

US EPA ARCHIVE DOCUMENT

*OK* *FR* *Corrections Update #2*

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01-149 to read as follows:

**§ 165.T01-149 Safety Zone: Decker Wedding Fireworks, Western Long Island Sound, Rye, New York.**

(a) *Location.* The following area is a safety zone: All waters of Western Long Island Sound within a 360 yard radius of the fireworks barge, in approximate position 40°56'34"N 073°41'23"W (NAD 1983), approximately 450 yards west of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on September 25, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a US Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 18, 1999.

R.E. Bennis,

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 99-22175 Filed 8-23-99; 5:08 pm]

BILLING CODE 4910-15-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 272**

[FRL-6423-8]

**Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to

incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference the Oklahoma authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into the CFR the currently authorized State hazardous waste program in Oklahoma. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. In addition, today's document corrects technical errors made in the table of authorities published in the September 22, 1998 (63 FR 50528) authorization notice for Oklahoma.

**DATES:** This action is effective on October 25, 1999 without further notice unless EPA receives relevant adverse comments by September 27, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments and inform the public that the rule will not take effect. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of October 25, 1999 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Written comments referring to Document Number OK99-2 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone (214) 665-8533. Copies of Oklahoma program revisions and materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, Phone number: (405) 702-7180 and EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 75202, Phone number: (214) 665-6444.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multi-Media Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

**SUPPLEMENTARY INFORMATION:**

**I. Corrections**

*A. Corrections to the September 22, 1998 (63 FR 50528) Authorization Document*

There were typographical and effective date errors in the table published as part of the September 22, 1998 (63 FR 50528) authorization document for Oklahoma. The affected entries for that table are as follows:

- ✓1. All references to "Sec. 2-7-104" are corrected to "Sec. 2-2-104";
- 2. All references to the permanent effective date of "June 1, 1997" are corrected to "June 2, 1997";
- ✓3. Specific to Checklist 137 (Item 3), a. the reference to "Sec. 2-7-107(10)" is corrected to "Sec. 2-7-107A(10)"; b. the phrase "and (60 FR 242) January 3, 1995" should be inserted after "September 19, 1994";
- 4. Specific to Checklist 140 (Item 5), the phrase "and (60 FR 25619) May 12, 1995" should be inserted after "April 17, 1995";
- 5. Specific to Checklist 141 (Item 6), the reference to "emergency effective date 1, 1996" is corrected to "emergency effective date August 1, 1996."

**II. Incorporation By Reference**

*A. Background*

Effective December 13, 1993 (58 FR 52679) and July 14, 1998 (63 FR 23673), EPA incorporated by reference Oklahoma's then authorized hazardous waste program. Effective November 23, 1998 (63 FR 50528), EPA granted authorization to Oklahoma for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Oklahoma.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of Hazardous Waste and Solid Waste Amendments of 1984 (HSWA), Public Law 98-616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the CFR whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally

approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma Hazardous Waste Program for which authorization approval has been granted by EPA.

#### *B. Oklahoma Authorized Hazardous Waste Program*

The EPA is revising the incorporation by reference of the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1851(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b)(2) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's Hazardous Waste Program are not part of the Federally authorized State program. These non-authorized provisions include:

- (1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i)); and
- (2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(b)(3) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Oklahoma has adopted but is not authorized for the Federal rule regarding delisting published on July 15, 1985 (50 FR 28702); and the Federal rules published in the FR on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); February 18, 1992 (57 FR 5859); December 6, 1994 (59 FR 62896); May 19, 1995 (60 FR 26828); and June 29, 1995 (60 FR 33912). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:200-3-2(2) through 252:200-3-2(11) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's FR document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting a Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in § 272.1851(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Oklahoma hazardous waste regulations incorporated by reference at § 272.1851(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

#### *C. HSWA Provisions*

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a

HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

### **III. Administrative Requirements**

#### *A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this rule from the requirements of E.O. 12866.

#### *B. Executive Order 13045*

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks," applies to any rule that: (1) the OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

#### C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the OMB a description of the prior consultation and communications the agency has had with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or

tribal governments in the aggregate, or the private sector. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. Costs to State, local and/or tribal governments already exist under the Oklahoma program, and today's action does not impose any additional obligations on regulated entities. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Oklahoma's requirements which EPA already authorized under 40 CFR part 271. Small governments are not subject to any additional significant or unique requirements by virtue of today's action.

#### E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's codification does not impose any additional burdens on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this codification will not have a significant economic impact on a substantial number of small entities.

This codification incorporates by reference Oklahoma's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### G. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 272**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1999.

**Jerry Clifford,**

*Acting Regional Administration, Region 6.*

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

**PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS**

1. The authority citation for part 272 continues to read as follows:

**Authority:** Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

**Subpart LL [Amended]**

2. Subpart LL is amended by revising § 272.1851 to read as follows:

**§ 272.1851 Oklahoma State-Administered Program: Final Authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for Base program effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998, and November 23, 1998.

(b) State Statutes and Regulations.

(1) The Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(ii) The EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2-2-104, 2-7-102, 2-7-104, 2-7-105 (except 2-7-105(27), 2-7-105(29) and 2-7-105(34)), 2-7-106, 2-7-107, 2-7-108(B)(2), 2-7-110(A), 2-7-113.1, 2-7-115, 2-7-116(A), 2-7-116(G), 2-7-

116(H)(1), 2-7-123, 2-7-126, 2-7-129, 2-7-130, 2-7-131 and 2-7-133.

