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RULES AND REGULATIONS

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 1. OSRC OPERATIONS

630:1-1-1. Purpose; construction of rules

The rules of this chapter are adopted pursuant to Title 82 O.S. Section 1451–1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating the administration of the Scenic Rivers Area for the Flint Creek and the Illinois River Scenic River Areas and those portions of Barren Fork Creek within Cherokee County. To the end that these objectives be obtained, the rules of this chapter shall be given a fair and impartial construction and under no circumstances shall they be construed to deprive or limit the commission of any powers, duties and jurisdiction otherwise conferred by law.

630:1-1-2. Severability of rules; rules cumulative; cooperation with other agencies

Nothing within the rules of this chapter shall be read, interpreted, understood, or applied so as to affect the validity and enforceability of any additional requirements, rules, or regulations of any other governmental entity, public agency, or instrumentality which may be otherwise applicable to those transactions, conduct, and facilities regulated herein. The rules of this chapter shall be deemed cumulative and supplemental to all other applicable rules and regulations authorized by law. In the enforcement of the rules of this chapter, the Oklahoma Scenic Rivers Commission shall work in cooperation with all other interested or concerned state and federal agencies to the extent to which they may be officially interested.

630:1-1-3. Revising rules

The Commission may adopt, amend or repeal a rule of its own initiative, at the request of the Administrator or upon a rulemaking petition, all pursuant to the Oklahoma Administrative Procedures Act (the "APA," 75 O.S. § 250 et seq.).

630:1-1-4. Rulemaking petitions

(a) Anyone may petition the OSRC requesting the promulgation, amendment, or repeal of an OSRC rule. Rulemaking petitions shall be in writing, shall identify the text of the particular rule(s) involved, include a brief statement of the issues raised by the rulemaking which cause the request to be made, include a statement of the petitioner's personal interest in the rulemaking, describe how the request would affect those interests and the interests of others, and describe any communications with OSRC members or employees about the rulemaking.

(b) The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

(c) Should any petition be granted in the discretion of the Commission, in whole, or in part, the petition as granted shall be referred to the Administrator and thereafter be treated as in the case of all rule-making and the rulemaking procedures of the APA shall apply.

630:1-1-5. Rulemaking hearings

(a) **Conduct.** A Commissioner, the Administrator or his designee may conduct a rulemaking hearing when required by the APA. Notice shall be given as provided in the APA. A rulemaking hearing may be conducted separately from, or as part of, any meeting of the Commission. Rulemaking hearings shall be informal, but conducted in an orderly manner.

(b) **Comments.** Members of the public may comment orally at the hearing or submit written comments by the close of a specified comment period, or both. The person conducting the hearing may set reasonable time limits on oral presentations, may exclude repetitive or irrelevant comments, and shall keep a record of the proceeding.

(c) **Summary of comments.** If the rulemaking hearing is not part of a Commission meeting, then the person conducting the rulemaking hearing shall prepare a fair and accurate summary of relevant comments received, and provide the summary to the Commission before the Commission takes final action on the proposed rules.

(d) **Continuation.** The person conducting the rulemaking hearing or the Commission may continue the hearing. Any continuation shall be announced orally at the rulemaking hearing and shall not require publication.

630:1-1-6. Minimum local government standards

The OSRC is authorized to prepare and establish minimum standards for the planning and other ordinances and rules of local government agencies whose political boundaries cross scenic rivers or lands adjacent and contiguous to scenic rivers. See, 82 O.S. § 1461, paragraph G.

(1) Before taking comment on, adopting or recommending any local government planning standard, the OSRC shall give notice of the proposed action to the public and to each local government agency that may be affected by such standard, and shall generally follow the procedures for rulemaking hearings (OAC 630-1-1-5) insofar as they may be applicable.

(2) Minimum local government standards, while not rules of the Commission, may be adopted by the Commission and may be treated procedurally as if they were rules and subject to petitions for rulemaking and for declaratory rulings. The OSRC shall notify any local government agency that may be affected of the filing of such a petition and allow the agency to comment and intervene if the OSRC convenes an individual hearing.

630:1-1-7. Notice of violation

Whenever the OSRC has reason to believe a person may be in violation of its rules, or its minimum local government standards, the OSRC may give notice of the violation to the person, describe the specific rules or standards involved, describe the acts or omissions that are in violation, and request compliance with the rules or standards within 15 days or some stated schedule of compliance. Except in an emergency, the OSRC shall not commence an individual hearing on the matter if compliance, or a schedule of compliance to correct the violation, has been made within the stated compliance period.

630:1-1-8. The OSRC

(a) **The agency.** The OSRC is an agency of the State of Oklahoma, consisting of a seven-to-fifteen-member governing body of Commissioners (the Commission), an Administrator, support staff and River Rangers. The OSRC implements the Oklahoma Scenic Rivers Act, 82 O.S. Section 1451 and following.

(1) **Officers.** At its first regular meeting each year, the Commissioners shall elect a chair, a vice-chair and a secretary. Officers may succeed themselves once to serve two consecutive years, as provided in the Oklahoma Scenic Rivers Act.

