RM 201900005  
Chapter 15: Fuel Inspection

Rule:  
165:15-1-2 Definitions:

"Aboveground storage tank" or "AST" means any stationary tank and individual compartments not included within the definition of an underground storage tank in Oklahoma Administrative Code (OAC) 165:25-1-11, which is designed to contain any PSTD regulated substances without structural support of earthen material. A "Storage tank" as defined in 17 O.S. § 303 that has more than ninety percent (90%) of its volume above the surface of the ground.

"Aboveground storage tank system" means an aboveground storage tank, the individual compartments, and any connected aboveground or underground piping, dispensers and associated equipment and fixtures or transport truck connected to the storage tank system.

O.S. § 303 definitions:  
None for "aboveground storage tank" or "underground storage tank", but the following are found:

40. "Storage tank" is a permanent trade fixture and means a stationary vessel designed to contain an accumulation of regulated substances. It includes the individual compartments within a compartmentalized tank, any aboveground or underground connected piping, and is a trade fixture. A storage tank that has ten percent (10%) or more of its volume beneath the surface of the ground is considered an underground storage tank;

41. "Storage tank system" means a closed-plumbed system including, but not limited to, the storage tank(s), the individual storage tank compartments, the lines, the dispenser for a given product, containment sump, if any, ancillary equipment or a delivery truck that is connected to the storage tank system;

Comment:  
The definitions for UST and AST are unique and are not referenced as "storage tank" accurately. Federal regulations do not describe them this way, and those regulations are enforced exclusively to UST or ASTs. There is no specific definition for aboveground storage tank found in 40 CFR Part 112, (EPA’s Spill Prevention, Control, and Countermeasure SPCC regulation). The EPA regulates aboveground petroleum storage tanks only under SPCC rules. Because aboveground systems are visible and do not pose the same threat to environment, they do not have the same extensive requirements found in the Federal Policy Act that are specific to underground storage tanks found in 40 CFR 280. SPCC uses the term "bulk storage container". The Industry Codes and Standards referenced in PSTD rules for ASTs, e.g. NFPA 30, API 653, STI SP-0001, and PEI RP-200 all characterize and describe an AST, with the common description "more than 90% of its volume above the surface of the ground." This definition is the more technically appropriate description.

The EPA definition that should be referenced and used in PSTD rules and associated statutes:
Underground storage tank or UST means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

UST system or Tank system means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

By adding language to interpret the system to include dispensers, for example, additional requirements would be imposed for repaired piping or replacement dispensers that do not require under dispenser containment (UDC) according to the EPA federal requirements. The result of implementing the state rules that are more stringent has an economic impact, potentially for both existing and new systems.

Directly related and published in the Federal Register 2015 Final Rule explanations and comments: Requiring retrofits of major components would be a significant financial burden for owners and operators. EPA anticipates owners and operators will replace single walled UST systems as they age. When owners and operators replace single walled UST systems after the effective date of the final UST regulation, tanks and piping must be secondarily contained and new dispensers must have UDC. To implement secondary containment and UDC, EPA is adding new definitions to this final UST regulation. EPA is defining these terms, so they are consistent with the definitions contained in EPA’s secondary containment grant guidelines to implementing agencies. New definitions in the final UST regulation are:

• Dispenser—This means equipment located aboveground that dispenses regulated substances from the UST system. The 2011 proposed UST regulation defined dispenser system. However, based on comments received, EPA decided to also add the definition of dispenser to the final UST regulation.

• Dispenser system—This means the dispenser and the equipment necessary to connect the dispenser to the UST system. As described above, EPA decided to add dispenser to the list of definitions in the final UST regulation for clarity. As a result, EPA shortened the definition of dispenser system in the final UST regulation to account for the new definition of dispenser.

• Replaced—For a tank, this means to remove a tank and install another tank. For piping, it means to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run. Commenters suggested adding a definition of replaced as it applies to a dispenser system. However, since EPA is only applying the UDC requirement to new dispenser systems, we are not defining the term replaced as it relates to dispenser systems.