(ii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, section 252:200-1-1(b); subchapter 11, section 252:200-11-2; and subchapter 13, sections 252:200-13-1 and 252:200-13-3.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200-3-2(1), 252:200-3-4(b)(1)-(3) and 252:200-3-4(b)(16).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2-7-119 and 2-7-121.

(ii) The Oklahoma Administrative Code Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 8.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 13, section 252:200-13-4; subchapter 17; and 252:200 appendices B and C.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at § 272.1851(b)(1), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Delisting .....	50 FR 28702: Amendments to 260.22(a) through 260.22(e).	07/15/85
Toxicity Characteristics; Hydrocarbon Recovery Operations .....	55 FR 40834, 56 FR 3978, 56 FR 13406.	10/05/90, 02/01/91, 04/02/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants .....	56 FR 5910 .....	02/13/91
Administrative Stay for K069 Listing .....	56 FR 19951 .....	05/01/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations.	56 FR 66365 .....	12/23/91
Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable.	57 FR 5859 .....	02/18/92
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Rules 154.1 and 154.2).	59 FR 62896, 60 FR 26828 .....	12/06/94, 05/19/95
Removal of Legally Obsolete Rules .....	60 FR 33912 .....	06/29/95

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma, signed by the EPA Regional Administrator on August 4, 1998, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization," signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November

6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; and April 15, 1997, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto

are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Oklahoma" to read as follows:

#### Appendix A to Part 272—State Requirements

\* \* \* \* \*

##### Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, effective August 30, 1996, sections 2-7-103, 2-7-108(A), 2-7-108(B)(1), 2-7-108(B)(3), 2-7-108(C), 2-7-110(B), 2-7-110(C), 2-7-111(A), 2-7-111(B) (except the last sentence and the phrase, "recycling" in the first sentence), 2-7-111(C)(2)(a) (except the phrase "Except as provided in subparagraph b of this paragraph" and the word "recycling" in the first sentence), 2-7-111(D), 2-7-111(E) (except the word "recycling" in the first sentence), 2-7-112, 2-7-116(B) through 2-7-116(F), 2-7-116(H)(2), 2-7-118(A), 2-7-124, 2-7-125 and 2-7-127.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526.

The regulatory provisions include:

The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, sections 252:200-1-1(a) and 252:200-1-2; subchapter 3, sections 252:200-3-5 and 252:200-3-6; subchapter 5, sections 252:200-5-3 and 252:200-5-5; subchapter 7, sections 252:200-7-1 through 252:200-7-4; subchapter 9 (except 252:200-9-2, 252:200-9-6 and 252:200-9-7); subchapter 11, sections 252:200-11-1 (except the phrases "or off-site recycling" and "(TSDRs)"), 252:200-11-3(a) (except the word "recycling"), 252:200-11-3(b) through 252:200-11-3(d), 252:200-11-4(a)(1) (except the phrases "Except as otherwise provided in this section" and "or recycling"), 252:200-11-4(a)(5) (except the phrase "For the purposes of this section"), 252:200-11-4(b) through 252:200-11-4(e); and subchapter 13, sections 252:200-13-2 introductory paragraph, 252:200-13-2(1) and 252:200-13-2(2) first sentence.

The Oklahoma Administrative Code Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200-3-1, 252:200-3-2 (except 252:200-3-2(1)) and 252:200-3-4(a) and 252:300-3-4(b)(4)-(15); subchapter 5, sections 252:200-5-1, 252:200-5-4 and 252:200-5-6; and subchapter 9, section 252:200-9-2.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101

State Capitol, Oklahoma City, Oklahoma 73105.

\* \* \* \* \*

[FR Doc. 99-21936 Filed 8-25-99; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[CC Docket No. 95-116; FCC 99-151]

#### Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy statement.

**SUMMARY:** This document addresses issues raised on reconsideration of the First Report and Order relating to interim number portability. First, the Commission affirms its earlier conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The Commission denies the request that these cost recovery guidelines be applied retroactively. The Commission also affirms its earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The Commission also clarifies issues relating to terminating access charges, billing system modifications, and certain cost recovery allocators, as each of these issues relates to interim number portability.

**DATES:** Effective September 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Lien or Janet Sievert at (202) 418-1520, Competitive Pricing Division, Common Carrier Bureau.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Fourth *Memorandum Opinion and Order on Reconsideration* in CC Docket No. 95-116, *In re Telephone Number Portability*, FCC 99-151, adopted June 23, 1999 and released July 16, 1999. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW., Room CY-A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231

20th St. NW., Washington DC 20036; (202) 857-3088.

#### Analysis of Proceeding

##### I. Introduction

The Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605 (July 25, 1996) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. *In re Telephone Number Portability*, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*First Report and Order*). Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. 251(b)(2). Section 251(e)(2) provides that "the costs of establishing \* \* \* number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. 251(e)(2). The Communications Act of 1934, as amended ("the Act" or "the 1996 Act") defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. 153(30). In the *First Report and Order*, the Commission determined, among other things, that it has authority under section 251 to promulgate rules regarding long-term and currently available (or "interim") number portability, as well as to establish cost recovery methods for each.

Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*. Nineteen parties filed oppositions to or comments on the petitions, and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280 (April 15, 1997) in this proceeding, addressing a number of these issues. *In re Telephone Number Portability*, CC Docket 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997). A *Second Memorandum Opinion and Order on Reconsideration*, 63 FR 68197 (Dec. 10, 1998) clarified that all LECs must discontinue using interim number portability in areas where a long-term number portability method has been implemented. *In re*