(2) **Commissioner attendance.** As required by the Oklahoma Scenic Rivers Act, any commissioner who misses three regular meetings in succession, without absence excused by the chair,

is subject to replacement. The OSRC will look to the appointing authority for the commissioner being replaced to provide the replacement.

- (b) **Principal office.** The principal office of the OSRC is 15971 Highway 10, Tahlequah 74464 (which is 2 miles northeast of Tahlequah on State Highway #10). Its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292, and its office hours are 8 to 4:30, Monday through Friday except state holidays.
- (c) **Communicating with OSRC.** Communications to the OSRC shall be directed to the Administrator. Communications to the Commission may be made through the Administrator.
- (d) **Meetings.** The Commission meets at such times and places as it deems necessary, with a regular meeting at least once each quarter of each calendar year. Meetings of the Commissioners are open to the public except as provided in the Oklahoma Open Meetings Act, 25 O.S. Sections 301 and following.
 - (1) **Regular meetings.** The OSRC must notify the Secretary of State by December 15th of each year of the date, time and place of regularly scheduled meetings for the following calendar year.
 - (2) **Special meetings.** Special meetings may be called by the chair or the vice-chair in their discretion, and if three commissioners so request. The OSRC must, at least 48-hours in advance, notify the Secretary of State, and mail to each person who has made a written request to be notified of OSRC meetings and has paid any applicable fees.
 - (3) **Agendas.** Meeting agendas are to provide factual explanation of matters to be taken up, and shall reserve time during the meeting for public comments on agenda action items. Agendas shall be developed by the Administrator with the advice of the Chair. Time permitting, an agenda shall be sent to each Commissioner in advance of a regularly scheduled meeting. The Commissioners may, by majority vote during a meeting, continue an agenda item or specify a new agenda item for another meeting. The chair may set reasonable time limits on oral comment and may accept written submittals. An agenda is to be posted at the OSRC or other place of meeting at least 24-hours in advance, not including weekends and state holidays.
 - (4) **Minutes.** Minutes or a record shall be made of all Commission proceedings to show members present and absent, matters considered, actions taken and the vote of each member on each action.
- (e) **Open records.** Records of the OSRC shall be open to any person for inspection or copying pursuant to the Oklahoma Open Records Act, 52 O.S. Section 24A.5 and following.
- (f) **Committees.** The Commission may appoint ad hoc committees to assist the OSRC for any lawful purpose.

CHAPTER 3. ELECTION PROCEDURES

630:3-1-1. Purpose

The rules of this Chapter are adopted pursuant to paragraph D of 82 O.S. Section 1461. They establish the election procedures for elected commissioners, the costs of which are borne by OSRC.

630:3-1-2. Notice of filing period

The OSRC shall publish notice of the filing period for elected-commissioner candidates in a newspaper of general circulation, serving the respective counties affected, at least twice with an interval of seven (7) days during the last week of October and the first two weeks of November, and/or by posting copies of such notice in at least five (5) public places within each county affected by the elections.

630:3-1-3. Filing by candidates

Candidates shall file at the principal office of the OSRC a completed "Declaration of Candidacy" form provided by the OSRC between 8:00 a.m. and 4:30 p.m., Monday through Wednesday of the third week in November in the year that positions become available.

630:3-1-4. Notice of election

If there are two or more candidates for an office, the OSRC shall publish notice of elections in a newspaper of general circulation, serving the respective counties affected by the elections, once a week

for two consecutive weeks prior to election day. The notice shall list the names of the candidates, voting hours, election date and voting locations. If there is no candidate the Commission may then decide whether and when to conduct a special election.

630:3-1-5. Date and place of election

Elections for non-appointed members of the Commission shall be held on the first Tuesday in December, from 7 a.m. to 7 p.m., as said positions become available. The OSRC shall provide at least one polling place in each of the counties affected by the election.

630:3-1-7. Qualification for voting in election

To qualify to vote in commissioner elections, all registered voters who also wish to vote for a candidate must reside, own real property or own a residential structure within 660 feet of a Scenic River, as specified in Title 82, Section 1461. To qualify, each registered voter must sign an OSRC affidavit for voter-qualifications in person or by mail with the OSRC at least 24 days before an election commences. Once registered, by submitting a ballot, registered voters certify that they remain eligible to vote.

630:3-1-9. Special election

Should an elected-commissioner vacancy occur with more than 90 days remaining in its term, the OSRC may conduct a special election to fill the remainder of the vacant term.

(1) The OSRC shall publish notice of a special election, the filing period (which shall be the second week after the week in which notice was first published) and the location in the same manner as described in rule 630:3-1-2, above.

(2) Candidates shall file during the week specified in the notice in the same manner as described in rule 630:3-1-3, above.

(3) The OSRC shall publish notice of the special election, which shall be held on the third Tuesday following the end of the filing period, in the same manner as described in rule 630:3-1-4, above.

630:3-1-10. Loyalty Oath and Oath of Office for new members

Newly elected members of the Commission shall receive an Oath of Office and Loyalty Oath to be administered at the next Commission meeting following the election.

630:3-1-13. Prohibitions

(a) Absentee voting shall not be permitted in Commission elections.