EPA considers a dispenser system new when owners and operators install both the dispenser and equipment needed to connect the dispenser to an UST system. EPA includes check valves, shear valves, unburied risers or flexible connectors, and other transitional components as equipment that connects a dispenser to an UST system. This equipment is located underneath the dispenser and typically connects underground piping to a dispenser. If an owner or operator replaces a dispenser but uses existing equipment to connect a dispenser to the UST system, then UDC is not required.

No definition of Dispenser, Dispenser System or Replaced found in O.S. §303, and none is found in PSTD rules. These definitions and terminology are universally applied in federal regulations concerning petroleum storage tanks. Unintended consequences of creating new definitions add unnecessary regulatory burden and economic impacts to Oklahoma tank owners and operators.
Rule:
165:15-13-1 General identification and color-coding requirements

Comment:
There are several changes to use of color coding (how the fill lids are painted) that are not in accordance with the industry standard used nation-wide: API Standard 1637-Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals. There is no need to mandate unique color coding specific to Oklahoma; therefore, we suggest striking 15-13-1(b), 15-13-1(c), and 15-13-1(d) as written in rule currently and the proposed changes and adopting the API 1637 by reference. This standard accommodates existing and future fuels, including E-15.
See below:

A.P.I. COLOR CODES

- Unleaded Regular
- Unleaded Midgrade
- Unleaded Premium
- Unleaded Regular w/Ext.
- Unleaded Midgrade w/Ext.
- Unleaded Premium w/Ext.
- Kerosene
- Kerosene High Sulfur
- Kerosene Ultra-Low Sulfur
- #1 Fuel Oil High Sulfur
- #1 Fuel Oil
- #2 Fuel Oil High Sulfur
- #2 Fuel Oil
- Diesel Ultra-Low Sulfur
- Diesel
- Diesel High Sulfur
- Biodiesel
- Alcohol Based Fuel
- Monitoring Well
- Vapor Recovery
- Used Oil
Chapter 25: Underground Storage Tanks

Rule:
165:25-1-11. Definitions:

The definition of Owner and Person in 17.O.S. § 303 matches the EPA definition below. Why are we adding language in rule but not Statute, could there be legal implications? We suggest using the EPA definition as referenced.

The EPA definition:

Owner means:
(1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
(2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

Person means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. Person also includes a consortium, a joint venture, a commercial entity, and the United States Government.

The same comments made for Chapter 15 definitions apply to Chapter 25.

Rule:
165:25-1-48. Tank and line testing
(b) Any tank and/or line that fails tightness testing must be repaired and retested or it must be removed.

Comment:
There are circumstances when a tank or line does not pass tightness testing, and the tank or lines would not require repair or removal. For example, if repairs cannot be made successfully to a riser on the top of the tank due to structural concerns, removal of the tank would cost anywhere from $1 to $2 per gallon, depending on the size of the tank and length of the piping run. That translates to over $10,000 for a typical UST. A newly installed tank system must be double wall tank and piping. We agree that potential environmental impact should be properly assessed by site investigation as currently required in EPA regulation and Oklahoma rules. EPA allows tank systems to be temporarily removed from service if the site investigation is completed, and the tank system is properly emptied and secured. The operator may have other surrounding tanks in service and replacement is not justified economically. This rule is more stringent than federal regulations.

Rule:
165:25-2-38. Fill pipe requirements

Comment:
We would request an additional opportunity to discuss the proposed changes before adoption, due to our concerns for installation procedures that could meet the proposed requirements.
Rule:
165:25-2-55.1 Underground storage piping materials

(d) Existing facilities that are making repairs beneath a dispenser when concrete removal is required or any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor pursuant to 165:25-3.6.29.

(e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3.6.29 if modifications are made to the shear valve or below the dispenser cabinet.

(f) Existing facilities that are replacing underground storage tanks or making repairs at a submersible pump that require excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3.6.29.

(g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.

