Conservation District shall, after due notice has been give, submit a copy of such notice and a certificate signed by the Chair of the board to the Commission.

(c) Upon completion of the Resource Conservation Program (Long Range Plan) and each year thereafter, the annual plan of operations shall be derived from the Resource Conservation Program. The annual plan of operations shall be written in a manner as prescribed by the Commission.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-21. Zoning ordinances

The Conservation Districts, in reviewing and commenting upon the various zoning ordinances promulgated by those governmental entities allowed by law to so pass, shall adhere to the following procedure:

(1) When reviewing a zoning ordinance, the Conservation District shall look at such ordinance in light of its current and future conservation plans and program impacts, with due respect for sound, economically feasible, and efficient use of the land subject to such ordinance;

(2) The Conservation District may request the District Conservationist of the Natural Resources Conservation Service to assist them in preparing a survey of such area to be encompassed in the zoning ordinance with particular details for:

(A) suitability of soils for the use of the zoning ordinance suggests,

(B) drainage from the area in light of the use the area may be subject to,

(C) if the area is a flood plain, this should be noted,

(D) if the area is within a watershed dam breach inundation area, this should be noted,

(E) will the proposed use, as suggested by the zoning ordinance be one which will inherently damage the renewable natural resources in the area to such an extent that irreparable and irreversible damage will occur, and

(F) pollutants - is there a proper method of disposal:

(i) natural pollutants, and

(ii) pollutants from suggested use as per zoning ordinance.

(3) The board of directors of the Conservation District may request technical assistance from the Natural Resources Conservation Service District Conservationist as to the possible ramifications of the zoning ordinance:

- (A) If the Board of Directors deems necessary more technical data, they shall convey this request to the District Conservationist to ask for additional technical assistance upon which to have their report; and
 - (B) The Conservation District shall notify the Commission of such a decision and specify which area of technical assistance they have requested and why. The Conservation District shall also notify the appropriate entity of government what they are intending to do.
- (4) The Conservation District shall prepare a report for the appropriate unit of government seeking to adopt such zoning ordinance giving their comments. The Conservation District shall forward a copy of such report to the Commission.

[Source: Amended at 26 Ok Reg 786, eff 4-25-09]

155:10-1-22. Small watershed flood control fund

- (a) None of the funds in the Small Watershed Flood Control Fund shall be expended until 80% of the easements are obtained for the watershed project in which the money from the fund is to be used.
- (b) All requests for funds from the SWCF shall be made by application on form prescribed by the Commission.
- (c) When any real property interest or easement has been acquired by a District in whole or in part by the use of any funds allocated from the SWCF and the property acquired is thereafter sold, leased, or rented, it shall be the duty of the Board of Directors of the said District to remit to the Commission a pro rata share of the proceeds of such sale or lease equal to the percentage of the total cost of the acquisition of such real property or easement which was paid from any allocation made from the SWCF and all such remittances shall be forwarded to the Commission within 30 days from receipt thereof by the Conservation District.
- (d) No property owned by the Conservation District whereby revolving fund money has been used shall be encumbered for longer than one year unless a longer encumbrance is approved by the Commission.
- (e) The Commission may direct any Conservation District to dispose of property or easements after a review of the facts and circumstance of why such property or easement is still retained by the Conservation District.

CHAPTER 12. LAND MANAGEMENT

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 1. GENERAL PROVISIONS

155:12-1-1. Purpose

This Chapter sets forth provisions and requirements related to the different programs and projects of the Land Management Division pursuant to authority in Title 27A, Sections 3-1-101 et. seq. of the Oklahoma Statutes.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-1-2. Definitions

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

"AEMS" means Agricultural Environmental Management Services division within the Oklahoma Department of Agriculture, Food, and Forestry dedicated to working with producers and concerned citizens in protecting the state's soils, air, and waters from animal waste.

"Alternate restoration" means the return of lands disturbed by human-related activities to a post-land use other than that which existed before the activity. Alternate restoration must be stable and have utility.

"BMPs" means Best Management Practices. These practices are capable of protecting the environment while considering economic factors, availability, technical feasibility, ability to implement, and effectiveness.

"Commission" means the Oklahoma Conservation Commission as created by the Conservation District Act of 1971.

"District" means a conservation district which is a governmental subdivision of this State and a public body corporate and politic organized in accordance with the provisions of the Conservation District Act of 1971.

"Director" means the Director of the Land Management Division of the Oklahoma Conservation Commission.

"DSA" means driving surface aggregate which is a well-graded, unbound mixture of loosely compacted fragments or particles designed for use as a wearing course on unpaved roads and to achieve maximum density to resist erosion and traffic wear.

"Eligible Land and Water" means those lands and waters that are eligible, under the criteria outlined in Section 155:12-3-2, for land restoration.

"Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"ESM" means environmentally sensitive maintenance practices that reduce the impact of road runoff and sediment into local streams, while reducing long-term road maintenance costs.

"ESP" means environmentally safe practices which are practices that are put in place to ensure that the surrounding environment is free from hazards that will impact the safety and well-being of the public, as well as prevent accidental environmental damage or erosion.

"Extreme Danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"FEMA" means Federal Emergency Management Agency an agency within the Department of Homeland Security charged with responding to Presidentially declared disasters.

"French mattress" means a structure under a road consisting of clean coarse rock wrapped in geotextile through which water can freely pass. French Mattresses are used in saturated soils, such as in wetlands, to support the roadbed while allowing unrestricted water movement.

"Hard rock mining" means uncovering and extracting non-fuel metal and mineral deposits of solid ores or eroded deposits in igneous or metamorphic terrains or streambeds. Some common hard rock minerals mined are copper, gold, iron ore, lead, molybdenum, phosphate rock, platinum, potash, silver, uranium, zinc, sand, and gravel.

"Land Management" means an activity to preserve or repair the function of previously disturbed land or water channels.

"Logjam" means an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a waterway and that is: (1) Causing or threatening to cause flooding on a road or private property. (2) Impeding navigation by a boat. (3) Reducing the capacity of a waterway to transport water. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel.

"Mineral" means any metalliferous material extracted from the earth, including gold, silver, copper, molybdenum, zinc, lead, and other materials that are used as feedstocks in producing metalliferous materials.

"NMP" means Nutrient Management Plan which is a plan that is developed to manage the amount or rate, source, placement, method of application, and timing of plant nutrients and soil amendments. The purpose is to budget, supply, and conserve nutrients for plant production.

"ODAFF" means the Oklahoma Department of Agriculture, Food, and Forestry which is an agency of the state of Oklahoma charged with protecting and promoting agriculture, agricultural goods, and natural resources.

"Permanent facilities" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the land restoration is completed, such as a relocated stream channel or diversion ditch.

"Program" or **"Land Management Program"** means the program established by the State for the restoration, repair, reclamation,

improvement, modification, or alteration of land and/or water adversely affected by human activity or natural processes (i.e., mining, logjams, erosion)

"Restoration" means measures that are taken on surface disturbances to achieve stability and safety consistent with post-land use objectives.

"Soil" means topsoil, suitable substrate, or other plant growth media that will sustain vegetation.

"Stability" means the condition of land concerning its erosion potential and ability to withstand seismic activity.

"Surface disturbance" means clearing, covering, or moving land using mechanized earth-moving equipment for exploration, development, and production purposes but does not include surveying, assessment and location work, seismic work, maintenance, and other activities that create a de minimis disturbance.

"Unpaved road" means surfaces of natural material or crushed aggregate that have not been incorporated into a bound layer using asphalt, oil, or other such binder.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 3. LAND RESTORATION

1. Land restoration

1. Land restoration

155:12-3-1. Land restoration

Land restoration is the ecological process of restoring a natural and safe landscape for humans, wildlife, and plant communities. This process protects our ecosystems, creates economic development, helps prevent natural disasters such as floods, and increases soil health, productivity, and food supplies.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-2. Eligibility

(a) Lands are eligible for restoration that have a continuing condition that substantially degrades the quality of the environment, prevents or damages the beneficial use of the land, natural resources, or water resources, or endangers the health or safety of the public.

(b) In addition to paragraph (a), mined lands including hard rock mining, and associated waters are eligible for land restoration if:

- (1) Mined or affected by mining processes; and
- (2) Abandoned either unreclaimed or inadequately reclaimed; and
- (3) No continuing responsibility for reclamation exists by the operator, permittee, or agent of the permittee under the statutes of the State.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-3. Mine restoration objectives and priorities

Land Management projects related to mining shall meet one or more of the objectives stated in this Section. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives. The following objectives are stated in the order of priority with the highest priority first:

(1) **Priority 1.** The protection of public health, safety, and property from the extreme danger of adverse effects of mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from the extreme danger of adverse effects of mining practices.

(2) **Priority 2.** The protection of public health and safety from adverse effects of mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of mining practices.

(3) **Priority 3.** The restoration of land and water resources and the environment previously degraded by adverse effects of mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1) (A) or (a)(2)(B) of this Section.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-4. Land management project evaluation criteria

Proposed land restoration projects and completed restoration work shall be evaluated in terms of the factors stated in this Section. This evaluation will be undertaken by the Director. The factors shall determine whether or not proposed land restoration will be undertaken and to assign priorities to proposals intended to meet the objectives in terms of factors set forth below as a means of identifying conditions that should be avoided, corrected, or improved in plans for future land restoration. The factors for consideration include:

- (1) The need for restoration work to accomplish one or more specific land management objectives.
- (2) The availability of technology to accomplish the land restoration with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
- (3) The specific benefits to be considered when evaluating restoration projects shall include but are not limited to eligibility in 155:12-3-2, and the mine restoration objectives and priorities in 155:12-3-3.
- (4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after restoration and of uncorrected conditions, if any, that will continue to exist after the land restoration is completed.
- (5) Consideration shall be given to both the economy and efficiency of the improvements and to the results obtained or expected as a result of the restoration.
- (6) Landowner(s) acceptability to the restoration of the land.
- (7) The availability of additional mineral or material resources within the project area that:
 - (A) Indicates a reasonable probability that the desired land improvements will be accomplished during the process of future mining.
 - (B) Requires special consideration to ensure that the resource is not lost as a result of the restoration and that the benefits of the restoration are not negated by subsequent, essential resource recovery operations.
- (8) The acceptability of post-restored or improved land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws, and the needs and desires of the community in which the project is located.
- (9) The probability of post-land management, maintenance, and control of the area consistent with the improvements once completed.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-5. Rights of entry

- (a) This Section establishes procedures for entry by the Commission for land restoration purposes.
- (b) Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out land restoration activities.
- (c) The Commission, its agents, employees, or contractors may enter upon land to perform land restoration, make improvements, or conduct studies or exploratory work to determine the existence of the adverse effects of past mining or land damage, if consent from the owner is obtained.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-6. Revegetation standards

The Commission will restore lands that can include a variety of possible uses like production agriculture, wildlife habitat, grasslands, and native wooded areas.

- (1) Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.
- (2) Revegetation shall be conducted to establish plant species that will support the approved land use. The establishment of vegetation species, density, or diversity that is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:
 - (A) The post-land use is different from the pre-land use or the use of adjacent lands;
 - (B) The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; or
 - (C) The establishment of different species is preferable for the control of erosion.
- (3) Planting shall be conducted during the most favorable period of the year for plant establishment.
- (4) Soil stabilizing practices or irrigation measures, or both, may be used to establish vegetation.
- (5) This Section only applies if vegetation or revegetation measures are included in the approved restoration plan.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-3-7. Off-site soil

Soil may be brought in from off-site locations, and may include any growth media that will support vegetation, will provide a stable growing surface, and will not create a hazard to public safety.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 5. UNPAVED ROADS PROGRAM

155:12-5-1. Purpose of unpaved roads program

(a) The purpose of the Unpaved Roads Program is to create a better unpaved road system with a reduced negative environmental impact on priority water resources in Oklahoma. The Program focuses on best management practices (BMPs) that reduce the impact of sediment and road runoff into streams, rivers, and drinking water supplies while reducing long-term unpaved road maintenance costs.

(b) The Program is designed to fund work on public roads with unbound road surfaces also known as unpaved roads. For the Program, driving surface aggregate (DSA) is NOT considered "paved" even though the material looks similar to pavement/concrete and is laid with paving equipment, however, it has no binding agent.

(c) Public entities that own and maintain public roads in Oklahoma that are open to public vehicle travel at least eight (8) consecutive weeks a year are eligible to apply for grants for Program funding.

(d) Counties are the primary applicants for Program funding. Other unincorporated areas with public, unpaved roads can also apply for funding as long as the entity has the capacity to implement and manage a Program grant.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-2. Program goals

The Commission's program goals are to:

- (1) Fund safe, efficient, and environmentally sound projects for the maintenance of unpaved roads that have been identified as possible contributors of sediment in Oklahoma streams.
- (2) Provide training on techniques of unpaved road maintenance that minimize negative impacts to water and on air quality.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-3. Application ranking criteria

Applications will be reviewed and ranked with preference given to projects in priority watersheds. The application criteria in order of priority given are:

- (1) A water body listed as impaired on Oklahoma's 303(d) list;
- (2) A water body containing an aquatic species listed as threatened, endangered or a candidate species by the Federal Government;
- (3) A water body used as a drinking source for people;
- (4) A water body used as an interstate waterway;
- (5) A water body important to agricultural or pasture land use;
- and
- (6) A water body important to forestry land use.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-4. Project eligibility

(a) To be eligible for funding under this program, the applicant's project must focus on:

- (1) Both unpaved road improvements and sediment reduction that is negatively impacting, or could negatively impact a named, priority water body covered by the program; and/or
- (2) Worksites (identified pollution sites) and environmentally safe practices (ESP) to reduce pollution while providing a more stable unpaved road.

(b) The applicant must have at least one person certified in ESM practices on staff.

(c) Only projects that provide some form of environmental benefit, typically by reducing sediment and concentrated drainage to waterways, will be considered for funding.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-5. Ineligible projects

(a) Projects not eligible for funding consideration under the Unpaved Roads Program include, but are not limited to:

- (1) Roadways that have bound surfaces including oil, asphalt, concrete, or any mixture of sealed aggregate.
- (2) Roadways that are not negatively impacting a priority body of water.
- (3) Public roads that are open to the public for less than eight (8) consecutive weeks.
- (4) Any and all private roads.

(b) Applicants are not eligible for an Unpaved Roads Grant if the applicant or county has an Unpaved Roads Grant currently open. Once the grant closes, applicants are eligible to re-apply.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-6. Environmentally sensitive maintenance

(a) An Environmentally Sensitive Maintenance (ESM) certified person must be in charge of work plan development and project implementation for the applying entity. ESM training for the program is a one-day course that covers the road maintenance practices employed by the program.

(b) ESM training is made available at no cost to potential grant applicants such as county Commissioners, county roads personnel, and other interested parties. It is highly recommended that all persons representing the county who have a significant role in the program attend ESM training, including county administrative staff. ESM training must be taken once every three (3) years to maintain certification and an approved Local Technical Assistance Program (LTAP) course on years when no ESM course is taken.

(c) Some examples of ESM principles are as follows:

(1) **Road/Stream Interactions.** ESM practices for stream crossings focus on reducing the sediment delivery to a river or lake, riverbank stability issues, and the river crossing itself. Practices such as high water bypasses, French mattresses, proper stream crossing sizing, better bridge and pipe design, and in-stream flow control structures can be effectively used to stabilize the unpaved road or stream interface.

(2) **Unpaved Road Surface.** ESM practices for the unpaved road surface include drainage control and improved aggregate. Drainage control starts with proper crown and cross-slope but also includes practices such as grade breaks, berm removal, and broad-based dips. Improved surface aggregate focuses on the driving surface aggregate and includes maintenance concerns such as grading and pothole repair.