(b) Except for OSRC staff and notices, no person shall campaign, post campaign literature or poll voters within 300 feet of any ballot box during voting hours.

630:3-1-16. Counting of votes

(a) Ballots shall be collected, counted and delivered to the principal office of the OSRC by the first Friday after the election.

(b) In the event of a tie vote for the winner, the Administrator shall notify each candidate of that fact and of the date and time for a recount. Each candidate, or their designee, may be present and observe the recount. If the recount yields a tie, the Administrator will select the winner by lot.

(1) The Administrator shall, in full view of those present, clearly write or print the name of each tied candidate on a separate piece of paper of equal size. The papers shall be folded in half one time so that the written names are not visible and then placed into a container chosen by the Administrator.

(2) The Administrator shall draw, or may designate an OSRC staff member to draw, one paper, and the name of the person appearing on the first drawn paper shall be declared the winner.

(c) At the conclusion of the ballot counting, the Administrator shall notify each candidate of the results, including the numbers of ballots cast for each candidate, and post the results at the principal office.

630:3-1-17. Election challenges

(a) Any candidate whose name appeared on an election ballot may, at any time before 4:30 p.m. on the second Friday after an election, contest the announced results of the election by filing a written petition with the OSRC, and mailing a copy to each candidate. The petition shall be treated under rule 630:4-1-6

as for an interpretive opinion about the results of the election. Nothing in this rule shall be construed to prohibit any proceedings in district court, which are otherwise authorized by law, alleging irregularities or fraud in an election.

(b) If the petition seeks a recount, the Administrator shall, within five days after the petition is filed, conduct the recount, post the results at the principal office and notify the candidates and the Commission in writing. Ties shall be processed as in paragraph (b) of rule 630:3-1-16, above.

(c) If the petition alleges some fraud or other irregularity, the Commission may order a new election only if the Commission finds, based on the record of the hearing, that fraud or a procedural irregularity materially affected the outcome of the election.

630:3-1-18. Certification of results

(a) If no petition is filed by the second Friday after an election, then the Administrator shall certify the results to the Commission.

(b) If a petition challenging the election is timely filed, then the Commission shall certify the results after determination under rule 630:4-1-6.

(c) Notice of the certified results shall be posted in public view at the OSRC principal office and mailed to the candidates within 24 hours after certification.

630:3-1-21. Spoiled ballots

Should a voter spoil any ballot, the voter shall write "spoiled" and print and sign his or her name on the ballot and return it to the clerk to exchange for a fresh ballot. Spoiled ballots shall not be counted.

CHAPTER 4. HEARING PROCEDURES, PRACTICES, AND APPEALS

SUBCHAPTER 1. GENERAL PROVISIONS

630:4-1-1. Purpose

The rules of this Chapter are adopted pursuant to Title 82 O.S. Sections 1451 - 1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating administration of the Scenic Rivers Area for the Flint Creek and the Illinois River and those portions of Barren Fork Creek within Cherokee County.

630:4-1-2. Scope

The rules of this chapter govern all hearing proceedings for individual hearings before the OSRC. Exhaustion of these proceedings is required prior to resort to relief of the Oklahoma state district courts.

630:4-1-3. Authority

Individual hearings in the name of the Commission are conducted pursuant to Article II of the Oklahoma Administrative Procedures Act (75 O.S. Sections 308a and following, the "APA"), to the rules of this chapter and, where additional guidance is needed, generally to the civil procedures followed by the Oklahoma district courts.

630:4-1-4. Hearing sites

Unless the act requires otherwise, hearings shall be held in a location established by the hearing examiner or the Commission. However, due regard shall be given to the convenience of the parties or their representatives and witnesses.

630:4-1-5. Computation of time

Except as otherwise provided in the regulations of this chapter, computation of time is based upon the following:

- (1) Except as otherwise provided by order, computation of time is based upon calendar days.
- (2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal

holiday on which the OSRC is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(3) Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

630:4-1-6. Interpretive opinion about a rule or order

Any person who alleges that any OSRC rule or order interferes with or impairs, or threatens to interfere with or impair, their legal rights may petition the OSRC to request a declaratory ruling about the applicability of the rule or order. The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

(1) **Form and content of petition.** Petitions for a declaratory ruling shall be in writing, shall identify the particular rule(s) involved, include a brief statement of the issues raised by the rule(s) which cause the request to be made, include a statement of the petitioner's personal interest in the ruling, describe any communications with OSRC members or employees about the issues, and pose the specific question(s) to be answered and the relief sought.

(2) **Determination.** To address a petition for declaratory ruling, the Commission may rule on the petition, refer the petition to a hearing examiner or decline to rule on the petition. Rulings shall state the findings of fact and conclusions of law upon which they are based. If the OSRC does not make a ruling or begin an individual proceeding on the petition within 90 days after the petition is filed, the petition shall be deemed to have been denied. If the OSRC begins an individual proceeding on the petition, it shall offer an opportunity for a hearing to the petitioner. After the OSRC issues a ruling or a final order, the OSRC shall mail a copy of the ruling or final order to the petitioner by certified mail, return receipt requested.

(3) **Judicial review.** A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the APA, 75 O.S. § 307.