Comment:
Please review previous comments for definitions of Underground Storage Tank system. We suggest matching the EPA requirements which do not associate concrete removal, or repair/replacement of a shear valve only. As proposed, if a shear valve fails and has to be replaced at a minor cost, the sump would have to be installed, even when a dispenser or piping is not replaced.

EPA considers a dispenser system new when owners and operators install both the dispenser and equipment needed to connect the dispenser to an UST system. EPA includes check valves, shear valves, unburied risers or flexible connectors, and other transitional components as equipment that connects a dispenser to an UST system. This equipment is located underneath the dispenser and typically connects underground piping to a dispenser. If an owner or operator replaces a dispenser but uses existing equipment to connect a dispenser to the UST system, then UDC is not required.

Rule:
165:25-2-55.2 Vent piping requirements

(d) Vent risers must be located, protected, and anchored to prevent damage from traffic, wind, or testing procedures.

Comment:
This rule should not apply to existing tank systems. Vent risers are made of steel piping, and to require relocation or installation of bollards around vent risers for “protection” may cost an estimated $2,000. If a steel riser is knocked over by a vehicle, replacement of the steel riser can be made. No potential release or threat to human health or the environment will occur if a riser is damaged, since they are designed to allow the tank to equalize during a fuel delivery, releasing only fuel vapors.
RM 201900007
Chapter 26 Aboveground Storage Tanks

Rule:
165:26-1-2 Definitions

Comment:
The same comments apply for definition of Aboveground storage tank as cited in definition of Underground storage tank in Chapter 15 and 25.

"Change in service" means a change in the status of a storage tank (i.e. from currently in use to temporary out of use); or change of regulated substance that a storage tank contains.

Comment:
The following is found in EPA regulations for change in service, which refers to changing from a regulated substance to storing a non-regulated substance (e.g. water). Please use the appropriate federal application, which is below:

§280.71 Permanent closure and changes-in-service.

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under §280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must: be removed from the ground, filled with an inert solid material, or closed in place in a manner approved by the implementing agency.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with §280.72.

Rule:
165:26-1-48 (b)

Comment:
The same comment found in 165:25-1-48 above.
Rule:
165:26-2-5.1
(c) For existing aboveground storage tank systems installed after before July 1, 2007 any one of the following methods must be used to prevent overfilling.
(d) For installations after October 13, 2016 July 1, 2007, a fill valve which automatically stops delivery of liquid when a tank reaches ninety-five percent (95%) capacity in addition to one of the following methods must be used to prevent overfilling.

Comment:
The additional requirements found in (d) were added in the last rule making. By changing the effective date to July 1, 2007, the rule now applies to all installations after that date at a substantial additional cost estimated at over $1,000. This change is not required by EPA SPCC regulation and is more stringent than those SPCC plans now in place and certified by a Professional Engineer to be meet 40 CFR 112 regulations. We request that no changes to these rules be made as proposed.

Rule:
165:26-2-7 Collision barriers
(b) (4) and (5)
(4) They shall not be less than three feet (3') above grade and concrete barriers not less than thirty-two inches (32") above grade.
(5) They shall not be less than five feet (5') from the tank shell.

Comment:
These additional requirements should not apply to existing tank systems installed prior to this rule making. If the contractor that installed the bollards did not place exactly as described, to remove and install them would be very expensive.

Rule:
165:26-2-55 (c) and (d)

Comment:
These are the same revisions as proposed in 165:25-2-55.1 found in the Underground storage tank rules. The same comments would apply here. Additionally, the 40 CFR 280 technical regulations apply ONLY to underground storage tank systems. 40 CFR 112 regulations for aboveground petroleum storage tanks do not require under dispenser containment (UDC) for existing or newly replaced dispensers. Containment measures are applied typically to the entire tank system, when dispensers can be located within the dike systems of aboveground tanks, or alternate provisions such as curbing, culverting, gutters, weirs, booms, diversion or retention ponds, sorbent materials are in place. These measures meet the same purpose as UDC to contain spills.