(3) **Unpaved Road Base.** Practices that improve the base of a road include mechanical base improvements, underdrains, French mattresses, road elevation increase, and in some cases full-depth reclamation.

(4) **Vegetation Management.** Practices that manage vegetation in a sustainable manner will reduce erosion from the unpaved road area and save on future maintenance costs associated with tree trimming and cleanup. Practices include selective thinning, proper pruning, seeding and mulching, and managing vegetation for long-term stability.

(5) **Unpaved Road Bank Management.** Practices that stabilize the upslope or downslope road bank include slope reinforcement, filling the road profile, naturalizing bank shape, and natural or mechanical slope reinforcement.

(6) **Unpaved Road Ditch and Outlet Stabilization.** ESM practices for ditches include anything that reduces the flow in the ditch. The simplest of these practices is to provide more drainage outlets in the form of new turnouts and cross pipes. Selecting locations to outlet water and choosing the proper outlet stabilization methods is also important. Other practices such as rock check dams, berm removal, and filling the road profile in an attempt to eliminate ditches completely and promote sheet flow. Practices to reduce the effect of subsurface flow such as underdrains are also important.

(7) **Bridges.** Applying ESM practices to the construction and maintenance of bridges located on unpaved roads.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-7. Eligible project expenses

(a) Applicants may apply for the full or partial costs of materials, equipment, and labor required for the implementation of the grant project. Salaries and other associated personnel expenses are not eligible. Eligible grant fund caps, labor expense information, and other specific program requirements will be provided in the program year guidelines issued by the Commission.

(b) Material expenses on a project include but are not limited to items such as pipe, stone, fill, fabric, aggregate, etc. Products with the potential ability to leach off the road (such as dust suppressants) must meet Oklahoma state standard requirements for non-pollution.

(c) Program projects are often completed with applicant-owned equipment. In most cases, this will be county-owned equipment. Reimbursement of applicant-owned equipment costs may be an eligible expense under the Program as:

(1) Accepted Federal Emergency Management Agency (FEMA) rates if submitted with the grant application;

(2) Legitimate quote or invoice acceptable by the Commission; or

(3) Approved labor expenses as set out in the program year guidelines.

(d) Projects may require equipment that the applicant does not own. It may be an eligible expense for an applicant to rent or lease equipment necessary to complete a project with program funds. Equipment rented or leased with program funds can only be used on the project for which it was rented or donated. Grant funds from the program cannot be used to purchase or maintain equipment.

(e) Some projects may be completed entirely by a subcontractor where no unpaved road work is performed by the applicant. Applicants should follow standard procedures regarding project bidding and working with sub-contractors. The Commission will make payments to the grant recipient, not directly to the grant recipient's sub-contractors.

(f) Most projects will require permits, engineering, or consultant work to design and complete.

(g) Each program year the Commission shall establish and issue program guidelines that specify what practices and expenses shall be approved and covered by the program's funds.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-8. Funding availability

Applicants with an eligible project may apply for the program year cap amount in state-matching funds toward a single project. As the grant pool monies are limited, the Commission may award less than the amount requested.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-9. Matching requirement

(a) All proposed and funded projects are required to have at least a 1:1 match contribution.

(b) In-kind goods and services committed by the county will include without limitation labor, equipment use, materials, and services.

(c) Donations from private entities and other program stakeholders can be applied to meet or exceed the programmatic matching requirements. Other sources of funds that will benefit a county's grant applications are encouraged.

- (d) All matching funds must be pledged at the time of application submission and be immediately available if an award is received.
- (e) Donated labor cannot count as match if it is executed before the grant is awarded.
- (f) Debt financing of any nature and proceeds from any other state grant programs cannot be used for matching purposes.
- (g) Proof must be shown that the entire project can be funded.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-10. Pre-application

(a) Applicants are encouraged to conduct pre-application site visit meetings with Commission staff to discuss the potential project and look at the potential project on-site before an application is submitted for funding in excess of \$25,000. A pre-application meeting aims to work jointly with the applicant to ensure the plan submitted is in the best interest of both entities. The pre-application meeting allows the Commission to provide input on the potential project at an early stage before the applicant has invested a large amount of time and resources in developing a worksite plan. Topics to discuss at the pre-application meeting would include but not be limited to:

- (1) Environmental concerns,
- (2) Permitting requirements,
- (3) Funding availability,
- (4) Potential landowner issues, and
- (5) Scope and design of project.

(b) The Commission, at its discretion, may refuse to accept incomplete applications or applications that do not properly address environmental issues or other program or project requirements.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-11. Application

(a) A complete grant application should include the following:

- (1) **Cost estimate.** The cost estimate breakdowns and budget tables should include both the requested grant funds and matching funds. The minimum matching requirement ratio is 1:1. Every grant dollar must be matched with at least one dollar of non-grant funds.
- (2) **Work plan.** A work plan that consists of a hand-drawn or digitally produced sketch of the proposed project. A work plan of the road should include all planned features such as pipes, aggregate, underdrain, surface features, etc. Applicants may use the space provided on the back of the grant application for the work plan.
- (3) **Map.** A map that identifies where the project is located with a clear delineation of the water body that will be impacted by the project needs to be included. The water body must be named.
- (4) **Documentation.** The general program agreements, resolutions, and forms must be completed and included.

- (5) **EMS practices.** A planned list of ESM practices to be utilized on the project.
- (b) Applications that the commission deems complete and potentially acceptable to the Program will be reviewed, ranked, prioritized, and funded accordingly.
- (c) All applications for funding must be approved by the Commission.
- (d) All applicants shall be notified in writing of the funding decisions of the Commission.
- (e) A county cannot begin on any part of the project until they have received their grant approval letter.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-5-12. Project field data

- (a) All approved and funded projects shall require site visits by the Commission or assigns.
- (b) Roadside erosion predictor data sheets will be completed:
 - (1) before the project begins, and;
 - (2) five (5) days after the project completion date.
- (c) Roadside erosion predictor analysis will be used to produce sediment reduction yields. Repeatable photo points will be installed during site visits. Approximately one year later Program staff will return to the project site to perform a project walk-through to ensure the project is still operational and reducing sediment. Photo points will be repeated. Program staff will complete a simple project completion report worksheet that will summarize the project implementation to ensure the grant was completed to achieve the grant objectives.
- (d) A final inspection must be scheduled on-site involving the Commission and the grant recipient. Final inspections should be completed within five (5) days after work is complete, so any remediation can be done while equipment is still on site. Other entities such as Program stakeholders, and sub-contractors to the grant recipient should be encouraged to participate. The purpose of the final inspection is to verify:
 - (1) Completion of the project according to program standards and the satisfaction of the Commission;
 - (2) Completion of all “in-kind services” in accordance with program standards and the satisfaction of the Commission; and
 - (3) Proper installation of the proposed work elements contained in the work plans.
- (e) Once the final inspection is completed the Commission shall summarize the project work elements and include cost documentation provided by the applicant to the Project Completion Report.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 7. LOGJAMS

155:12-7-1. Benefits and harms

Logjams occur naturally and can provide beneficial stream structure and cover for fish and wildlife as well as contributing to nutrient-rich sediment being deposited on adjacent floodplains. In many cases, the ripples caused by obstructions oxygenate the water to improve water quality. However, streams are also expected to function as efficient drainage outlets, conveying water off the land in a timely manner. Logjams may inhibit this drainage function resulting in increased flooding, destruction of property, negative impacts on some wildlife habitats, and increased erosion and sedimentation.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-7-2. Evidence of logjams

Logjams are evidenced by a blockage that does any of the following:

- (1) Traverses the waterway,
- (2) Causes upstream ponding,
- (3) Results in significant bank erosion, or
- (4) Endanger infrastructure.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-7-3. Condition classifications

The Commission recognizes five (5) condition classifications for logjams. They are as follows:

- (1) **Condition 1.** A single log located either in or across the waterway channel.
- (2) **Condition 2.** Two or more logs in or across the channel. The accumulated logs are interlocked, but there is no sediment build-up or debris collecting at the site in the channel.
- (3) **Condition 3.** Two or more logs in or across the channel. The accumulated logs are interlocked and sediment and debris have begun to collect on the jam. There is still water movement through the logjam.
- (4) **Condition 4.** Two or more logs in or across the channel. The accumulated logs are interlocked and sediment and debris have compacted into the logjam. There is no water movement through the logjam. The logjam acts as a dam, holding back water within the channel; water movement is now through the overbank areas rather than the channel.
- (5) **Condition 5.** Logjam is located on a waterway within an area providing significant environmental benefit or within a critical area for fish spawning.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-7-4. Evaluation for removal

Logjams or other in-stream obstructions should be looked at closely and evaluated to determine if the obstruction should be removed by the Land Management Division. Factors to consider include but are not

limited to:

- (1) Available Funding,
- (2) Conditions of the logjam,
- (3) Severity,
- (4) Local impacts, and
- (5) Analysis of the benefits.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 9. CONSERVATION PLANNING PROGRAMS

155:12-9-1. Purpose

The purpose of these programs is to assist Oklahoma producers and growers with developing Conservation and Nutrient Management Plans that promote environmental stewardship and meet state regulatory requirements.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-9-2. NMP program perimeters

- (a) The Commission shall assist in the hiring and placement of nutrient management planners in conservation districts where plans are needed.
- (b) The Commission shall review and determine which applications for plans will be accepted and denied. The Commission shall consider, but not be limited to, looking at:
 - (1) available manpower,
 - (2) reasonableness of projected timeframes,
 - (3) scope of the NMP,
 - (4) complexity,
 - (5) type of operation, and
 - (6) ability of the Commission's planners to produce a quality NMP.
- (c) NMPs shall be written to expire every six (6) years.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-9-3. Process

- (a) The NMP request form shall be available online for completion and submission by applicants.
- (b) The completed application will be reviewed by the Director for acceptance or denial.
- (c) If accepted the applicant and ODAFF shall receive an electronic Notice of Intent (NOI) from the Commission and an NMP planner will be assigned to develop and write the NMP.
- (d) If the application is denied, the applicant shall receive an electronic Notice of Denial (NOD) from the Commission.
- (e) The planners shall submit their completed NMP draft to the Director for review and comment.

- (f) The Director shall return the NMP to the planner for corrections and changes if any are required.
- (g) If the Director approves the plan then the plan is sent to AEMS for its approval.
- (h) Once approved by the Director and AEMS, a meeting is set with the grower to review the plan, acquire signatures, and submission of a copy of the signature page to AEMS to meet ODAFF requirements.
- (i) Once the NMP is approved as complete by the Director, the Director shall verify with the District that all requirements are met and the NMP released to the applicant.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-9-4. District partnership

The Commission shall partner with conservation districts to get planners hired, housed, and writing plans. The conservation districts shall be primarily responsible for:

- (1) Keeping and tracking all the NMP funds in a separate bank account from other district funds.
- (2) Keeping the Commission apprised of the funds.
- (3) Following program guidelines.
- (4) Housing planners.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-9-5. Conservation planners

- (a) For many state and federal cost-share programs, a conservation plan is required. However, the state has not had enough conservation planners to meet the needs of producers.
- (b) The Commission shall assist districts in the hiring and placement of conservation planners across the state. These planners will work with producers to develop and write these plans.
- (c) The Commission shall serve as the primary coordinator and overseer for the training and certifications required for these conservation planners.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

SUBCHAPTER 11. INVASIVE WOODY SPECIES PROGRAMS

155:12-11-1. Purpose

The Commission shall assist in the managing and reduction of red cedars and other invasive woody species in an effort to protect our water supply, grazing lands, and wildlife habitat, to reduce wildfire risk, and show proof of concept for cedar removal impacts. In addition, the Commission will work to increase public awareness of the impact of these invasive species, increase support for the use of prescribed fire as

a management tool, and provide a return on investment that will result in continued funding for the expansion of managing practices across the state.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-11-2. Terry Peach North Canadian Watershed Restoration Act

(a) The Commission shall administer the Terry Peach North Canadian Watershed Restoration Act. Under this Act, the Commission shall:

- (1) Cooperate with landowners, state agencies, and other political subdivisions for the removal of invasive woody species;
- (2) Share costs with landowners for expenses incurred;
- (3) Measure the density of invasive woody species and determine its water usage;
- (4) Establish at least two active project areas; and
- (5) Develop grant programs with districts, rural fire departments, and prescribed burn associations.

(b) The Commission will focus on the following invasive woody species under this project:

- (1) Eastern Redcedar;
- (2) Rocky Mountain Juniper;
- (3) Oneseed Juniper; and
- (4) Salt Cedar.

(c) The Commission shall use the following three (3) prong approach to manage these invasive woody species:

- (1) Data collection and research;
- (2) Increase use of prescribed burns; and
- (3) Wildfire damage prevention.

(d) Under this program the Commission shall partner with conservation districts. The conservation districts shall:

- (1) Serve as the local contact with landowners;
- (2) Conduct outreach;
- (3) Engage additional partners;
- (4) Provide staff support, office space, and homing of equipment;
- (5) Work with the Commission to process payments; and
- (6) Check the maintenance of practices.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-11-3. Program expansion

The Commission will work to implement new and expanding programs to combat the spread of invasive woody species. This could include the expansion of the Terry Peach North Canadian Watershed Restoration Act practices to other watersheds, the creation of a cost-share program, or any other beneficial program. The Commission will develop program year guidelines, standards, and specifications that are ecologically and geographically specific.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

155:12-11-4. Cooperation

The Commission and the conservation districts are encouraged to work cooperatively with federal and state agencies, tribes, OSU extension, burn associations, and other entities to reduce the footprint of woody invasion plants and the impacts the plants have on state waters and natural resources.

[Source: Added at 41 Ok Reg, Number 22, effective 9-2-24]

CHAPTER 15. OKLAHOMA'S ABANDONED MINE LAND RECLAMATION PROGRAM

[Authority: 45 O.S., §§ 740.1 through 740.7]

[Source: Codified 12-31-91]

155:15-1-1. Purpose

This Chapter sets forth requirements for Oklahoma's Abandoned Mine Land Reclamation Program pursuant to Title 45, Sections 740.1 through 740.7 of the Oklahoma Statutes.

155:15-1-2. Definitions

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

"Abandoned Mine Reclamation Fund" means the fund established by the State for the purpose of accounting for moneys granted by the Director of the Office of Surface Mining under an approved State Abandoned Mine Land Reclamation Program and other moneys authorized by these rules to be deposited in the Abandoned Mine Reclamation Fund.

"Certified in lieu funds" means moneys that the Office distributes to the Commission in lieu of moneys allocated to the Commission's State share of the Fund after October 1, 2007. Certified in lieu of funds come from general funds of the United States Treasury that are otherwise unappropriated.

"Code" means the Code of Federal Regulations (CFR).

"Commission" means the Oklahoma Conservation Commission as created by the Conservation District Act of 1971.

"Conservation District" means a governmental subdivision of this State, and a public body corporate and politic organized in accordance with the provisions of the Conservation District Act of 1971.

"Director" means the Director of the Office of Surface Mining, United States Department of the Interior.

"Eligible Land and Water" means those lands and waters that are eligible, under the criteria outlined in Section 155:15-1-5, for reclamation activities.

"Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"Extreme Danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"Fund" means the Abandoned Mine Reclamation Fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Section 401 of the SMCRA.

"Historic coal funds" are moneys provided under Section 402(g) (5) of SMCRA based on the amount of coal produced before August 3, 1977 in which Oklahoma has an interest. The Office can reallocate

historic coal funds from other states and tribes.

"Make up funds" are additional moneys the Office distributes each Federal fiscal year to the Commission to make up the difference between the total distribution of other funds and \$3 million.