630:4-1-7. Conduct and record of individual hearings

(a) **Open to public.** The Commission or a designated hearing examiner shall conduct every individual hearing before the OSRC. All hearings shall be open to the public unless a protective order is entered to uphold confidentiality laws; however, upon motion of a party, the Commission or the hearing examiner may exclude from the hearing room any witness not at that time under examination. Neither a party nor their attorney may be excluded.

(b) **Record.** All testimony shall be taken on the record unless otherwise designated by the Commission or the hearing examiner. The OSRC shall make an electronic recording of the hearing proceedings that shall be the official record. The recording will not be transcribed as a matter of course. Copies of the recordings shall be provided to a party on written request. The cost of transcription, if done, shall be borne by the party having the recording transcribed.

(c) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. The original transcript shall be filed with the OSRC. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(d) **Maintenance of the record.** The record of a hearing and the file containing the notices and the pleadings will be maintained by the OSRC. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Commission or the hearing examiner upon receipt.

(e) **Designation on appeal.** On an appeal to district court, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the APA.

SUBCHAPTER 5 – INDIVIDUAL HEARINGS

630:4-5-1. "Individual hearing" defined

Individual hearings are hearings held on matters directly affecting the interests of an individual person or persons and resulting in the issuance of an Order. An individual hearing is an “individual proceeding” as defined in the APA, 75 O.S. § 250.3 (7). Examples of individual hearings include hearings on revocation of licensing and violations of OSRC rules.

630:4-5-2. Appointment of hearing examiner

The Administrator may appoint hearing examiners to conduct individual hearings from the OSRC staff or retain local or government counsel.

630:4-5-3. Filing of documents

- (a) Any initial pleadings in a proceeding to be conducted or being conducted by a hearing examiner under these rules shall be filed, by hand or by mail, with the OSRC.
- (b) Any person filing initial pleadings with the OSRC or a notice of appeal shall furnish an original and one copy. Any person filing other documents with the OSRC shall furnish only an original.
- (c) Any person who has initiated an individual hearing under these rules before the OSRC or filed a notice of appeal shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgement by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by party in any proceeding.
- (d) The effective filing date for documents initiating proceedings shall be the date the document is received by the OSRC.

630:4-5-4. Petition, service and request for hearing

- (a) **Petition.** If the Administrator or the Commission determines that action should be taken to enforce the rules or minimum local government standards of the OSRC, the Administrator may initiate an individual hearing pursuant to the APA by filing a petition with the OSRC and by serving the petition on each respondent. The petition shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference. The petition shall provide that the action shall commence and become effective fifteen (15) calendar days after receipt of the petition by the Respondent, unless the Respondent timely files a written request for a hearing with the OSRC.
- (b) **Service.** The petition shall be served on each respondent personally or by registered or certified mail, return receipt requested. Substitute service of a petition may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition were then mailed first class mail to the last known address of the respondent. All subsequent documents shall be served personally or by first class mail. Service shall thereafter be made on attorneys who have entered an appearance for a party. Service of a petition is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.
- (c) **Request for hearing.** A request for hearing must set forth objections to the petition and will be timely filed if said request is in writing and postmarked or hand delivered to the OSRC within fifteen (15) calendar days of the date the party received the petition. If a timely written request for a hearing is not filed by the Respondent, the allegations in the petition shall be deemed confessed by the Respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before the Commission or a hearing examiner at least fifteen (15) days after the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

630:4-5-5. Intervention

- (a) Any person may petition for leave to intervene at any stage of a proceeding before the OSRC.

- (b) A petitioner seeking leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and how the interest is or may be adversely affected.
- (c) The hearing examiner or the OSRC shall grant intervention where the petitioner:
 - (1) Has a statutory right to initiate the proceeding in which he wishes to intervene; or
 - (2) Has a protected interest which is or may be adversely affected by the outcome of the proceeding or the proceeding involves minimum local government standards under OAC 630:1-1-6.
- (d) If neither (1) or (2) of subsection (c) of this section apply, the hearing examiner shall consider the following in determining whether the intervention is appropriate:
 - (1) The nature of the issues;
 - (2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
 - (3) The ability of the petitioner to present relevant evidence and argument; and
 - (4) The effect of intervention on the OSRC's implementation of its statutory mandate.
- (e) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervener wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing examiner.

630:4-5-7. Motions

- (a) Except for oral motions made in proceedings on the record, or where the hearing examiner otherwise directs, each motion shall be in writing and shall contain a concise statement of supporting grounds.
- (b) Unless the hearing examiner orders otherwise, any party to a proceeding in which a motion is filed shall have fifteen (15) days from service of the motion to file a response.
- (c) Failure to make a timely motion or to file a response may be construed as a waiver of objection.
- (d) The hearing examiner shall rule on all motions as expeditiously as possible.

630:4-5-8. Waiver of right to hearing

Any person entitled to a hearing before a hearing examiner may waive such right in writing.