"Office" means the Office of Surface Mining of the United States Department of the Interior.

"Permanent facilities" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

"Plan" or **"State Abandoned Mine Land Reclamation Plan"** means the plan submitted by the Commission to the Office for the reclamation of land and water adversely affected by past coal mining activities.

"Prior balance replacement funds" means moneys that the Office must distribute to the Commission instead of moneys the Office allocated to the Commission's State share of the Fund before October 1, 2007, but did not distribute to the Commission because Congress did not appropriate them. Prior balance replacement funds come from the U.S. Treasury that are otherwise unappropriated. Under section 411(h)(1) of the SMCRA, the Office distributes prior balance replacement funds to the Commission for seven years starting in the Federal fiscal year beginning October 1, 2008.

"Program" or **"Oklahoma Abandoned Mine Land Reclamation Program"** means the program established by the State for the reclamation of land and water adversely affected by past coal mining, operated under the provisions of the State Abandoned Mine Land Reclamation Plan including annual application for grants under the State Plan.

"Secretary" means the Secretary of the United States Department of the Interior.

"SMCRA" means the Surface Mining Control and Reclamation Act of 1977.

"State share funds" are moneys the Office distributes to the Commission from the State share of the Fund each Federal fiscal year under Section 402(g)(1)(A) of the SMCRA.

[Source: Amended at 12 Ok Reg 3480, eff 9-11-95 ; Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-3. Responsibilities

The Oklahoma Conservation Commission shall:

- (1) Participate in the Federal Abandoned Mine Land Reclamation Program through the establishment of the Oklahoma Abandoned Mine Land Reclamation Program.
- (2) Establish the Oklahoma Abandoned Mine Land Reclamation Fund for use in conducting the Oklahoma Abandoned Mine Land Reclamation Program.
- (3) Request, receive, and administer grant moneys and other moneys for use in this program.

(4) Ensure that every successful bidder for an Abandoned Mine Land Reclamation Program contract must be declared eligible to receive funds by using the Office's automated Applicant/Violator System for each contract to be awarded.

[Source: Amended at 12 Ok Reg 3480, eff 9-11-95]

155:15-1-4. Oklahoma Abandoned Mine Land Reclamation Funds

- (a) Revenue to the Abandoned Mine Reclamation Fund shall include:
- (1) Amounts granted to the State by the Office for the purpose of conducting the Program.
 - (2) Moneys collected by the State from charges for use of land acquired or reclaimed with moneys from the Fund.
 - (3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands that had been reclaimed with moneys from the Fund.
 - (4) Moneys recovered by the State from the sale of lands acquired with moneys from the Fund.
 - (5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the Program.
- (b) **"Make up funds"** are additional moneys the Office distributes each Federal fiscal year to the Commission to make up the difference between the total distribution of other funds and \$3 million. Make up funds may not be used by the Commission for Acid Mine Drainage set-asides, for water supply restoration under Section 403(b), for noncoal reclamation under Section 409(b), and for stand alone Priority 3 problems.
- (c) **"Historic coal funds"** are moneys provided under Section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in Oklahoma in which Oklahoma has an interest, under the Surface Mining Control and Reclamation Act Amendments of 2006, that were enacted as Division C, Title II,, Subtitle A of P.L. 109-432, each year the Office allocates and distributes 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic funds to supplement grants to Oklahoma. Historic coal funds also include moneys reallocated by the Office under sections 401(f)(3)(A)(I), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including: the moneys the Office reallocates based on prior balance replacement funds distributed under the Code (30 CFR 872.29), that will be available to supplement grants beginning with Federal fiscal year 2023; and the moneys the Office reallocates based on certified in lieu funds distributed under the Code (30 CFR 872.32), that will be available to supplement grants in Federal fiscal years 2009 through 2022.
- (d) **"State share funds"** are moneys the Office distributes to the Commission from Oklahoma's share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Oklahoma's State share of the Fund is 50 percent of the reclamation fees the Office collected from within Oklahoma and allocated to the Oklahoma in the Fund for coal produced in the previous fiscal year.
- (e) **"Prior balance replacement funds"** are moneys the Office must distribute to the Commission instead of the moneys the Office allocated

to the Commission of the Fund before October 1, 2007, but did not distribute to the Commission because Congress did not appropriate them. They come from general funds of the United States Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, the Office distribute prior balance replacement funds to the Commission for seven years starting in October 1, 2008.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-5. Eligible lands and water

(a) Coal mined lands and associated waters are eligible for reclamation activities if:

- (1) They were mined or affected by mining processes before August 3, 1977; and
- (2) They were left or abandoned either unreclaimed or inadequately reclaimed; and
- (3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund or any prior balance replacement funds maybe used; and
- (4) There is a continuing condition that substantially degrades the quality of the environment, prevents or damages the beneficial use of the land or water resources, or endangers the health or safety of the public.

(b) Notwithstanding subsection (a) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

- (1) They were mined for coal or affected by coal mining processes; and
- (2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and ending
 - (A) on or before January 19, 1981, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
 - (B) on November 5, 1990, and that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority one or two pursuant to section 403(a)(1) and (2) of SMCRA. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(c) If reclamation of a site covered by an interim or permanent program permit is carried out under the Program, the permittee of the site shall reimburse the Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the Commission performing reclamation under subsection (b) of this Section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of SMCRA nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of SMCRA.

(d) Surface coal mining operations on lands eligible for re-mining pursuant to Section 404 of SMCRA shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for re-mining is forfeited, funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant, the Secretary shall immediately exercise his/her authority under Section 410 of SMCRA.

(e) The Commission may expend funds made available under paragraphs 402(g)(1) and (5) of the SMCRA and prior balance replacement funds under section 411(h)(1) of the SMCRA for the reclamation and abatement of any site eligible under paragraph (b) of this Section, if the Commission, with the concurrence of the Secretary, makes the findings required in paragraph (b) of this Section and the Commission determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraph (a) of this Section that qualify as a Priority 1 of 2 site under section 403(a) of the SMCRA.

(f) With respect to lands eligible under paragraph (b) or (e) of this Section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

[Source: Amended at 12 Ok Reg 3480, eff 9-11-95 ; Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-6. Reclamation objectives and priorities

Reclamation projects should be accomplished in accordance with the Office's "Final Guidelines for Reclamation Programs and Projects" as printed in Volume 66 of the Federal Register page 31250, June 11, 2001 . Reclamation projects shall meet one or more of the objectives stated in this Section. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives. The following objectives are stated in the order of priority with the highest priority first:

(1) **Priority 1.** The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) **Priority 2.** The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

(3) **Priority 3.** The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1) (A) or (a)(2)(B) of this Section.

[Source: Amended at 12 Ok Reg 3480, eff 9-11-95 ; Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-6.1. Water supply restoration

(a) Any State that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under the Code (30 CFR 872.16, 872.19, 872.23, and 872.31) for water supply restoration projects. For purposes of this section, "water supply restoration projects" are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For funds awarded before December 20, 2006, any uncertified State may expend up to thirty (30) percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in the Code (30 CFR 874.12(b)), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of SMCRA, the project shall remain

eligible, notwithstanding the criteria specified in the Code (30 CFR 874.12(b)), if the Commission finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

[Source: Added at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-7. Reclamation project evaluation

Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this Section. This evaluation will be undertaken by the Commission. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives in terms of factors set forth below as a means of identifying conditions that should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

- (1) The need for reclamation work to accomplish one or more specific reclamation objectives.
- (2) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
- (3) The specific benefits to be considered when evaluating reclamation projects shall include but are not limited to the reclamation objectives and priorities in 155:15-1-6.
- (4) The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
- (5) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
- (6) The availability of additional coal or other mineral or material resources within the project area that:
 - (A) Indicates a reasonable probability that the desired reclamation will be accomplished during the process of future mining.
 - (B) Requires special consideration to ensure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.
- (7) The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable State, regional, and local land use plans and laws,

and the needs and desires of the community in which the project is located.

(8) The probability of post reclamation management, maintenance, and control of the area consistent with the reclamation completed.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-7.1. Rights of entry

(a) **Criteria.** This Section establishes procedures for entry by the Commission or the Office for reclamation purposes. Under Section 410 of SMCRA, the Commission or the Office pursuant to an approved reclamation program, may use police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

(b) **Written consent for entry.** Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

(c) **Entry and consent to reclaim.** The Commission, the Office, or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained. If consent is not obtained, then, prior to entry under this section, the Commission or the Office shall find in writing, with supporting reasons that:

(1) Land or water resources have been or may be adversely affected by past coal mining practices.

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken.

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the Commission, the Office, or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(d) **Failure to Obtain Consent.** If consent is not obtained, the Commission or the Office shall give notice of its intent to enter for purposes of conducting reclamation at least thirty (30) days before entry upon the property. The following procedures should be conducted when providing notice:

(1) Notice to a known owner shall be in writing and mailed return receipt requested with an attached copy of the findings as required by this section.

(2) If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

(e) **Entry for emergency study or reclamation.** The Commission, the Office, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare. Entry requirements are as follows:

(1) Prior to entry under this section, the Office shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with section 410 of SMCRA; and

(2) The Office shall not be required to provide notice to the owner prior to entry for emergency reclamation. The Commission or the Office shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with this section.

[Source: Added at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-8. Reclamation on private lands

This section authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Commission.

(1) **Appraisals.** When private land is to be reclaimed and is subject to a lien under this section, a notarized appraisal shall be obtained from an independent appraiser. The appraisal shall be made prior to the start of reclamation work. The Commission shall furnish to the appraiser information of sufficient detail to make the appraisals. The Commission shall provide the following:

(A) An appraisal standards consistent with generally accepted appraisal practices.

(B) When reclamation requires more than six (6) months to complete, an updated appraisal under (1) above of this section shall be made to determine if the increase in value as originally appraised has actually occurred.

(C) An updated appraisal shall not include any increase in value of land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien.

(2) **Liens.** The Commission has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value.

(A) Exceptions that apply are as follows:

(i) A lien must not be placed against the property of a surface owner who did not consent to, participate in or exercise control over the mining operation which necessitated the reclamation work.

(ii) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Commission pursuant to the Section 408 in SMCRA and consistent with Oklahoma laws governing liens.

(iii) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located, or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence.

(iv) The Commission may waive the lien if the cost of filing it, including indirect costs to the Commission exceeds the increase in fair market value as a result of reclamation activities.

(B) If a lien is to be filed, the Commission shall, within six (6) months after the completion of the reclamation work, file a statement in the County Clerk's office for the land to be lienied. Such statement shall consist of notarized copies of the appraisals obtained under 155:15-1-10(a) and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in the County Clerk's office provided however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved. Within sixty (60) days after the lien is filed, the landowner may petition a hearing before the Commission to determine the increase in market value of the land as a result of the reclamation work. Any aggravated party may appeal as provided by law.

(3) **Satisfaction of liens.** Liens placed on private property under this section shall be satisfied in one of the following ways:

(A) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(B) When the Commission files a lien on private property it shall maintain or renew the lien from time to time as may be required by State or local law.

(C) Moneys derived from the satisfaction of liens established under this section shall be deposited in the appropriate abandoned mine reclamation fund account.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-9. Acquisition of land and water for reclamation

(a) Land and/or water adversely affected by past coal mining practices may be acquired with moneys from the Fund if approved in advance by the Office. The Office shall find in writing that acquisition is necessary for successful reclamation and that the following conditions are met:

(1) The acquired land and/or water will serve recreation, historic, conservation, and reclamation purposes, or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) The Commission, if approved in advance by the Office, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds.

(1) Before the approval of the acquisition, the Commission will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of the Commission's reclamation program.

(2) Where an emergency situation exists and a written finding as set out in 155:15-1-7.1(e) has been made, the Commission may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by the Commission if the acquisition is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

(d) The Commission when acquiring land shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

(1) The customary practices and laws of Oklahoma in which the land is located will not allow severance of such interests from the surface estate; or

- (2) Such interests are necessary for the reclamation work planned or for the postconstruction use of the land; and
- (3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-10. Procedures for acquisition

- (a) An appraisal of all land or interest in land to be acquired shall be obtained by the Commission. The appraisal shall state the fair market value of the land as adversely affected by past mining.
- (b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.
- (c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.
- (d) The Commission when acquiring land or interests in land under this section, shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq., and 41 CFR part 114-50.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-11. Acceptance of gifts of land

- (a) The Commission under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements in 155:15-1-9.
- (b) Offers to make a gift of land or interests in land shall be in writing and shall include:
 - (1) A statement of the interest that is being offered.
 - (2) A legal description of the land and a description of any improvements on it.
 - (3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.
 - (4) A statement that:
 - (A) The donor is the record owner of the interest being offered.
 - (B) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.
 - (C) There are no adverse claims against the interest offered.
 - (D) There are no unredeemed tax warrants outstanding against the interest offered.
 - (E) There is no continuing responsibility by the operator under State or Federal statutory law for reclamation.

- (5) An itemization of any unpaid taxes or assessments levied, assessed, or due which could operate as a lien on the interest offered.
- (c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Oklahoma Abandoned Mine Reclamation Act of 1981." Title to all donated land shall be in the name of the State of Oklahoma.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-12. Management of acquired lands

- (a) Land acquired under 155:15-1-9 and 155:15-1-11 may be used pending disposition under 155:15-1-13 for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.
- (b) Any user of land acquired under Sections 155:15-1-9 and 155:15-1-11 shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the State for providing the benefit, whichever is appropriate. The Commission may waive the fee if found in writing that such a waiver is in the public interest.
- (c) All user fees collected shall be deposited in the Abandoned Mine Reclamation Fund, unless previously appropriated or otherwise authorized by the Legislature, for the specific purpose of operating and maintaining improvement of the land.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-13. Disposition of lands

- (a) Prior to the disposition of any land acquired under 155:15-1-9, the Commission shall publish a notice of proposed land disposition, hold public hearings, and make written findings in accordance with the authority contained in section 407(g)(2) of SMCRA.
- (b) Prior to disposition of any acquired land the Commission shall:
- (1) Publish a notice that describes the proposed disposition of the land in a newspaper of general circulation in the area where the land is located for a minimum of four successive weeks. The notice shall provide at least thirty (30) days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held.
 - (2) Schedule such hearings at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least thirty (30) days before the hearing.
 - (3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent

- with any local, State, or Federal laws or regulations that apply.
- (c) The Commission may transfer title or administrative responsibility for land acquired under this part to any agency or political subdivision of the State with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:
- (1) The purposes for which the land may be used consistent with the authorization under which the land was acquired.
 - (2) The administrative responsibility for the land will revert to the Commission if, at any time in the future, the land is not used for the purpose specified.
- (d) The Commission, with the approval of the Oklahoma Legislature, may transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office, and maintain a preference right to the purchase of such land from the Office after reclamation is completed. The price shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the Commission.
- (e) The Commission may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, State, or Federal land use plans for the area in which the land is located.
- (1) Land shall be sold by public sale only if it is found that retention by the State, or disposal under other paragraphs of this section, is not in the public interest. Disposal procedures will be in accordance with Section 407(g) of SMCRA and applicable State requirements.
 - (2) Land shall be sold for not less than fair market value under a system of competitive bidding that includes at a minimum:
 - (A) Publication of a notice once a week for four weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants that will be a condition of the sale, and state the time and place of the sale.
 - (B) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.
- (f) All moneys received from disposal of land under this section shall be deposited in the Fund.

[Source: Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-14. Utilities and other facilities [REVOKED]

[Source: Added at 12 Ok Reg 3480, eff 9-11-95 ; Revoked at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-15. Future set-aside

- (a) The Commission may receive and retain without regard to the three-year limitation referred to in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the funds distributed annually to the Commission,

pursuant to the authority in Sections 402(g)(1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006.

(b) The Commission must deposit all set-aside funds awarded into a special fund established under State law. The Commission must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(c) Moneys the Commission deposited in the special fund account, together with any interest earned, are considered State moneys.

[Source: Added at 12 Ok Reg 3480, eff 9-11-95 ; Amended at 27 Ok Reg 2473, eff 8-2-10]

155:15-1-16. Acid mine drainage treatment and abatement

In order to establish an Acid Mine Drainage Treatment and Abatement Program, the Commission must meet certain criteria to be eligible.

(1) Beginning December 20, 2006, the Commission having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1) of SMCRA, up to thirty (30) percent of the total of the funds distributed annually to the Commission under section 402(g)(1) of SMCRA (State share funds) and section 402(g)(5) of SMCRA (Historic coal funds). For funds awarded before December 20, 2006, any uncertified State may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this Section must be deposited into an acid mine drainage abatement and treatment fund established under State law.

(2) Before depositing funds under this section, the Commission must:

(A) Establish a special fund account providing for the earning of interest on fund balances.

(B) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

(3) As used in this section, a "qualified hydrologic unit" means a hydrologic unit:

(A) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(B) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(4) After the conditions specified in paragraphs (1) and (2) of this section are met, the Office may approve a grant and the Commission may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State moneys.

[**Source:** Added at 12 Ok Reg 3480, eff 9-11-95 ; Amended at 27 Ok Reg 2473, eff 8-2-10]

CHAPTER 20. CONSERVATION COST-SHARE PROGRAM

[Authority: 27A O.S., §§ 3-1-101 et seq.]

[Source: Codified 6-1-99]

155:20-1-1. Purpose

The purpose of the Conservation Cost-Share Program is to provide financial assistance through cost-share payments to land users identified as eligible for applying soil and water conservation or water quality best management practices.

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99]

155:20-1-2. Definitions

In addition to terms defined in 27 O.S. Ann. §§ 3-1-103 and 3-3-114, the following words and terms, when used in this document, shall have the following meanings, unless the context clearly indicates otherwise:

"Allocated funds" means funds budgeted through the Commission and the conservation districts for cost-share payments.

"Allocation period" means that period of time established by the Commission in which a conservation district has to obligate the allocated funds received for any program year.

"Applicant" means an eligible person who applies for a cost-share payment from a conservation district.

"Available funds" means monies budgeted, unobligated, and approved by the Commission for cost-share payments.

"Average cost" means the calculated cost, determined by averaging recent actual costs and current cost estimates, considered necessary for a participant to carry out a conservation practice or a designated component of a conservation practice. Actual cost includes labor, supplies, and other direct costs required for installation of a practice.

"Case file" means the collection of materials that is assembled and maintained for each approved application for a cost-share payment.

"Commissioners" means the five members who are appointed by the Governor and confirmed by the Senate that make up the governing board of the state agency known as the Oklahoma Conservation Commission.

"Commission staff" or **"staff"** means employees of the Oklahoma Conservation Commission.

"Conservation Cost-Share Fund" means the fund created by the Oklahoma Legislature and Governor into which appropriations and other monies will be deposited for the purpose of funding activities associated with the Conservation Cost-Share Program. This fund is a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Commission to implement and maintain the Conservation Cost-Share Program.

"Conservation Cost-Share Program" means the assumption by the state of a proportional share of the cost of installing conservation structures, conservation practices or best management practices on land

for public and environmental benefits.

"Conservation plan" means the record of decisions approved by a conservation district for applying and maintaining soil and water conservation practices on the land.

"Conservation practice" means best management practice.

"Cost" means the amount actually paid or engaged to be paid by the participant for equipment use, materials, and services for carrying out a conservation practice, identifiable component, or if the participant uses their own resources in carrying out an identifiable component, the constructed value of their own labor, equipment use, and materials.

"Cost-share payment" means a disbursement of money to a participant for completed and certified cost-share conservation practices.

"Cost-share rate" means the percentage of the total cost of implementing an approved cost-share conservation practice that will be paid by public funds.

"Deobligated funds" means monies from a conservation district's allocated funds that have been obligated to a participant and then subsequently released.

"Designated technical representative" means a qualified technician designated by the conservation district to determine need, design and layout of proposed conservation practices, determine compliance with applicable design standards and specifications, and certify completion of practices.

"Disbursed funds" means funds released by the Commission for payment to participants for completed and certified cost-share conservation practices.

"District cooperator agreement" means a written and signed agreement between a conservation district and any person or entity who owns or controls land within the district. The agreement generally states that the district will provide the cooperator with technical assistance in developing a conservation plan for land under the cooperator's control and that the cooperator will start to implement the provisions of the plan as resources become available.

"Eligible conservation practices" means those conservation practices that have been approved by the Commission.

"Eligible person" means any landowner or land user that is not prevented by law from participating in the Program.

"FSA" means Farm Service Agency.

"Geographic Information System" means an organized collection of computer hardware, software, geographic data, and personnel designed to efficiently capture, store, update, manipulate, analyze, and display all forms of geographically referenced information.

"Identifiable component" means all of an eligible conservation practice, or a part thereof, that when carried out can be clearly identified as a segment in the sequence of carrying out the conservation practice.

"Land user" means any person, firm, corporation, or entity who has control over a tract or tracts of land in Oklahoma such as a landowner, operator, lessee, or tenant.

"Landowner" means any person, firm, corporation, or entity holding title to land lying within an Oklahoma conservation district.

"Legal description" means the section, township, range, and county where a cost-share conservation practice is located.

"Life span" means the period of time specified in the maintenance agreement and/or conservation plan during which the conservation practice is to be maintained and used for the intended purpose.

"Locally Led Conservation Initiative" means a program activity which will address general renewable natural resource conservation issues that are causing or have the potential to cause detrimental effects to the environment.

"Maintenance agreement" means a written agreement between the participant and a conservation district wherein the participant agrees to maintain the applied conservation practices for a period of time as established by the Commission and outlined in the applicable conservation plan.

"NRCS" means Natural Resources Conservation Service.

"Obligated funds" means monies from a conservation district's allocated funds that have been committed to a participant after approval of the application by the district board.

"Participant" means an applicant whose application has been approved and funds have been obligated by the district for funding cost-share conservation practice implementation.

"Performance agreement" means a written agreement between the participant and a conservation district wherein the participant agrees to perform conservation practices for which obligated funds are being paid.

"Priority system" means a system devised by a conservation district, under guidelines of the Commission, for ranking approved conservation practices or for ranking applications for cost-share assistance. The system or systems devised will be used to facilitate the disbursement of allocated funds in line with a district's priorities.

"Priority watershed" means a watershed that has been identified by the Commission as having special properties or conditions that require a watershed management plan to address the maintenance, improvement, or re-mediation of these properties or conditions through intensive nonpoint source management. Procedures that identify a priority watershed will be consistent with other state watershed priority setting systems.

"Priority Watershed Initiative" means a program activity which will address special environmental concerns that exist within a priority watershed. Funds directed to this initiative will be used for cost-share payments to a participant who implements a conservation plan. Special cost-share rates and conservation practices may be available to participants.

"Program" means the Conservation Cost-Share Program.

"Program initiative" means one or both of the two program activities-the Locally Led Conservation Initiative and the Priority Watershed Initiative.

"Program year" means a consecutive period of time established by the Commission which will be used to identify conservation cost-share practices that have been allocated funds from the Conservation Cost-Share Fund.

"State average cost" is the arithmetic mean of the average cost of a conservation practice or a designated component of a conservation practice as submitted by the districts to the Commission. State average cost may be calculated and applied by geographic region, as determined by the Commission.

"Tracts of land" means all land owned by the applicant/participant in a single parcel or several parcels.

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99]

155:20-1-3. Responsibilities

(a) The Commissioners shall:

- (1) Identify problems affecting the state's renewable natural resources and set resource guided goals that the Conservation Cost-Share Program will address.
- (2) Establish, based on Commission staff recommendations, program year guidelines.
- (3) Designate priority watersheds and allocate funds to be used in these watersheds based on recommendations from Commission staff.
- (4) Consider the establishment of a reserve fund to address contingencies that may arise concerning the operation of the Conservation Cost-Share Program within the districts and/or the Commission.

(b) The Commission staff shall:

- (1) Present to the Commissioners a prioritized list of problems affecting the state's renewable natural resources and recommend a set of resource guided goals in addressing these problems.
- (2) Recommend program year guidelines to the Commissioners.
- (3) Recommend to the Commissioners priority watersheds and the amount of funds to be allocated to each priority watershed. Input from the Nonpoint Source Working Group will be used in developing these recommendations.
- (4) Develop, and make available to districts, guidance including a detailed list of policies, procedures, and forms necessary for the efficient administration of the program.
- (5) Monitor, evaluate, and assess waters of the state to determine the condition of streams and rivers impacted by nonpoint source pollution and report the results of these studies to the Commission, districts, and appropriate local, state, and federal agencies.
- (6) Assist districts in identifying and prioritizing nonpoint source problems as well as other problems impacting the state's renewable natural resources.
- (7) Assist and give guidance to districts in selecting cost-share conservation practices that will be used to address Commission established nonpoint source problems in priority watersheds.

(c) The conservation district shall:

- (1) Identify and prioritize problems affecting the district's renewable natural resources. If so applicable, the district may

identify unique priority areas for focusing the application of conservation practices.

(2) Consult with Commission staff concerning the selection of cost-share conservation practices which will be used to address nonpoint source pollution problems in priority watersheds or parts of priority watersheds that exist within the district.

(3) Apply to the Commission for an allocation of funds to address the Priority Watershed Initiative and the Locally Led Conservation Initiative.

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Amended at 26 Ok Reg 797, eff 4-25-09]

155:20-1-4. Administration of funds

(a) **Conservation Cost-Share Fund.** The Conservation Cost-Share Fund shall be administered according to 27 O. S. Ann. § 3-3-115.

(b) **General.**

(1) The Commission will, upon recommendations from Commission staff, set aside not more than 10 percent of any legislative appropriation for administration of the Conservation Cost-Share Program. This money will be used to fund personnel and operating costs, including technical assistance costs, associated with administration of the Program at both the Commission and conservation district level. In addition, a reserve fund may be maintained to meet contingencies that may arise. The remainder of the appropriation will be allocated to two main program initiatives - the Priority Watershed Initiative and the Locally Led Conservation Initiative.

(2) Any funds allocated to districts and not obligated during the allocation period for a given program year will be released by the district and made available for reallocation by the Commission. Additionally, any funds obligated during the allocation period but not disbursed within one year after the end of the allocation period shall be released to the Commission and made available for reallocation. The Commission will reallocate these funds and such funds will be identified as current program year funds.

(3) During any allocation period, should any funds become deobligated within the district, for whatever reason, then these funds are available for re-obligation by the district board within the respective program initiatives.

(4) Nothing in any contract or agreement executed between the district and participant shall be interpreted or construed to constitute a financial or general obligation of the state. No state revenue shall be used to guarantee or pay for any damages to property or injury to persons as a result of the provisions of any contracts or agreements.

(c) **Locally Led Conservation Initiative allocation.** The Locally Led Conservation Initiative will receive funds from the Conservation Cost-Share Fund as allocated by the Commission.

(d) **Priority Watershed Initiative allocation.** The Priority Watershed Initiative will receive funds from the Conservation Cost-Share Fund as

allocated by the Commission. Funds will be allocated watershed by watershed by the Commission, based on recommendations prepared by Commission staff with input from the Nonpoint Source Working Group and other interested groups. This money will be available for cost-share conservation practices that address water quality, soil erosion, and animal waste issues in high priority watersheds.

(e) **Reserve fund.** The Commission may administer a reserve fund to be set aside and used only to meet contingencies that occur in the districts or within the Commission. Money for this fund shall come from the Conservation Cost-Share Fund as determined by the Commission.

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Amended at 26 Ok Reg 797, eff 4-25-09]

155:20-1-5. Eligibility for Conservation Cost-Share Program

(a) **Eligible land.** The determination whether land is eligible for cost-share payments shall be pursuant to any restrictions established by the conservation district in whose jurisdiction the land is located and pursuant to 27A O. S. Ann. §§ 3-3-114.

(b) **Eligible purposes.** Cost-share payments shall be available only for eligible conservation practices.

(c) **Eligible conservation practices.** Conservation practices that the Commission has approved shall be eligible for cost-share payments. A complete listing of the eligible conservation practices will be identified in the Commission's program year guidelines.

(d) **Requirement to file an application and conservation plan.** In order to qualify for a cost-share payment, an eligible person shall file:

(1) An application for allocated funds.

(2) A conservation plan approved by the district in which the eligible person's land is located.

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Amended at 26 Ok Reg 797, eff 4-25-09 ; Amended at 31 Ok Reg 891, eff 9-12-14]

155:20-1-6. Application processing procedures [REVOKED]

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Revoked at 26 Ok Reg 797, eff 4-25-09]

155:20-1-7. Maintenance of practices [REVOKED]

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Revoked at 26 Ok Reg 797, eff 4-25-09]

155:20-1-8. Violations of performance or maintenance agreements [REVOKED]

[Source: Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Revoked at 26 Ok Reg 797, eff 4-25-09]

155:20-1-9. Determining status of conservation practices during transfer of land ownership [REVOKED]

[**Source:** Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Revoked at 26 Ok Reg 797, eff 4-25-09]

155:20-1-10. Reporting and accounting [REVOKED]

[**Source:** Added at 15 Ok Reg 4301, eff 8-12-98 (emergency); Added at 16 Ok Reg 1355, eff 6-1-99 ; Revoked at 26 Ok Reg 797, eff 4-25-09]

CHAPTER 25. CLEAN WATER STATE REVOLVING FUND PROGRAM

[**Authority:** 27A O.S., § 3-2-106 and 82 O.S., § 1085.65]
[**Source:** Codified 5-11-08]

155:25-1-1. Purpose

Title 82 O.S. § 1085.65 requires the Oklahoma Conservation Commission (OCC or Commission) to promulgate rules to receive, and review applications for water quality projects submitted to the Clean Water State Revolving Fund Program for implementation of nonpoint source management programs as allowed by the federal Water Quality Act of 1987 for those activities subject to its jurisdiction as specified in the Oklahoma Environmental Quality Act. This rule specifies the process for such receipt and review.

[**Source:** Added at 25 Ok Reg 7, eff 8-8-07 (emergency); Added at 25 Ok Reg 851, eff 5-11-08]

155:25-1-2. Receiving and Reviewing Applications

(a) Applications and requests for funding for projects for nonpoint source management programs shall be filed with the Oklahoma Water Resources Board (OWRB). If the application meets the preliminary determination of eligibility the OWRB will forward the application to the OCC.

(b) The OCC'S Water Quality Division (OCCWQ) will review the application or request and determine whether the project meets or will meet a critical local or state need, as defined in the State Nonpoint Source Assessment and Management Report, is needed or will be needed to comply with the State Nonpoint Source Assessment and Management Report, is designed to prevent, reduce or halt the pollution of the waters of this state and comply with Oklahoma's Water Quality Standards, is cost-effective, and is designed to be awarded upon a cost-share basis.

(c) The Commission shall consult with and obtain comments of the Executive Director of the Department of Environmental Quality prior to making a recommendation on all applications and programs that may involve nonpoint sources subject to the jurisdiction of the Department of Environmental Quality. The Department of Environmental Quality's comments shall be addressed in the recommendation or attached thereto.