630:4-5-9. Powers of hearing examiners

- (a) Under the regulations of this subchapter, a hearing examiner may:
 - (1) Administer oaths and affirmations;
 - (2) Issue subpoenas;
 - (3) Issue appropriate orders relating to discovery;
 - (4) Rule on procedural requests or similar matters;
 - (5) Hold conferences for settlement or simplification of the issues;
 - (6) Regulate the course of the hearing and govern the conduct of participants;
 - (7) Rule on offers of proof, receive relevant, material and non-repetitious evidence, and make inquiries of parties and witnesses to develop fairly the facts and issues;
 - (8) Take other actions authorized by these regulations and the act;
 - (9) Require or allow the filing of briefs, proposed findings of fact and conclusions of law by the parties;
 - (10) Issue final orders for parties in default, for withdrawals of petitions and for settlements; and
 - (11) Make or recommend decisions, issue proposed orders and close the record.
- (b) A hearing examiner may order a prehearing conference:
 - (1) To simplify and clarify issues;
 - (2) To receive stipulations and admissions;
 - (3) To explore the possibility of agreement disposing of any or all of the issue in dispute; and
 - (4) For such other purposes as may be appropriate.
- (c) Except as otherwise provided in the regulations of this subchapter, the jurisdiction of the hearing examiner shall terminate upon:

- (1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;
- (2) The issuance of an order of the Commission granting a petition for review; or
- (3) The expiration of the time period within which a petition for review or an appeal to the Commission may be filed.

630:4-5-10. Notice of hearing

A hearing examiner shall give notice in writing to the parties of the time, place, and nature of any hearing.

630:4-5-11. Certification on interlocutory ruling

Upon motion or upon the initiative of the hearing examiner, the examiner may certify to the Commission a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance the ultimate disposition by the examiner.

630:4-5-12. Summary decisions

- (a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of the case.
- (b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.
- (c) A hearing examiner may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits show that:
 - (1) There is no disputed issue as to any material fact; and
 - (2) The moving party is entitled to summary decision as a matter of law.
- (d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the hearing examiner shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

630:4-5-14. Orders and decisions by hearing examiner

- (a) Except as may otherwise be required by the APA, the OSRC has the burden of going forward to make a prima facie case for the petition, and issues are decided by substantial evidence.
- (b) An order or decision rendered by a hearing examiner disposing a case shall be delivered or mailed to each respondent, and shall incorporate:
 - (1) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law and discretion presented on the record;
 - (2) An order granting or denying relief; and
 - (3) A notice that the order or decision of the hearing examiner will be issued as a final order unless, within 15 days after the date it was mailed to them, they mail or deliver to the OSRC a written request for review by the Commission. The appeal to the Commission must state facts, reasons and the specific relief requested.

630:4-5-15. Effect of order or decision by hearing examiner

- (a) An order or decision by the hearing examiner shall be made final if that order or decision is not timely appealed to the Commission. If not timely appealed to the Commission, then the Administrator shall sign the order or decision by the hearing examiner as a Final Order and mail a copy to each respondent by certified mail, return receipt requested.
- (b) If an order or decision by a hearing examiner is timely appealed to the Commission, then the Commission shall at its next meeting take up the matter, and allow each party an opportunity to present arguments why the order or decision should not become a final order.

(c) After hearing arguments, the Commission may affirm the order or decision of the hearing examiner, or may for good cause modify the decision or order of the hearing examiner and issue a revised order with findings of fact and conclusions of law, or may refer the order or decision back to the hearing examiner for a hearing on specific matters. The Administrator shall mail a copy of a Final Order by the Commission to each respondent by certified mail, return receipt requested.

(d) A party may appeal a Final Order as provided in the APA.

630:4-5-16. Certification of record

Within five (5) days after an order or decision by a hearing examiner has been rendered, the hearing examiner shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing to the OSRC. The tape of the hearing shall not be transcribed unless an appeal of the order or decision is made to the Commission pursuant to Subchapter 13 of this chapter.

630:4-5-17. Discovery

Following the initiation of a proceeding and with permission of the hearing examiner the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing. Discovery shall generally be conducted according to the Oklahoma Discovery Code, 12 O.S. § 3224 and following.

CHAPTER 10. LICENSING AND USE PERMITS
SUBCHAPTER 1. GENERAL PROVISIONS AND LICENSING

630:10-1-1. Purpose

The purpose of this Chapter is to establish a system for licensing of commercial float operations and commercial flotation devices and the collection of commercial and private fees to preserve the scenic rivers in their natural state and to preserve the health and safety of the patrons.

630:10-1-2. Authority

The rules and regulations set forth in this chapter are adopted pursuant to the authority granted the Oklahoma Scenic Rivers Commission (OSRC) in 82 O.S.1981 Section 1451, et. seq., as amended.

630:10-1-3. Definitions

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

"**Commercial float operators (or operations)**" means any person or business that rents or leases flotation devices commercially to the public for use upon scenic rivers within the jurisdiction of the OSRC.

"**Flotation device**" means a canoe, boat, kayak, raft, inner tube, or other similar device suitable to transport one or more individuals on a scenic river.

"**Scenic rivers**" means the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County, which are within the jurisdiction of the Scenic Rivers Commission ("OSRC") pursuant to 82 O.S. § 1461(B).

630:10-1-5. Commercial licensing procedures, requirements, and annual use fees

(a) The statutory annual use fee per commercially owned and operated flotation device shall be paid at the time of licensing.