(d) Upon a determination that the proposed project meets the minimum criteria set forth in (b) above, the proposed project shall be placed on the Commission's list of approved projects. Said list, and the application or request will be submitted to the OWRB with a recommendation that a loan(s) be made for the project(s).

(e) OCC will make its determination with respect to whether a proposed project meets the minimum criteria set forth in (b) above and, if deciding to place the proposed project on the Commission's list of approved projects, will submit the list, the application or request and recommendation to the OWRB within thirty (30) days of receipt of the application or request from OWRB as set forth in (a) above. If recommending that a loan be denied for the proposed project, OCC will submit the application or request and recommendation to the OWRB within thirty (30) days of receipt of the application or request from

OWRB as set forth in (a) above.

[**Source:** Added at 25 Ok Reg 7, eff 8-8-07 (emergency); Added at 25 Ok Reg 851, eff 5-11-08]

CHAPTER 30. OKLAHOMA CARBON SEQUESTRATION CERTIFICATION PROGRAM

Editor's Note: *On 7-1-09, this Chapter was added by a permanent action that superseded an earlier emergency action that became effective on 7-3-08. However, the Chapter was reorganized in the permanent action, and many of the Subchapters and Sections in the emergency action were numbered differently in the permanent action. The emergency rules were published in The Oklahoma Register using the following section numbers: 155:30-1-1 through 155:30-1-9; 155:30-3-1 through 155:30-3-7; 155:30-5-1 through 155:30-5-7; 155:30-7-1 through 155:30-7-4. [See 25 Ok Reg 2737] The permanent rules were published in The Oklahoma Register using the following section numbers: 155:30-1-1 through 155:30-1-4; 155:30-3-1 through 155:30-3-5; 155:30-5-1 through 155:30-5-5; 155:30-7-1 through 155:30-7-3; 155:30-9-1 through 155:30-9-5; 155:30-11-1 through 155:30-11-5; 155:30-13-1 through 155:30-13-5. [See 26 Ok Reg 1388]*

[**Authority:** 27A O.S., §§ 3-1-101 et seq.; 3-1-106(33); and 3-4-101 et seq.]

[**Source:** Codified 7-1-09]

SUBCHAPTER 1. GENERAL PROVISIONS

155:30-1-1. Purpose and authority

The rules in this Chapter are promulgated for the purpose of establishing and administering the Oklahoma Carbon Sequestration Certification Program, pursuant to the Oklahoma Carbon Sequestration Enhancement Act. These rules describe and establish the requirements for voluntary participation in the Program. The rules define carbon dioxide and an Oklahoma verified carbon offset. The rules also describe how to register Oklahoma carbon offsets on the Oklahoma Carbon Offset Registry. Additionally, the rules describe the process to become recognized as a state approved aggregator or verifier of carbon offsets. These rules are to ensure that each transferable Oklahoma verified offset is a true representation of the quantity of stored greenhouse gas that it is claimed to represent, and that each offset is only claimed once for the purposes of emissions reduction. Such assurance is fundamental to the sale, trade, or transfer of greenhouse gas offsets.

[**Source:** (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-1-2. Definitions

The following words or terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Carbon Sequestration Enhancement Act, 27A O.S. § 3-4-101 et seq.

"Aggregator" means an intermediary that serves as the administrative representative between offset sellers and offset buyers for

the purpose of pooling or bundling carbon offsets for sale.

"Air quality agency" means the agency with jurisdiction to issue or enforce permits for air emissions.

"Anthropogenic carbon dioxide" or **"Man-Made CO₂"** means carbon dioxide that is formed mechanically as opposed to carbon dioxide that naturally occurs or is from natural processes such as respiration and decay. It includes, for example, carbon dioxide from power generation, manufacturing, or other similar sources.

"Applicant" means a person making an application.

"Application" means a petition or any written request for authority, approval, determination, permission, or other Commission action or relief pursuant to these rules. An application also includes the standard state forms for applying for verification of an offset, including any supplemental materials, additions, revisions, or modifications to the forms.

"Carbon dioxide (CO₂)" means an inorganic compound containing one carbon atom and two oxygen atoms. Carbon dioxide is an inert, stable, colorless, odorless, non-toxic, incombustible, inorganic gas. It is dissolvable in water and is naturally present in underground locations and in the atmosphere as a trace gas. Carbon dioxide is formed during respiration and exhaled by humans and animals, and is utilized by plants during photosynthesis. Carbon dioxide can be liquefied by compression and cooling, and can be solidified into dry ice. Carbon dioxide is a gas produced when carbon is oxidized by any process. It can be produced through various natural processes or produced mechanically. For the purposes of these rules, only anthropogenic carbon dioxide is considered to be carbon dioxide. Under standard conditions, one short ton (2,000 pounds) of carbon dioxide equals 17.483 mcf (thousand cubic feet) or 0.91 metric tonnes.

"Carbon dioxide equivalent (CO₂e)" means a term used to refer to gases other than carbon dioxide that have been converted into the equivalent of carbon dioxide based on their global warming potential. As defined by the U.S. Environmental Protection Agency, Global Warming Potential (GWP) is the cumulative radiative forcing effects of a gas over a specified time horizon resulting from the emission of a unit mass of gas relative to a reference gas. The GWP-weighted emissions of direct greenhouse gases in the U.S. Inventory are presented in terms of equivalent emissions of carbon dioxide (CO₂e), using units of teragrams of carbon dioxide equivalents (Tg CO₂ Eq.).

"Carbon offset" means the emissions reduction that occurs when a practice or project negates greenhouse gas emissions by sequestering greenhouse gases in a carbon sink with reforestation, afforestation, managed forests, growing agricultural crops, increasing existing vegetated areas, or utilizing geologic storage. An offset may be expressed in standard cubic feet of CO₂, metric tonnes of CO₂, tons of CO₂, or tons of CO₂e.

"Carbon offset registry" means the repository of records of Oklahoma carbon offsets certified under this program, and the repository of records of Oklahoma carbon offsets not verified under this program, and collectively maintained by the Commission and made public through an online website where Oklahoma carbon offsets are reported for the

purpose of reducing the potential for the offsets to be claimed more than once as an emission reduction credit.

"Carbon sequestration" or **"carbon storage"** means the process of increasing the amount of greenhouse gases held in soil, in plants, underground, in geologic storage, in waterbodies, or in other types of long term storage.

"Certificate" means a document evidencing carbon sequestration occurred and was verified by the Commission or other approved verifier. It is issued by the Commission pursuant to these rules in response to an application and subsequent verification of a specified carbon offset or project that occurred during a specific, defined time period. Any Certificate shall specify the year the offset occurred and the numerical volume or tonnage of the offset. For pooled projects, the certificate shall only apply to the distinct offset or contract verified by this program and shall not be applied to other offsets or contracts held within a pooled project unless the entire pooled project has been verified pursuant to these rules.

"Document" means any kind of printed, recorded, written, graphic, photographic or electronic matter or material, however printed, produced, reproduced, coded or stored.

"EOR reservoir" means a reservoir that is a common source of supply or pool of hydrocarbons, including oil or gas, that may be recovered using enhanced methods.

"Geologic storage" means underground storage or sequestration of carbon dioxide or other greenhouse gas in a reservoir, including an EOR reservoir.

"Greenhouse gas" means any gas that absorbs infrared radiation in the atmosphere. Greenhouse gases include, but are not limited to, water vapor, carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), ozone (O₃), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Governmental entity" means any department, commission, authority, council, board, bureau, committee, legislative body, agency, beneficial public trust, municipality, institution, political subdivision, tribe, or other establishment of the executive, legislative or judicial branch of the United States, the State of Oklahoma, any other state in the United States, the District of Columbia, the Territories of the United States, and any similar entity of any foreign country.

"Landowner" means the person authorized to enter into contract for the lands or vegetation that will provide the carbon offset under Subchapters 3 and 5 of these rules.

"Oklahoma Carbon Program" means the Oklahoma Carbon Sequestration Certification Program pursuant to the Oklahoma Carbon Sequestration Enhancement Act.

"Oklahoma Verified Offset" means a carbon offset verified by the Commission pursuant to the rules of the Oklahoma Carbon Program.

"Operator" means the person permitted by the UIC agency to perform injection of carbon dioxide or other greenhouse gas into a reservoir or storage facility.

"Person" means any institution, individual, public or private corporation, partnership, proprietorship, association, firm, company, limited partnership, limited liability company, joint venture, public trust, joint-stock company, syndicate, trust, organization, estate, governmental entity, tribe, or any other legal entity or an agent, employee, representative, assignee or successor.

"Pooled project" means a project created by the grouping of more than one carbon contract or project.

"Project" means the separate and distinct activity or practices that sequestered carbon dioxide or carbon dioxide equivalent for a defined time period and for which the applicant is making an application for verification and certification under these rules.

"Reserve" means a fund or qualifying carbon offset set aside to compensate for the reversal or loss of greenhouse gas sequestered by an offset or project.

"Reservoir" means a geologic or subsurface sedimentary stratum, formation, aquifer, cavity or void, whether naturally occurring or artificially created, including an EOR reservoir, saline formation, or coal seam.

"Resource Management Plan (RMP)" means a detailed description of the practice, activity, or project, including the method that will sequester carbon dioxide or carbon dioxide equivalent on a specified area of land or in a specified reservoir. For forest carbon sequestration, the Commission shall accept forest management plans that are written using specifications approved by the Director of Forestry Services, Oklahoma Department of Agriculture, Food and Forestry.

"Reversal" means the release, due to natural or human activities, of some or all of the greenhouse gas sequestered by a project.

"Storage facility" means the reservoir, and all underground equipment and surface buildings, facilities and equipment, utilized in the project, excluding all pipelines used to transport greenhouse gases.

"UIC" means the Underground Injection Control program of the U.S. Environmental Protection Agency pursuant to the Safe Drinking Water Act.

"UIC agency" means the state governmental entity(s) having jurisdiction over UIC in Oklahoma.

"UIC permit" means the document issued by the UIC agency authorizing the operator to engage in injection of carbon dioxide or other greenhouse gas into a reservoir or storage facility.

"Verification" means the determination that the sequestration of carbon dioxide or its equivalent is occurring or has occurred in accordance with a specific method or standard. **"Verifier"** means a person, approved by the Commission that confirms the accuracy of information reported for the purposes of verification.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-1-3. Applicability

These rules apply to aggregators and operators who are seeking verification and certification of Oklahoma carbon offsets or carbon

sequestration projects through this program; to persons seeking to become state approved aggregators or verifiers of Oklahoma carbon offsets through this program; and to persons seeking to register Oklahoma carbon offsets on the Oklahoma Carbon Offset Registry. The Commission disclaims any express or implied warranties as to the marketability, merchantability, or market value of an offset verified by the Oklahoma Carbon Program.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-1-4. Informal complaint process

(a) Any person may complain to the Commission about any matter regarding this program under the Commission's authority. A complaint shall be in writing, and it shall include the following information:

- (1) The name, address, and telephone number of the person making the complaint;
- (2) The name, address, and telephone number of the organization the person represents, if applicable;
- (3) The name, address, telephone number, and title of any representative of the person filing the complaint;
- (4) A brief, clear description of each charge, problem, or issue that is the basis for the complaint including names, dates, places, and actions;
- (5) The numbers and headings of the laws and rules that may apply;
- (6) The remedy, if any, the person making the complaint seeks;
- (7) The signature of the person making the complaint; and
- (8) The date of the complaint.

(b) If the complaint is repetitive, concerns a matter that has already been resolved, or is a matter outside the Commission's authority, the Executive Director or the Executive Director's designee may reject the complaint.

(c) The Executive Director or the Executive Director's designee may provide other affected persons with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response shall contain the following information:

- (1) The name, address, and telephone number of the person responding;
- (2) The name, address, and telephone number of the organization the person represents, if applicable;
- (3) The name, address, telephone number, and title of any representative of the person responding;
- (4) A specific admission, denial, or explanation of each charge;
- (5) A brief, clear description of the facts including names, dates, places, and actions;
- (6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;
- (7) The numbers and headings of the laws and rules that may apply;
- (8) The signature of the person responding; and

- (9) The date of the response.
- (d) The Executive Director or the Executive Director's designee may refer complaints to informal procedures, including but not limited to telephone calls, letters, meetings, mediation, investigations, or other appropriate procedures.
- (e) The Executive Director or the Executive Director's designee shall make a decision about a complaint within 60 days after its receipt, unless more time is required. In that case, the Commission shall notify in writing the person filing the complaint and persons filing any responses to the complaint informing the persons that additional time is needed to reach a decision.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-1-5. Applications [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-1-6. Commission action on applications [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-1-7. Verification [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-1-8. Carbon offset registry [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-1-9. Informal complaint process [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

SUBCHAPTER 3. VERIFICATION OF CARBON OFFSETS

155:30-3-1. Approval process for applications for carbon offset verification

The process for approval of applications for carbon offset verification pursuant to this program is as follows:

- (1) An applicant shall submit an application requesting verification of a carbon offset or sequestration project to the Commission. The application shall comply with both general requirements of this subchapter and any additional specific requirements contained in subsequent subchapters regarding the different types of carbon offsets.

- (2) Eligible carbon offsets identified in the application will be verified by the Commission or other state approved verifier.
- (3) The Commission will issue a certificate of Oklahoma verified offset if the offset is found to be in accordance with standards pursuant to or accepted by this program.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-3-2. Applications for carbon offset verification

(a) **Obtaining an application.** An applicant may obtain an application from the Commission.

(b) **Contents.** Applications shall be submitted on a form provided or in a format designated by the Commission. The application shall contain, at a minimum, the following information:

- (1) The name, address, and phone number of the applicant;
- (2) The name, address, and phone number of the offset aggregator, if an aggregator has been retained;
- (3) The legal description of the physical location of the offset or project;
- (4) The name of the city nearest to the location of the offset or project, and the county in which the offset or project is located;
- (5) The type of offset and start date of the activity or project that created the offset;
- (6) An aerial photo of the land delineating the offset or project area and indicating the number of acres delineated or, in the case of geologic sequestration, an aerial photo, topographical map, or graphic depiction of the land area overlaying the reservoir that received the carbon dioxide or carbon dioxide equivalent. If the above are not available, the Commission may accept GPS coordinates of the offset or project;
- (7) A statement, signed by an authorized person, that permits and authorizes the Commission or other state approved verifier to conduct verification pursuant to these rules; and
- (8) Exhibits as required in the respective subchapter related to the application.

(c) **Fees.** The application shall be accompanied by payment of fees specified in the respective subchapter related to the application. The fees shall be paid by check, certified check, or United States Postal Money Order.

(d) **Guidance and review.** The Commission shall provide applicants with guidance, including copies of any additional policies, procedures, and necessary forms for the efficient administration of the program, and shall process applications in a timely manner.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-3-3. Commission action on applications for carbon offset verification

(a) **Approval.** When the Commission is satisfied that all requirements for verification have been met, then a certificate of verification will be issued to the applicant.

(b) **Denial.** Any denial of an application shall be in writing and provided to the applicant, along with the reasons that the application was denied. A denial shall also advise the applicant of their right of appeal and of the procedures necessary to exercise those appeal rights.

(c) **Timing.** A certificate of verification or a denial will be issued by the Commission to the applicant within (90) days after receipt of an application, unless more time is required. In that case, the Commission shall notify the applicant in writing that additional time is needed.

(d) **Withdrawal.** Any application may be withdrawn by the applicant at any time prior to verification occurring. An applicant may withdraw an application by submitting a written request to the Commission. The applicant's application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this section shall not be refunded to the applicant.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-3-4. Verification

(a) The Commission or other approved verifier shall verify carbon offsets using protocols established by or approved by the Commission. Carbon offsets shall be verified to a reasonable level of assurance by the Commission or other state approved verifier.

(b) Verification shall include the calculation of the volume or weight of carbon dioxide or carbon dioxide equivalent sequestered by the project, and will use visual confirmation paired with values from carbon accumulation tables, standard values for each type of carbon offset, or direct measurement or other verification protocol or document applicable under the respective subchapter related to the application.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-3-5. Restrictions on certification

(a) The Commission reserves the right to transfer a certificate to another person if the applicant is not legally entitled to the certificate.

(b) The Commission shall not determine the market value, if any, of any carbon offset.

(c) The Commission on issues relevant to the project shall not certify a carbon offset that has accidentally, intentionally, or through gross negligence violated the law when such determination is made by a governmental entity having competent jurisdiction. If and when a violation has been cured or remedied to the satisfaction of a governmental entity and documentation of the cure or remedy and satisfaction has been submitted to the Commission, certification will proceed. In addition, the Commission will not certify a carbon offset purported to be created by the intentional disturbance of soil followed by

the subsequent replanting of crops or plants for the purpose of creating a carbon offset for monetary gain.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-3-6. Aggregator [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-3-7. Contracts between aggregators and landowners [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

SUBCHAPTER 5. AGGREGATORS AND VERIFIERS

155:30-5-1. Approval process for aggregator and verifier applications

Aggregators seeking to receive verification of carbon offsets and persons seeking to conduct verification of carbon offsets under this program must apply to and be approved by the Commission.

(1) **Approval.** The Commission shall notify the applicant in writing within ninety (90) days of receipt of an application that they have been approved to participate as an aggregator or verifier in the program.

(2) **Denial.** Any denial of an application shall be provided to the applicant in writing within ninety (90) days of receipt of an application, along with the reasons that the application was denied. A denial shall also advise the applicant of their right of appeal and of the procedures necessary to exercise those appeal rights.

(3) **Withdrawal.** Any application may be withdrawn by the applicant at any time prior to approval or denial in response to an application. An applicant may withdraw an application at anytime by submitting a written request to the Commission. The application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this section shall not be refunded to the applicant.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-5-2. Applications for aggregators and verifiers

Aggregators seeking to receive verification of carbon offsets and persons seeking to conduct verification of carbon offsets under this program must apply to and be approved by the Commission. This requirement may be waived for governmental entities that are

participating in this program as a verifier under a written agreement with the Commission.

(1) **Obtaining an application.** Applications may be obtained from the Commission.

(2) **Fees.** The application shall be accompanied by payment of the application fee. The fee shall be paid by check, certified check, or United States Postal Money Order.

(A) **Aggregators.** An aggregator shall submit with the application a fee of three hundred dollars (\$300.00). An aggregator shall submit a new application with a fee of three hundred dollars (\$300.00) every three years within the calendar month of the initial application.

(B) **Verifiers.** A verifier shall submit with the application a fee of three hundred dollars (\$300.00). A verifier shall submit a new application with a fee of three hundred dollars (\$300.00) every three years within the calendar month of the initial application.

(3) **Contents.** Applications shall be submitted on a form provided or in a format designated by the Commission. The application shall contain, at a minimum, the following information:

(A) The name, address, and phone number of the applicant; and

(B) Documentation showing that the applicant is an approved aggregator or verifier for a national or international carbon exchange, or documentation showing that the applicant meets equivalent criteria as determined by the Commission.

(4) **Aggregators.** An applicant not affiliated with a national or international carbon exchange shall submit required information on a form provided or in a format designated by the Commission. The information shall include, at a minimum, the following:

(A) Proof of a bond or other financial instrument that is not less than Ten Thousand Dollars (\$10,000.00);

(B) Description of past experience and available resources that demonstrates the ability to manage the marketing and tracking of an offset portfolio and of the capability to be an aggregator of carbon sequestration projects;

(C) Description of safeguards in place to ensure that the risk of reversal is minimized and that, should reversal occur, a mechanism is in place that guarantees that the reductions or removals will be replaced or compensated;

(D) Documentation of insurance or approved reserves of emission reductions, or some other guarantee to replace any unexpected reversals;

(E) A monitoring plan that describes how potential reversals will be discovered, measured, or estimated and compensated in the event they occur; and

(F) A sample copy of the contract that offset sellers will be asked to sign and samples of all supplemental information provided to the seller as part of the contract

(5) **Verifiers.** An applicant not affiliated with a national or international carbon exchange shall submit on a form provided or in a format approved by the Commission, at a minimum, the following information to the Commission:

(A) A resume;

(B) A description of the applicant's expertise in the area of agriculture, forestry, geologic storage or the oil and gas industry, including specific experience verifying carbon offsets or sequestration in the specified area of expertise. When the applicant is a company, this information shall be provided for each individual person who will conduct verification on behalf of the company;

(C) Information that demonstrates they are qualified and capable of conducting verification of projects in accordance with Commission established and approved verification criteria;

(D) Documentation of any licenses, degrees, certificates, or specific training that qualifies the applicant to verify carbon offsets in the specified area of expertise; and

(E) Documentation of errors and omissions insurance.

(6) **Time to file.** An application may be filed with the Commission at any time.

(7) **Guidance and review.** The Commission shall provide applicants with guidance, including copies of any additional policies, procedures, and necessary forms for the efficient administration of the program, and shall process applications in a timely manner.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-5-3. Commission action on applications for aggregators and verifiers

(a) **Approval.** The Commission shall notify the applicant within ninety (90) days of receipt of an application that they have been approved to participate in the program.

(b) **Denial.** Any denial of an application shall be provided to the applicant in writing within ninety (90) days of receipt of an application, along with the reasons that the application was denied. A denial shall also advise the applicant of their right of appeal and of the procedures necessary to exercise those appeal rights.

(c) **Withdrawal.** An applicant may withdraw an application at anytime by submitting a written request to the Commission. The application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this section shall not be refunded to the applicant.

(d) **Revocation.** An approved application and any subsequent authorizations may be revoked for cause by the Commission at anytime.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-5-4. Performance criteria for state approved verifiers

State approved verifiers shall do the following:

- (1) Have no financial or pecuniary interest in the project they are verifying;
- (2) Perform verification only on project scopes and geographies that they are qualified for and authorized to conduct by the Commission;
- (3) Conduct verification in accordance with verification criteria, standards, protocols, or agreements established or approved by the Commission;
- (4) Certify on forms provided by the Commission that offsets have or have not occurred as claimed;
- (5) Evaluate project reports, documentation, and summary reports as required by the Commission;
- (6) Establish and implement protocols acceptable to the Commission for conducting verification and reporting the results;
- (7) Maintain transparent records on the methods and assumptions used to develop, calculate, and conduct verification of projects to the degree that the methods and assumptions are independently verifiable to other interested persons; and
- (8) Provide copies of all required verification reports and supporting documentation or materials to the Commission in accordance with Commission established and approved procedures.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-5-5. Performance criteria for state approved aggregators

State approved aggregators shall do the following:

- (1) Gather the required information for each offset from participating landowners with whom they are contracted;
- (2) Submit offset documentation to the Commission pursuant to these rules;
- (3) Have verified by this program at least ten percent of the Oklahoma carbon contracts on which the applicant, applicant's company or representative is a contract signatory;
- (4) Maintain a monetary reserve to cover offset buyer losses caused by reversal;
- (5) Utilize safeguards to ensure that the risk of reversal is minimized and that, should any reversal occur, a mechanism is in place that guarantees that the reductions or removals will be replaced or compensated;
- (6) Establish and implement acceptable protocols for landowner contract non-compliance;
- (7) Track project information as required;
- (8) Report offset information to the state carbon offset registry pursuant to these rules;
- (9) Disseminate to the public reliable information about carbon sequestration in Oklahoma;

- (10) Encourage landowners to maintain contracted practices that sequester carbon and that result in the sequestered carbon remaining in place at least through the duration of the contract; and
- (11) Include the following information in landowner contracts:
 - (A) Length of time the carbon sink shall be maintained;
 - (B) Verification requirements;
 - (C) Compensation protocol;
 - (D) Reserve stipulations;
 - (E) Landowner non-compliance stipulations; and
 - (F) Clear explanation of who owns the rights to the offset.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-5-6. Aggregator [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

155:30-5-7. Contracts between aggregators and landowners [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

SUBCHAPTER 7. CARBON OFFSET REGISTRY

155:30-7-1. Applications for carbon offset registration

(a) **Obtaining an application.** Persons signatory to a contract for, or owning an interest in, a carbon offset, allowance, credit or sequestration project that was not verified by the Oklahoma Carbon Program but who wish to have information related to such offset published to the Oklahoma carbon offset registry may obtain an application from the Commission.

(b) **Contents.** Applications under this subchapter shall be submitted on a form provided or in a format designated by the Commission. The application shall contain, at a minimum, the following information:

- (1) The name, address, and phone number of the applicant;
- (2) The name, address, and phone number of the offset aggregator, if an aggregator has been retained;
- (3) The legal description of the physical location of the offset or project;
- (4) The name of the city nearest to the location of the offset or project, and the county in which the offset or project is located;
- (5) The type of offset and start date of the activity or project that created the offset;
- (6) An aerial photo of the land delineating the offset or project area and indicating the number of acres delineated or, in the case of geologic sequestration, an aerial photo, topographical map, or graphic depiction of the land area overlaying the reservoir that

received the carbon dioxide or carbon dioxide equivalent. If the above are not available, the Commission may accept GPS coordinates of the offset or project; and

(7) A copy of the offset purchase and sale contract or other transfer agreement, or memorandum of a contract or agreement, signed by the seller and buyer.

(c) **Fee.** A fifty dollar (\$50.00) fee shall accompany an application under this subchapter, and is assessed for the review of an offset that was not verified by this program and to publish offset information to the Oklahoma carbon offset registry. The fee shall be paid by check, certified check, or United States Postal Money Order. Offsets certified by the Oklahoma Carbon Program will be automatically published to the registry free of charge after all fees for verification and certification have been received by the Commission.

(d) **Filing.** An application under this subchapter may be filed with the Commission at any time after the offset is verified or the contract or agreement described in subparagraph (b)(7) above is fully executed. An applicant under this subchapter should be the operator, seller, purchaser, aggregator, verifier, or other person who is a signatory party to the carbon contract or agreement.

(e) **Guidance and review.** The Commission shall provide applicants with guidance including copies of any additional policies, procedures, and necessary forms for the efficient administration of the program.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-7-2. Commission action on applications for carbon offset registration

(a) **Approval.** Offset information for carbon offsets not verified by the Oklahoma Carbon Program will be published to the Oklahoma carbon offset registry within ninety (90) days after the application for registration and fees are received and approved by the Commission. Applicants shall refer to the online carbon offset registry to determine application status.

(b) **Denial.** Any denial of an application shall be provided to the applicant in writing within ninety (90) days, along with the reasons that the application was denied. A denial shall also advise the applicant of their right of appeal and of the procedures necessary to exercise those appeal rights.

(c) **Withdrawal.** An applicant may withdraw an application at anytime by submitting a written request to the Commission. The application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this section shall not be refunded to the applicant.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-7-3. Carbon offset registry

- (a) The carbon offset registry shall be maintained and made publicly available via a website updated by the Commission at least monthly for the purpose of public disclosure.
- (b) Information on carbon offsets verified by the Oklahoma Carbon Program will be automatically published to the carbon offset registry after verification is conducted and applicable fees are received by the Commission.
- (c) Information on carbon offsets not verified under the Oklahoma Carbon Program will be published to the carbon offset registry after the application for registration accompanied by the fee is received and approved by the Commission.
- (d) Each offset reported by an applicant under this subchapter shall be unique; such offset shall not be claimed more than once on any regulatory, voluntary, or off market venue for the purposes of mitigating greenhouse gas emissions.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-7-4. State Verified Offset issuance [SUPERSEDED]

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter)]

SUBCHAPTER 9. SOIL CARBON SEQUESTRATION

155:30-9-1. Filing of applications for soil carbon offset verification

A request for verification of a soil carbon offset may be filed during each calendar year of the carbon offset contract.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter); Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-9-2. Fees

An applicant filing an application under this subchapter shall pay the following fees and expenses:

- (1) **Field verification fee.** Thirty dollars (\$30.00) per hour charged for time spent in the field verifying the offset, including travel time to and from the offset location. An applicant may indicate on the application a request to be contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.
- (2) **Field verification expenses.** The government rate in effect on the date of travel will be charged to cover travel or lodging costs incurred during travel associated with field verification. An applicant may indicate on the application a request to be contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.
- (3) **Document verification fee.** Fifty dollars (\$50.00) per hour assessed for the in-office review of documents and preparation of

reports that record whether carbon sequestration has occurred.

(4) **State certification fee.** Ten cents (\$.10) per metric ton of carbon dioxide for each ton under and including fifty thousand (50,000) metric tons, and three cents (\$.03) per metric ton of carbon dioxide for each ton over fifty thousand (50,000) tons, is assessed for the preparation and issuance of a certificate and report evidencing that carbon sequestration occurred and was verified by the Oklahoma Conservation Commission or other state approved verifier not to exceed \$10,000 per application. The applicant will be invoiced this fee per application after the Commission has verified the carbon offset.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-9-3. Soil carbon offset verification application requirements

(a) In addition to the requirements in Subchapters 1 and 3 for any application, an application for soil carbon offset verification shall include the following:

- (1) Resource management plan with details and explanations of the activities that will increase, or maintain existing, trapped carbon including but not limited to growing of designated crops or use of designated cropping systems that created the offset to be verified;
- (2) Crop certification summary from a state or federal agency;
- (3) Copy of Conservation Reserve Program (CRP) or Conservation Reserve Enhancement Program (CREP) contracts, or other federal conservation contracts when applicable;
- (4) Farm records showing dates and schedules of seeding, grazing, haying, or harvest as applicable and necessary to substantiate the offset; and
- (5) Current or previous carbon offset contract that includes any portion of the offset for which the applicant is requesting verification.

(b) The Commission may request additional information.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-9-4. Commission action on soil carbon offset verification applications

The Commission shall either approve or deny a soil carbon application and shall notify the applicant in writing of the Commission's determination.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-9-5. Soil carbon offsets eligible for verification

(a) Only soil carbon offsets with default or standard sequestration rates determined by research acceptable to the Commission to capture and hold carbon dioxide or its equivalent for a determined or estimated or measurable rate or span of time shall be considered for verification.

Types of eligible soil carbon offsets are:

- (1) Conservation tillage, and
- (2) Grassland establishment.

(b) Soil carbon offsets not specifically listed above may be considered by the Commission on a case by case basis.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

SUBCHAPTER 11. FOREST CARBON SEQUESTRATION

155:30-11-1. Filing of applications for forestry carbon offset verification

A request for verification of a forestry carbon offset may be filed during the first, third, or fifth or later calendar year of the carbon offset contract. For afforestation or reforestation applicants, the first year means the first year following the planting year.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-11-2. Fees

An applicant filing an application under this subchapter shall pay the following fees and expenses:

(1) **Field verification fee.** Thirty dollars (\$30.00) per hour charged for time spent in the field verifying the offset, including travel time to and from the offset location. An applicant may indicate on the application a request to be contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.

(2) **Field verification expenses.** The government rate in effect on the date of travel will be charged to cover travel or lodging costs incurred during travel associated with field verification. An applicant may indicate on the application a request to be contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.

(3) **Document verification fee.** Fifty dollars (\$50.00) per hour assessed for the in-office review of documents and preparation of reports that record whether carbon sequestration has occurred.