(b) The license required on commercial float operations shall be an annual license covering a calendar year. Licenses shall be properly displayed on each flotation device prior to its use on the river.

(c) Applications for new float licenses, not previously held by a commercial float operator, may be filed with the OSRC in January of each year. Commercial float operators shall file applications to renew their existing licenses during the month of September each year.

(1) Any commercial float operator that fails to submit a renewal application in September shall only be entitled to renew 85% of the previous number of licenses, and the other 15% shall be released in

January of the following year as new licenses. No renewal application shall be accepted after November.

- (2) Any commercial float operator that applies to renew his licenses must pay the statutory annual use fees, and pay or complete any outstanding OSRC obligations, by the last working day of December or the application shall be denied and the number of licenses released as new licenses in January.
- (3) Any person may apply in January for new commercial flotation device licenses which may be available, up to the number provided in 630:10-1-7. The OSRC shall process the applications, divide the numbers of licenses among the proper applications and issue them in February.
- (4) Except for temporary licenses, new licenses shall not be issued unless the number of licenses renewed in the previous year was below the number authorized in 630:10-1-7.
- (d) Application for such licenses shall be made on the form prescribed by the OSRC which shall include:
 - (1) The name and address of the commercial float operation;
 - (2) The name and address of the owner or owners thereof;
 - (3) A description of lands owned or leased, and/or intended for use in the operation, including the launch and retrieval points;
 - (4) An inventory of usable flotation devices;
 - (5) A description of how the requirements of paragraph (h) of this section will be met; and
 - (6) An agreement to abide by all State laws and all OSRC rules and regulations.
- (e) Licenses shall be issued in such form as is prescribed by the Administrator, and shall be displayed on the right front (starboard bow) of flotation devices that have bows, or conspicuously on the outside surface area above the water line of flotation devices without a discernable bow.
- (f) Licenses granted by this Chapter shall be transferable only after application to and approval by the Administrator upon a finding that the transfer will not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.
- (g) The number of flotation devices to be licensed for commercial use shall be limited as provided in 630:10-1-7.
- (h) All commercial float operators must maintain clean and sanitary facilities, maintain in good working order their flotation devices offered for use, and also:
 - (1) Provide access to toilet facilities to the floating public.
 - (2) Provide trash bags and disposal information to all customers.
 - (3) Conspicuously post on business premises and at launch points warnings against tying flotation devices together, about trespass and safety, and that drunk and disorderly conduct is cause for arrest.
 - (4) All signs placed along the river corridor shall be informational in nature and shall comply to standards established by the OSRC.
 - (5) Display on each flotation device used the name of the enterprise and an identification number at least three (3) inches high and two (2) inches wide on both the right and left sides (port and starboard sides), or once if it has no sides.
 - (6) Provide reasonable assistance in river clean-up and navigational hazard removal in his float area at least once each week during all weeks his flotation devices are operated on the river.
 - (7) Provide, in each flotation device used, at least one wearable personal flotation device in good and serviceable condition for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it.
- (i) Non-profit youth organizations may elect to obtain temporary licenses for their flotation devices as commercial flotation devices provided they do not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.

630:10-1-6. Suspend or revoke license

(a) The OSRC retains the right to suspend or revoke the licenses of any commercial float operation after the OSRC makes a finding that:

- (1) The operation has engaged in a pattern of willful violation of OSRC rules and regulations;
- (2) The ecosystem of the river section within which the particular flotation device is authorized to float is, or is in danger of being, harmed by the number of flotation devices authorized and it is necessary for the protection of that section of the river to revoke a certain number of licenses;
- (3) The health and safety of individuals floating on the river is threatened by the number of flotation devices currently licensed to float on a particular section of the river; or
- (4) The commercial operator has failed to comply with licensing requirements of 630:10-1-5.

(b) Except in case of emergency as provided in the Oklahoma Administrative Procedures Act, the OSRC may make such a finding only after the commercial float operation has been given notice and the opportunity for a hearing.

630:10-1-7. Limitation on licensing of flotation devices

(a) It is the intent of the OSRC in issuing commercial flotation licenses to protect the ecosystem and environment and the aesthetic, scenic, historic, archaeologic, and scientific features of the scenic river areas as well as the public health and safety of individuals using the scenic river areas.

(b) It is the determination of the OSRC that at this time the scenic rivers cannot assimilate the damages to their ecosystems, environments, aesthetic, scenic, historic, archaeologic, and scientific features if more than 3900 licenses are issued. Further, the protection of public health and safety requires that the OSRC not grant additional licenses.

(c) The OSRC recognizes the current interests and property rights of persons with respect to flotation devices presently available for hire within its jurisdiction subject to the OSRC Commercial Float Area limitations provided hereinafter. The number of such devices shall be set at a maximum of 3,900 for the combined scenic river areas.

(d) Any licensing of flotation devices in excess of said 3,900 shall be subject to approval of the OSRC if the applicant reasonably demonstrates there will not be an adverse impact on the waterways within the jurisdiction of the OSRC. Such additional licensing shall be determined on the basis of density of current usage, number of licenses requested, and other considerations necessary for river protection.