(4) **State certification fee.** Ten cents (\$.10) per metric ton of carbon dioxide for each ton under and including fifty thousand (50,000) metric tons, and three cents (\$.03) per metric ton of carbon dioxide for each ton over fifty thousand (50,000) tons, is assessed for the preparation and issuance of a certificate and report evidencing that carbon sequestration occurred and was

verified by the Oklahoma Conservation Commission or other state approved verifier not to exceed \$10,000 per application. The applicant will be invoiced this fee per application after the Commission has verified the carbon offset.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-11-3. Forest carbon offset verification application requirements

In addition to the general requirements in Subchapters 1 and 3 for any application, a forest carbon sequestration verification application shall include a forest management plan written on a form provided or in a format approved by the Oklahoma State Forester, containing the following:

- (1) Details and explanations of the activities that have or will increase, or maintain existing, trapped carbon;
- (2) Clearly stated landowner objectives for the forest management practices that include the sequestration of carbon;
- (3) Description and evaluation of the natural resources present on the area;
- (4) Defined desired future forest condition;
- (5) Description of the forest management practices and activities aimed at reaching the desired forest condition or condition class; and
- (6) Documentation of a timeline for forest management plan implementation that includes the start date of the forest management activities.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-11-4. Commission action on forest carbon offset applications

The Commission shall either approve or deny a forest carbon offset application and shall notify the applicant in writing of the Commission's determination.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-11-5. Forest carbon offsets eligible for verification

(a) Only forest carbon offsets with default or standard sequestration rates determined by research acceptable to the Commission to capture and hold carbon dioxide or its equivalent for a determined or estimated or measurable rate or span of time shall be considered for verification. Types of eligible forestry carbon offsets are:

- (1) **Afforestation.** The establishment of trees on lands that was unforested prior to 1990.
- (2) **Managed Forests.** The use and management of sustainable silvicultural practices in forests that are also part of a long-term

approved forest management plan.

(3) **Reforestation.** The establishment of trees on lands previously forested that are also part of a long-term approved forest management plan.

(b) Forestry carbon offset types not specifically listed above may be considered by the Commission on a case by case basis.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

SUBCHAPTER 13. GEOLOGIC CARBON SEQUESTRATION

155:30-13-1. Filing of applications for geologic carbon sequestration verification

A request for verification of geologic carbon sequestration may be filed anytime during the calendar year immediately following the calendar year, or portion thereof, in which sequestration occurred (i.e. applications must be filed on or before December 31, 2011 for any sequestration that occurred during any portion of the calendar year of 2010). Notwithstanding the foregoing, requests for verification of carbon dioxide or its equivalent sequestered prior to the effective date of these rules, but after the effective date of the Act, shall be made on or before December 31, 2010.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-13-2. Fees

An applicant filing an application under this subchapter shall pay the following fees and expenses:

(1) **Document verification fee.** The application shall be accompanied by payment of a fee equivalent to fifteen dollars (\$15.00) per injection well that was utilized during the injection of carbon dioxide or its equivalent for which verification is requested, with a minimum fee of one hundred fifty dollars (\$150.00) per application, as payment for the in-office review of documents and preparation of reports that record whether sequestration of carbon dioxide or its equivalent has occurred.

(2) **Field verification fee.** When applicable, thirty dollars (\$30.00) per hour charged for time spent visiting the project location, including travel time to and from the project location. An applicant may indicate on the application a request to be contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.

(3) **Field verification expenses.** The government rate in effect on the date of travel will be charged to cover travel or lodging costs incurred during travel associated with field verification. An applicant may indicate on the application a request to be

contacted prior to verification and to be told the estimated amount of time that will be needed to conduct verification.

(4) **State certification fee.** Ten cents (\$.10) per metric ton of carbon dioxide for each ton under and including fifty thousand (50,000) metric tons, and three cents (\$.03) per metric ton of carbon dioxide for each ton over fifty thousand (50,000) metric tons, is assessed for the preparation and issuance of a certificate and report evidencing that carbon sequestration occurred and was verified by the Oklahoma Conservation Commission or other state approved verifier not to exceed \$10,000 per application. The applicant will be invoiced this fee per application after the Commission has verified that carbon sequestration occurred.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-13-3. Geologic sequestration application requirements

(a) In addition to the requirements in Subchapters 1 and 3 for applications, an application for the verification of geologic carbon sequestration shall include the following:

(1) **Resource management plan (RMP).** An applicant shall provide an explanation of the activities that will increase sequestration of, or maintain sequestration of, carbon dioxide or its equivalent in the reservoir, and shall include a brief description of the following:

(A) The source(s) of the carbon dioxide or equivalent that was injected or maintained;

(B) The method used to capture the carbon dioxide or equivalent from the source(s); and

(C) The purity level of the carbon dioxide contained in the stream of gas or in the supercritical fluid injected, and a statement indicating whether the applicant took that purity level into account when calculating the volume or weight of carbon dioxide for which verification is requested in the application.

(2) **UIC agency documents.** An applicant shall provide clear and convincing proof that the project is authorized by and operating and monitored in accordance with applicable state and federal laws that protect underground sources of drinking water by providing written assurance on a designated form that any required UIC documents related to the project have been obtained by the applicant and are on file with the UIC agency. The Commission may also request copies of applicable UIC agency documents, which include the following:

(A) UIC permit documents. These documents include any applicable permits, orders, licenses, exemptions, rights, or registrations.

(B) UIC monitoring documents. These documents include:

(i) **Annual fluid injection report.** This report shows the carbon dioxide or carbon dioxide equivalent volumes and pressures associated with

the injection portion of the project were measured and reported in accordance with UIC agency rules. The Commission will request copies or written assurance that there is on file with the UIC agency the annual fluid injection report filed by the operator for each active injection well involved in the project during the calendar year for which verification is requested.

(ii) **Mechanical Integrity Test Report.** This report demonstrates that the injection well(s) associated with the project have sufficient mechanical integrity in accordance with UIC agency rules. The Commission will request a copy or written assurance that there is on file with the UIC agency the most recent Mechanical Integrity Test reports performed before or during the calendar year for which verification is requested.

(3) Annual carbon dioxide recovery and sequestration report.

(A) An applicant shall report the amount of carbon dioxide or equivalent sequestered in geologic storage as a result of the project. On a form provided by or in a format approved by the Commission, an applicant shall record the metered volume of carbon dioxide (or its equivalent) injected and the metered volume recovered, if any, during any recovery portion of the project.

(B) An applicant shall calculate and record in metric tons the total amount of carbon dioxide or its equivalent that was injected and not recovered by the project during the calendar year for which verification is requested.

(C) The report shall contain an authorized signature.

(4) List of prior certificates. An applicant shall include a list of each certificate or certificate number associated with all prior applications for verification submitted to the Commission related to the project.

(5) Air emissions documents. When air quality permits are required by the project, an applicant shall provide proof that the project is authorized by and operating in accordance with applicable state and federal laws that protect air quality. The Commission will request written assurance that the applicant has obtained any required permits, orders, licenses, exemptions, rights, or registrations required by law issued to the applicant from the state air quality agency or any other governmental entity having jurisdiction over air emissions pertaining to the project during the calendar year for which verification is requested. The Commission may request copies of the aforementioned documents.

(b) The Commission at its discretion may request additional information, within reason and relevant to the project, before approving an application.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-13-4. Commission action on applications for geologic carbon sequestration verification

Within ninety (90) days of the filing of an application for geologic carbon sequestration verification, the Commission shall either approve or deny the application and shall notify the applicant in writing of the Commission's determination. The Commission shall notify an applicant if more time is needed to make a determination and indicate the approximate date the determination will be made.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

155:30-13-5. Geologic carbon sequestration projects eligible for verification

Only geologic carbon sequestration projects utilizing anthropogenic carbon dioxide that are in compliance with all applicable UIC agency requirements, and air quality agency requirements when applicable, shall be considered for verification.

[Source: (For information about related emergency rules, see Editor's Note at beginning of Chapter);
Added at 26 Ok Reg 1388, eff 7-1-09]

CHAPTER 35. COORDINATION OF OKLAHOMA'S GEOGRAPHIC INFORMATION

[Authority: 27A O.S., §§ 3-2-106; through 3-2-107 et seq.]

[Source: Codified 4-25-09]

155:35-1-1. Purpose

(a) This Chapter sets forth statutory requirements for the coordination of Oklahoma's Geographic Information pursuant to 82 O. S. Ann. §§ 1501-205 and 27 O. S. Ann. §§ 3-2-107 of the Oklahoma Statutes. The purpose of coordination is to promote the collaboration and sharing of geographic information, eliminate duplication of efforts and to insure the consistency of geographic information data elements through the adoption of applicable standards and procedures. The result is the development and maintenance of a fully-functioning Oklahoma Spatial Data Infrastructure that supports governments, educational institutions, organizations, businesses and individuals in the State through better decision-making, service and responsiveness to the citizens.

(b) The state's pollution complaint data that is collected by various state agencies is a specific classification of geographic information that the Commission is charged with the responsibility of making this information accessible to the public. This is being accomplished through coordination with the various agencies and by creating and maintaining a central database for the purpose of reporting and making this information available to the public.

[Source: Added at 26 Ok Reg 804, eff 4-25-09]

155:35-1-2. Definitions

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

"Database or Data Base" means a structured collection of data which is managed to meet the needs of a community of users..

"Council" means the State Geographic Information Council.

"Geographic Database" means a database designed to store, query and manipulate geographic information and spatial data.

"Geographic Information" or "Geospatial Data" means any data or databases in which location or spatial distribution is an essential element, including, but not limited to, land, air, water, and mineral resources, the distribution of plant, animal, and human populations, real property interests, zoning and other land development regulations, and political, jurisdictional, ownership, and other artificial divisions of geography.

"Geographic Information System" or "GIS" or "Geographic Database System" means a computer system(s) that allow the analysis of data or databases containing geographic information.

"Oklahoma Spatial Data Infrastructure" means the technology, policies, and people necessary to promote geospatial data sharing throughout all levels of government, the private and non-profit sectors, and academia.

"Statewide Data" means geographic information whose spatial extent is defined by the geographic boundary of the state of Oklahoma.

[Source: Added at 26 Ok Reg 804, eff 4-25-09]

155:35-1-3. State Geographic Information Council, Geographic Information Revolving Fund and Office of Geographic Information

(a) State agencies have pursued using Geographic Information System (GIS) technology to support capturing, managing, manipulating, analyzing, and displaying spatially referenced data for solving complex planning and management problems since the early 1980's. Legislation in 1994 created the State Geographic Information System Council to coordinate the preparation of a Strategy for Developing a Geographic Information for the State of Oklahoma, focusing on, but not limited to, natural resources.

(b) In May of 1996 the Council presented to the Legislature a Geographic Information Systems (GIS) Strategy for the State of Oklahoma. Through volunteer efforts of Council member agencies many of the action items identified within the document have at least been partially implemented. However, due to the rapid adoption of GIS in decision-making and the accelerating availability of digital geographic information, legislation in 2004 expanded the membership of the Council as well as established the Office of Geographic Information to address the state's responsibility to efficiently coordinate the development and management of this critical infrastructure. This legislation removed the word "System" from the Council's title and increased the membership to 19 by adding representatives outside the natural resource arena.

(c) An important role of the Council and the Office of Geographic Information is to lead and encourage continued development and use of the Oklahoma Spatial Data Infrastructure (OSDI). The OSDI is modeled after the National Spatial Data Infrastructure (NSDI) and is, in fact, the Oklahoma component of the NSDI. In a sense, the Council can be viewed as the policy arm of geographic information coordination while the Office of Geographic Information is the implementor of that policy.

(d) The Conservation Commission will use its leadership position on the Council and the Office of Geographic Information to further develop the OSDI using the requirements and guidelines spelled out in 82 O. S. Ann. §§ 1501-205.1 - 205.3 for the betterment of the citizens of this state.

[Source: Added at 26 Ok Reg 804, eff 4-25-09]

155:35-1-4. Pollution complaint reporting system

The Conservation Commission will utilize the requirements and responsibilities identified in 27 O. S. Ann. §§ 3-2-107 to develop and maintain a geographic database system for reporting and making available to the public pollution complaint information collected by state agencies that receive and manage such data. The Commission will coordinate with the agencies to develop a common system that can be easily accessed by the public as well as governmental agencies.

[Source: Added at 26 Ok Reg 804, eff 4-25-09]

CHAPTER 40. WATER QUALITY PROGRAMS

[**Authority:** 27A O.S., §§ 1-1-101 et seq.; §§ 1-3-101 et seq.; 82 O.S., § 1085.65]

[**Source:** Codified 5-11-09]

155:40-1-1. Purpose

This chapter was adopted for three purposes. The first and primary reason is to formally meet the statutory requirement for Water Quality Standards Implementation Plan development. The second reason is to formally declare the general plan whereby the Commission will conduct its assigned responsibilities for the state's Nonpoint Source Management Program. And finally, the Commission wishes to formally convey general programmatic policies regarding the Water Quality Division's Nonpoint Source Education and Outreach Program referred to as Blue Thumb.

[**Source:** Added at 26 Ok Reg 1018, eff 5-11-09]

155:40-1-2. Definitions

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

"319" or "319 program" or "Section 319" or "Section 319(h)" means that section of the federal Clean Water Act dealing with nonpoint source pollution. Administered by the EPA, this section assists state and tribal nonpoint source programs with funding, technical support and programmatic guidance.

"Beneficial Uses" means a classification of the waters of the state, according to their best uses in the interest of the public; these are assigned in OAC Title 785, Chapter 45, Oklahoma Water Quality Standards.

"Blue Thumb" or "BT" means the Blue Thumb program.

"CWA" or "Clean Water Act" means that section of the U.S. Federal Law known in familiar terms as the Clean Water Act.

"EPA" means the Environmental Protection Agency.

"Nonpoint Source" or "NPS" means nonpoint source pollution or a source of pollution without a well defined point of origin.

"OCC" or "Commission" means the Oklahoma Conservation Commission.

"OWRB" means the Oklahoma Water Resources Board.

"Water Quality Standards", when capitalized, means Chapter 45 of OAC Title 785, Oklahoma Water Quality Standards. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

"Water Quality Standards Implementation Plan" or "WQSIP" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

[**Source:** Added at 26 Ok Reg 1018, eff 5-11-09]

155:40-1-3. Water Quality Standards Implementation Plan

Subsection B of Section 1-1-202 of Title 27A of the Oklahoma Statutes specifies that each state environmental agency shall promulgate a Water Quality Standards Implementation Plan (WQSIP) for its jurisdictional areas of environmental responsibility. The rules in this chapter are in direct fulfillment of this requirement.

(1) In fulfillment of the statutory mandate for a WQSIP, the OCC hereby adopts by reference a WQSIP policy document (dated December 22, 2008) on file and available via the OCC website, the OCC office, and the OCC Water Quality Division office. This document has undergone extensive review and comment by the Commission, OWRB, and the WQSIP working group comprised of members of other agencies required to produce the document.

(2) In accordance with the statutory mandate for WQSIP, the OCC will review the WQSIP policy document at least every three years from the promulgation of this rule to determine whether revisions are necessary. The OCC WQSIP policy document review will comprise both an intra-agency review and edit (as necessary), which will be followed by a peer review and comment process through the WQSIP working group or similar review panel.

(3) As a general statement of agency policy, programs and activities within the Oklahoma Conservation Commission (OCC) will be managed and conducted to protect the beneficial uses of the state's waters and to maintain water quality standards, including enforcement of the anti-degradation clause specified therein.

[Source: Added at 26 Ok Reg 1018, eff 5-11-09]

155:40-1-4. Nonpoint Source Management Plan

Oklahoma Statutes, §27A-1-3-101, Subsection F assigns to the Oklahoma Conservation Commission (OCC) multiple jurisdictional areas of environmental responsibility. Several of these delegations deal with nonpoint source pollution (NPS). The purpose of this chapter is to declare the plan whereby the OCC will conduct its assigned responsibilities for the state's NPS program.

(1) The OCC is declared the state's technical lead agency for NPS categories as defined in Section 319 of the Federal Clean Water Act (319 program) or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal stormwater or as otherwise provided by state law. As such, the OCC is responsible to monitor, evaluate, and assess waters to determine the condition of streams and rivers being impacted by NPS pollution and conduct NPS management programs and activities to abate it.

(2) Section 319(h) of the CWA authorizes funding support to implement an NPS program. States must have an EPA approved NPS Management Program Document to receive this funding, and this document must clearly describe the elements and activities of the NPS Program. Pursuant to its statutory assignments and in accordance with the 319 program mandate, the OCC drafted and

hereby adopts by reference Oklahoma's Nonpoint Source Management Program and Nonpoint Source Assessment Report which describes the processes by which the State addresses NPS pollution in its waters. This document is on file and available via the OCC website, the OCC office, and the OCC Water Quality Division office.

(3) Oklahoma's Nonpoint Source Management Program document is amended periodically as needed and includes participation and review by the State NPS Working Group, a broader instate review and comment period by state environmental agencies, a public review and comment period, and a final review and approval by EPA necessary to obtain 319 funding.

[Source: Added at 26 Ok Reg 1018, eff 5-11-09]

155:40-1-5. Blue Thumb Program

Oklahoma Statutes, §27A-1-3-101, Subsection F assigns to the Oklahoma Conservation Commission (OCC) multiple jurisdictional areas of environmental responsibility. Several of these delegations deal with nonpoint source pollution (NPS). The purpose of this chapter is to convey programmatic policies of the OCC Water Quality Division's NPS Education and Outreach Program formally referred to as the Blue Thumb Program.

(1) The OCC is the technical lead for the state's NPS Management Program. This program is non regulatory and based on voluntary participation of landowners in cost share programs to implement land management practices to abate NPS pollution. Water quality and environmental education is an integral component of OCC programs and a critical driver of the state's NPS Management Program. To this end, the OCC developed the Blue Thumb program.

(2) Blue Thumb is the water pollution education program of the OCC's Water Quality Division. The primary goal of this program is to educate Oklahoma citizens about NPS pollution, pollution prevention, and stream health.

(3) Blue Thumb program staff work directly with citizens in school, civic, work, and private contexts. The program is designed to recruit, educate, train, and equip volunteer groups across the state to monitor streams of local interest. The program works primarily through local conservation districts, municipalities, schools, and civic organizations.

(4) The Blue Thumb program coordinates with and provides support for other environmental and resource education programs.

(5) Foundational BT Program maintenance and promotion activities include volunteer monitor training sessions, data management, analysis and presentation, maintenance and distribution of water quality monitoring kits and supplies, quality assurance sessions, provision of educational materials for loan, and distribution of curb-marking supplies.

(6) Blue Thumb personnel work with local sponsors and volunteers to plan watershed education events in areas with strong local interest and/or where volunteer data indicate a need. These events feature information booths, volunteer activities, conservation opportunities and assistance available through local agencies, and data interpretation sessions.

(7) The Blue Thumb program provides support to cities to help meet the requirements of their Phase II stormwater permits and to help improve stormwater quality through education of its citizens. These education programs involve curbing marking, water quality training, and other education events.

(8) The Blue Thumb program conducts a groundwater education and well water screening program to promote interest and expand the educational platform. Staff conduct these activities through local conservation districts. Groundwater samples submitted by citizens during screening events are analyzed for alkalinity, sulfate, chloride, nitrate and pH. The results are presented as an initial screen for educational purposes only and are not intended to replace certified, lab based tests for potability.

[Source: Added at 26 Ok Reg 1018, eff 5-11-09]

CHAPTER 45. CONTROLLED BURN INDEMNITY FUND

[**Authority:** 2 O.S., § 16-28.3; and 27 O. S., §§ 3-1-101 et seq.]

[**Source:** Codified 8-02-10]

SUBCHAPTER 1. GENERAL PROVISIONS

155:45-1-1. Purpose and Authority

The rules in this Chapter are promulgated for the purpose of establishing and administering the Oklahoma Controlled Burn Indemnity Fund, pursuant 2 O.S. § 16-28.3. This program will provide landowners, who perform properly planned and executed controlled burns, compensation for eligible losses incurred from a fire that spreads beyond the control of the burner except for losses covered by insurance.

[**Source:** Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-1-2. Program intent

Participation in this program is voluntary and does not in anyway preclude or prevent a person from conducting a lawful burn pursuant to 2 O.S. §§ 16-24.1 and 16-28.1. The intent of the program is to encourage the use of prescribed fire to manage grasslands for brush encroachment and maximum forage production in a manner and to a level of completion which will protect the public health, safety and welfare and minimize damage to the environment and property.

[**Source:** Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-1-3. Definitions

The following words or terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Applicant" means a person making an application.

"Application" means a petition or any written request for authority, approval, determination, permission, or other Commission action or relief pursuant to these rules. An application also includes the standard state form for applying for pre-qualification, including any supplemental materials, additions, revisions, or modifications to the forms.

"Claim" means a properly submitted petition or written request for the investigation, determination, verification, approval, or other Commission action for payment from the Fund to person's suffering losses determined eligible for payment pursuant to these rules. A claim includes the standard state form for payment from the Fund, and shall also include any supplemental materials, additions, revisions, attachments, or modifications.

"Commission" means the Oklahoma Conservation Commission.

"Controlled burn or burning" or "prescribed burn or fire" means the act of utilizing fire for land management purposes for which advance preparations are made to limit the spread of fire onto adjoining

lands.

"Controlled Burn Plan" means a detailed document prepared with the assistance of the local conservation district and the NRCS based on NRCS guidelines for the purpose of planning the appropriate precautionary safety measures to insure that a controlled burn is contained to a predetermined area.

"Fund" means the Controlled Burn Indemnity Fund.

"Landowner" means any and all persons who holds title to the property on which a controlled burn is to be conducted. It also includes a consortium, a joint venture, a commercial entity, and the United State Government.

"NRCS" means the Natural Resource Conservation Service of the United states Department of Agriculture.

"Person" means any institution, individual, public or private corporation, partnership, proprietorship, association, firm, company, limited partnership, limited liability company, joint venture, public trust, joint-stock company, syndicate, trust, organization, estate, governmental entity, tribe, or any other legal entity or an agent, employee, representative, assignee or successor.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-1-4. Informal complaint process

(a) Any person may complain to the Commission about any matter regarding this program under the Commission's authority. A complaint shall be in writing, and it shall include the following information:

- (1) The name, address, and telephone number of the person making the complaint;
- (2) The name, address, and telephone number of the organization the person represents, if applicable;
- (3) The name, address, telephone number, and title of any representative of the person filing the complaint;
- (4) A brief, clear description of each charge, problem, or issue that is the basis for the complaint including names, dates, places, and actions;
- (5) The numbers and headings of the laws and rules that may apply;
- (6) The remedy, if any, the person making the complaint seeks;
- (7) The signature of the person making the complaint; and
- (8) The date of the complaint.

(b) If the complaint is repetitive, concerns a matter that has already been resolved, or is a matter outside the Commission's authority, the Executive Director or the Executive Director's designee may reject the complaint.

(c) The Executive Director or the Executive Director's designee may provide other affected persons with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response shall contain the following information:

- (1) The name, address, and telephone number of the person responding;

- (2) The name, address, and telephone number of the organization the person represents, if applicable;
 - (3) The name, address, telephone number, and title of any representative of the person responding;
 - (4) A specific admission, denial, or explanation of each charge;
 - (5) A brief, clear description of the facts including names, dates, places, and actions;
 - (6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;
 - (7) The numbers and headings of the laws and rules that may apply;
 - (8) The signature of the person responding; and
 - (9) The date of the response.
- (d) The Executive Director or the Executive Director's designee may refer complaints to informal procedures, including but not limited to telephone calls, letters, meetings, mediation, investigations, or other appropriate procedures.
- (e) The Executive Director or the Executive Director's designee shall make a decision about a complaint within sixty (60) calendar days after its receipt, unless more time is required. In that case, the Commission shall notify in writing the person filing the complaint and persons filing any responses to the complaint informing the persons that additional time is needed to reach a decision.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

SUBCHAPTER 3. PRE-QUALIFYING APPLICATION PROCESS

155:45-3-1. Application

- (a) **Pre-qualification.** To pre-qualify for coverage under the Program an applicant must apply to the Program prior to performing the prescribed burn.
- (b) **Obtaining an application.** An applicant may obtain an application from the Commission.
- (c) **Contents.** Applications shall be submitted on a form provided or in a format designated by the Commission. The application shall contain, at a minimum, the following information:
- (1) The name, address, and phone number of the applicant;
 - (2) A copy of the applicable controlled burn plan;
 - (3) Statement clarifying applicant's authority to apply a lawful burn to the property;
 - (4) A statement, signed by the title holder of the property, that acknowledges awareness of the controlled burn plan and applicant's intent to utilize fire on the property; and
 - (5) Any other records or documents requested by the Commission.
- (d) **Fee.** The application shall be accompanied by payment of one hundred dollars (\$100.00). The fee shall be paid by check, certified

check, or United States Postal Money Order.

(e) **Application review.** The Commission shall provide applicants with the necessary forms and shall process applications within thirty (30) calendar days. If more time is needed to make a determination then the Commission shall notify an applicant of the need and indicate in writing the new estimated date for determination.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-3-2. Commission action on applications

(a) **Approval.** When the Commission is satisfied that all requirements for pre-qualification have been met, then an approval letter shall be issued to the applicant.

(b) **Denial.** Any denial of an application shall be stated in a denial letter and provided to the applicant, along with the reasons that the application was denied. The denial letter shall also advise the applicant of their right of appeal.

(c) **Withdrawal.** Any application may be withdrawn by the applicant at any time by submitting a written request to the Commission. The applicant's application will be automatically withdrawn upon receipt of the request by the Commission. Any fees paid in connection with any application that is later withdrawn under this rule shall not be refunded to the applicant.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

SUBCHAPTER 5. CLAIMS PROCESS

155:45-5-1. Qualification for claim coverage

(a) **Pre-approval.** The applicant must have received an approval letter from the Commission prior to conducting the prescribed burn.

(b) **Implementation of burn plan.** The applicant must have strictly adhered to the pre-approved controlled burn plan.

(c) **Losses.** Applicant must have unintentionally lost control of the fire resulting in losses to another person's property not already covered by insurance.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-2. Claims

(a) **Obtaining a claim form.** Claimants may obtain a claim form from the Commission.

(b) **Contents.** Claims shall be submitted on a form provided or in a format designated by the Commission. The claim shall contain, at a minimum, the following information:

- (1) Copy of the pre-approved Controlled Burn Plan with supporting documents and other information verifying compliance of the plan at the time of the controlled burn;
- (2) Copy of the pre-qualification approval letter;

- (3) Detailed description and summary of the burn event resulting in the filing of the claim;
 - (4) Non-Ownership/Participation Affidavit;
 - (5) Losses statement along with an itemized list of the losses;
 - (6) Any and all documentation and photos showing and verifying the losses;
 - (7) List of insurance policies or other financial mechanisms that could
 - (8) Information deemed by the Commission to substantiate a claim of a person suffering a loss other than the applicant/claimant; and
 - (9) Any other information requested by the Commission when deemed warranted supporting the verification of the claim.
- (c) In those cases where an applicant has submitted an application, received a pre-qualification approval letter, and met the qualifications for claim coverage but is unavailable or unwilling to file a claim on behalf of a person suffering eligible losses due to the applicant's prescribed fire then the Director of the Conservation Programs Division of the Commission may execute a claim on that person's behalf.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-3. Filing period

- (a) **Time to file.** A claimant must submit the claim to the Commission within sixty (60) calendar days of the damage or loss. If the claim of loss is not presented within the time and in the manner required, the claim shall be forever barred and denied and the landowner shall forfeit all rights to remuneration or payment.
- (b) **Extension request.** A claimant may request in writing an additional sixty (60) calendar day extension for filing the claim to the Commission. The extension request must be received by the Commission at least ten (10) calendar days before the end of the original sixty (60) days and it must show that the claimant was not provided notification and reasonable time to file the claim.
- (c) **Extension request review.** Upon receipt of the extension request the Commission shall review the request and make a determination in writing as to its approval or denial within five (5) calendar days. Any denial of an extension request shall include the reasons that the request was denied.
- (d) **Withdrawal.** Any claim may be withdrawn by a claimant at any time by submitting a written request to the Commission. The claim will be automatically withdrawn upon receipt of the request by the Commission.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-4. Eligible losses

Eligible losses include but are not limited to the following:

- (1) Vehicles and equipment;
- (2) Buildings and structures;
- (3) Personal Property;

- (4) Crops;
- (5) Pasture/grass;
- (6) Animals (excluding wildlife);
- (7) Hay;
- (8) Fences;
- (9) Other appurtenances;
- (10) Veterinary bills for injury to animals; and
- (11) Other losses as determined by the Commission.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-5. Non-eligible losses

Non-eligible damages include but are not limited to the following:

- (1) Controlled burns on state or federal lands or conducted by state or federal governments;
- (2) Any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for losses claimed;
- (3) Loss of time;
- (4) Loss of business;
- (5) Smoke damage;
- (6) Loss of wildlife habitat;
- (7) Injury to or loss of human life;
- (8) Any damages or punitive damages awarded against claimant or applicant in any legal proceeding;
- (9) Attorney or legal fees;
- (10) Losses from an unapproved controlled burn; and
- (11) Other losses as determined by the Commission.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-6. Commission action on claims

(a) Upon receipt of a claim the Commission shall investigate and verify the claim using protocols established by or approved by the Commission and issue a determination in writing of the losses eligible for payment under the Fund within ninety (90) calendar days. If more time is needed to make a determination then the Commission shall notify a claimant of the need and indicate in writing the new estimated date for determination of the claim.

(b) The Commission shall pay from the Fund all persons suffering eligible losses as soon as practicable and not later than one (1) year following the date that the claim was filed.

(c) The price of losses per acre of land shall be established on the day of the loss and shall be for the full market value on that day.

(d) If there is an insufficient amount of funds in the Fund to cover all claims for a certain year, payments shall be made on a pro rata basis up to one hundred percent (100%) of the total loss to each person.

- (1) If payment is not received in the amount of one hundred percent (100%) of total loss for a certain year, then additional amounts shall be paid as funds become available in succeeding

years until repayment of one hundred percent (100%) of total loss is attained.

(2) If, at any time, a person receives payment totaling more than one hundred percent (100%) of total loss, the excess payment shall be returned to the Fund within thirty (30) days.

(3) Upon final payment of a claim from the Fund, the person receiving the payment shall subrogate the interest to the Conservation Commission in a cause of action against any and all parties, to the amount of loss that the person was reimbursed by the Fund.

(e) The Commission shall establish protocols and procedures for the issuance of payments from the Fund to person's suffering eligible and verified losses.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]

155:45-5-7. Withholding payment

The Commission may withhold payment from the Fund if any of the following apply:

- (1) Offsetting charges;
- (2) Conflicting, duplicate or unclear assignments;
- (3) Subrogation of payments;
- (4) Pending legal action pertaining to the payment of claims;
- (5) Clarification of possible third party payors; or
- (6) Investigation or pending investigation of suspected illegal or improper activity.

[Source: Added at 27 Ok Reg 2483, eff 8-2-10]