(e) In the event the OSRC determines that the requested licenses may harm the ecosystem, environment, aesthetic, scenic, historic, archaeologic or scientific features of the section of the river for which the licenses are sought, so that the health and safety of individuals floating on the river may be threatened by the addition of new flotation devices, the OSRC shall deny the number of licenses requested over 3,900 that it deems to be necessary to protect the scenic rivers. Any license issued above 3,900 in any calendar year shall be temporary, for a stated period of time, and shall not be renewed during the annual licensing process.

(f) Since May 1, 1987, the Illinois River scenic river area has been divided into the following sections for commercial flotation operation and licensing purposes:

- (1) From the Arkansas-Oklahoma state boundary (Illinois River mile 0) southward to Round Hollow Public Access Area (Illinois River mile 27.7) shall be known as OSRC Commercial Float Area One (OSRC CFA One).
- (2) From Round Hollow Public Access Area (Illinois River mile 27.7) southward to the Comb's Bridge (Illinois River mile 36.1) shall be known as OSRC Commercial Float Area Two (OSRC CFA Two).
- (3) From Comb's Bridge (Illinois River mile 36.1) southward to and including the confluence of the Barren Fork Creek with the Illinois River shall be known as OSRC Commercial Float Area Three (OSRC CFA Three).

(g) During weekends and holidays in May through September only commercial float devices licensed for OSRC CFA Two may float in OSRC Commercial Float Area Two. However, upon customer request commercial float operations without licenses for OSRC CFA Two may allow up to 20 of their

commercial flotation devices during such times to combine a float in Commercial Float Area Two with their licensed area.

(h) The operation of a commercial flotation device within an OSRC Commercial Flotation Area in violation of 630:10-1-7, shall subject that commercial float operation to a fine not to exceed One Hundred Dollars (\$100.00). [82 O.S. Supp. 1991, Section 1470(A)].

630:10-1-9. Non-commercial fee procedures

(a) Private, non-commercial flotation devices and persons who use them are subject to such statutory fees that are in effect while they are floating on state-designated scenic rivers.

(b) The Administrator shall develop forms and procedures for the collection and administration of non-commercial fees.

(c) Businesses and commercial float operations ("collectors") may, on behalf of the OSRC, collect non-commercial fees and issue receipts or usage indicators when they are approved by the Administrator and use the current forms and procedures of the OSRC. Collectors shall remit the non-commercial fees they collect to the OSRC using the current forms and procedures. Collectors may retain a percentage of statutory non-commercial fees for administering the non-commercial fee process in the amount that is currently designated by the Commission but not more than 10%.

(d) River Rangers and the Administrator may require anyone using a non-commercial flotation device on or leaving the waters of a scenic, who does not establish that they are exempt from statutory fees, to either show a receipt for or pay the statutory non-commercial fee.

SUBCHAPTER 2. PUBLIC ACCESS AREAS

630:10-2-1. Definitions

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

"**Camping**" means any method used for remaining overnight in a public access area which includes, but is not limited to tents, vehicles, cots, and sleeping bags.

"**Campsites**" means a single site located within a public access area which has been designated as open to camping by the Administrator.

"**Public Access Areas**" means an area within the jurisdiction of the Commission which has been designated by the Administrator as open for use by the public for camping and day use activities under the terms and conditions of this subchapter.

630:10-2-2. Camping fees

(a) Camping shall only be allowed in campsites that are located within Public Access Areas and are designated by the Administrator.

(b) Camping fees shall be the same as the camping rates charged by the Oklahoma Tourism and Recreation Department. The OSRC shall post the current fee schedule. See, 82 O.S. § 1470(C).

(c) The regular camping fee shall be discounted 50%:

(1) where one or more campers are 62 years of age or older, as documented by a valid driver's license, state-issued identification card, or passport;

(2) where one or more campers are certified as totally (100%) disabled or blind, as documented by a Medicare card or other federal or state-issued instrument; or

(3) for youth groups that provide at least 25 hours each year of beneficial service to the environment such as tree planting, refuse clean up or wildlife habitat improvement, as approved by the Administrator.

(d) The Administrator may waive or suspend camping fees for certain periods in the public interest.

630:10-2-3. Time limits and extensions

(a) The duration of the authorized camping shall be noted on each camping receipt, based on the number of days paid for in advance.

(b) Camping within the same campsite or public access area for longer than 7 consecutive days is prohibited without prior written approval from the Administrator.

(c) The Administrator may grant extensions beyond the 7 consecutive day limit in writing after consideration of the extent of public access area use, the particular recreation season, and anticipated holiday or weekend occupancy.

(1) Persons receiving extended camping privileges shall be limited to specific campsites.

(2) Extensions shall be requested at least 48 hours prior to the date on which the extension would commence.

(d) Persons with a medical disability, who can verify that they are currently under a physician's care for such disability, may maintain the same campsite for periods longer than 7 days with prior written approval from the Administrator.

630:10-2-4. Use of public access areas

(a) No person shall camp in a campsite under the jurisdiction of the OSRC without paying the fee established by this section.

(b) Camping fee receipts shall be retained by campers for the duration of their stay and shall be available for review upon request of the Administrator, a Camp Host or a River Ranger.

(c) Camping fee receipts entitle the named holder to use a campsite for the duration indicated on the receipt under the conditions set forth in this section. All camping fee receipts are non-transferable.

(d) The daily fee covers use of campsites from 5:00 p.m. on the day of payment until 5:00 p.m. on the following day. Occupants shall vacate the campsite by removing their personal property from the campsite prior to 5:00 p.m. on the day they are scheduled to leave.

(e) The following activities are prohibited in all public access areas:

(1) Excavation or leveling of the ground.

(2) Hanging a propane or gas operated lantern on any tree or plant.

(3) Leaving refuse or human waste at a campsite after departure.

(4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except where otherwise designated.

(5) Creating or sustaining unreasonable noise at a campsite as determined by the Administrator or a River Ranger considering the nature and purpose of the actor's conduct, the impact on other users, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(6) Constructing permanent camping facilities or dwellings.

(7) Camping or parking vehicles outside of campsites and parking areas designated by the Administrator.

(8) Parking a vehicle in, blocking access to, or occupying any designated campsites without having first paid camping fees for that campsite.

(9) Using the utility services in a campsite or public access area without having first paid campsite or utility fees.

(10) Connecting more than one water, electrical or sanitary connection per campsite or connecting to a utility which exceeds its manufactured design or capacity.

(11) The placing or parking of 2 or more vehicles on any site not designed for more than one vehicle.

(12) Camping longer than duration of stay noted on the camping receipt or exceeding the time limits set forth in this subchapter without prior written approval from the Administrator.

(13) Entering or remaining in a public access area for any purpose other than camping or authorized day use activities, except fishing.

(14) Possession or use of fireworks or firearms in public access areas. The Administrator may authorize fireworks on the 4th of July.

(15) Fires may only be built in fire pits or cookers established by the Commission.

- (f) Day use of public access areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the Administrator.
- (g) Entering or remaining in a day use area during closed hours is prohibited for any purpose, except fishing.
- (h) Possession of an open container, or consumption, of alcohol (including 3.2 beer) is prohibited in seven public access areas: Round Hollow, Todd, US 62 Bridge Access on the Illinois River, US 412 Bridge Access on Flint Creek, Lake Francis Dam Public Access Site, US 59 Illinois River Bridge Crossing Access Area, and Carnes Ford Area.
- (i) Violations of OSRC regulations or state law may result in the suspension or revocation of camping authorization or day use privileges. Other penalties prescribed by law may also apply.

CHAPTER 15. PROTECTION OF NATURAL RESOURCES

630:15-1-1. Purpose

The purpose of this Chapter is to establish standards for the Oklahoma Scenic Rivers Commission ("OSRC") to protect the natural resources of the scenic rivers located within its current operating area, which includes the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County (referred to in this Chapter as "scenic rivers").

630:15-1-6. Recreational vehicles

No vehicle shall drive upon the scenic river streambeds for purposes of enjoyment or recreation.

630:15-1-7. Glass and Styrofoam containers prohibited

Containers made of glass or Styrofoam (bottles, jars, plates, etc.) are not allowed on scenic rivers.

630:15-1-13. Gravel mining operations prohibited

(a) When used in this section, the following definitions apply:

(1) The term "river bank" means the area lying directly adjacent to the river bed with a width of 100 feet on either side of the river bed.

(2) The term "river bed" means any area of the river lying below the ordinary high water mark.

(b) Gravel mining operations which remove gravel from the river beds of scenic rivers are prohibited and are declared a public nuisance.

(c) Gravel mining operations are prohibited and declared a public nuisance where such operations remove gravel from the banks of scenic rivers if such removal negatively impacts the river by causing turbidity, erosion, pollution, or otherwise damages the scenic river environment.

(d) This section shall apply to restrict state permits to mine gravel that are pending as of April 20, 1993 or new permit applications submitted after that date. The Administrator may authorize site-specific exemptions for good cause, such as to remove gravel that was deposited above the ordinary high water mark by floods.

630:15-1-14. Ice chest restriction

To prevent littering, no person shall carry an ice chest that is not capable of being secured to prevent spilling its contents or larger than 50-quart capacity on a scenic river.

630:15-1-15. Tying flotation devices prohibited

To minimize environmental damage to the stream and river banks, operators of flotation devices are prohibited from tying or otherwise connecting two or more flotation devices together on scenic rivers except during rescue and retrieval.

630:15-1-16. Vessel Restrictions

Except for OSRC and law enforcement personnel, and during OSRC-authorized search and rescue training and operations, no person shall:

(1) operate a commercial flotation device on Flint Creek in Delaware County or on those portions of Barren Fork Creek in Cherokee County;

(2) operate a jet ski, airboat, hovercraft or similar water craft on a scenic river; or

(3) operate a vessel with a motor of more than 10 horsepower on a scenic river. Provided, however, that vessels with up to 25 horsepower may be used by anyone gigging during gigging season defined by the Oklahoma Department of Wildlife Conservation, and by commercial flotation device operators to rescue floaters, retrieve vessels and to clean the river and remove navigable obstructions in their flotation areas.