

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE) CAUSE NO. RM 201600009
OKLAHOMA CORPORATION COMMISSION)
AMENDING OAC 165:15, FUEL INSPECTION)

RULE IMPACT STATEMENT

This Rule Impact Statement addresses proposed amendments to the Oklahoma Corporation Commission's ("Commission") proposed rules to amend OAC 165:15 *et seq.*, Fuel Inspection rules for Petroleum Storage Tanks. This Rule Impact Statement has been prepared in substantial compliance to 75 O.S. 2013, Section 303 (D).

I. PURPOSE OF RULE PROPOSALS

The proposed changes, amendments, additions and revocations include: modifies purpose to include all Petroleum Storage Tank Division ("PSTD") regulated substances; provides definitional modification and clarification; revises for consistency; requires volume in tank be greater than volume of product to be transferred into said tank; requires calibration clarification; requires thirty (30) day monitoring of release detection; clarifies requirements for Statistical Inventory Reconciliation ("SIR"); no longer describes vaults as superior installation systems; requires dispensers to show the correct and accurate unit price of the product dispensed; corrects scrivener's error; and provides for an administrative penalty for violations that are not corrected.

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

The classes of those affected include owners and operators of storage tanks and regulated entities. The classes affected will bear the cost, if any, of this proposed rule. The proposed rules change operating procedures, practices and requirements.

The Commission, in its Notice of Proposed Rulemaking, has requested that business entities that are expected to incur an increase in the level of costs as a result of compliance with the proposed rulemaking provide written comments stating cost impact information to the Commission. All registered storage tank owners were mailed a postcard advising of the Notice of Proposed Rulemaking. However, as of the date of preparation of this Rule Impact Statement, the Commission has received no cost impact statements from any private or public entity. If any such comments are received by the Commission, they will be considered by Staff at the technical conferences on October 25, 2016, and November 22, 2016, and by the Commission *en banc* at the public hearing on January 24, 2017.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED RULE

The classes benefiting from the amendments include members of the public purchasing PSTD regulated substances, regulated entities and owners and operators of underground storage tanks doing business within the state.

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

It is anticipated that there will be minimal adverse economic impact upon the affected parties. The proposed rules adopt a federal standard regarding SIR. The proposed rules will not adversely impact other political subdivisions of the state.

Additionally, the proposed rules require that liquid measuring devices automatically and accurately compute the total money value of the petroleum product delivered at the proposed unit price. It is anticipated that there will be minimal adverse economic impact upon affected parties. The proposed rules will not adversely impact other political subdivisions of the state.

The economic impact of the implementation of these proposed rules will be in compliance with recently promulgated federal rules in regards to SIR. The federal rules are applicable to the Oklahoma regulatory program governing the sale and storage of regulated substances, and may be presently enforced by the EPA. The Commission does not consider the proposed rules ultimately having a material adverse effect on small business. Staff estimates an additional cost of \$150.00 annually regarding changes in SIR, and estimates an additional cost of \$20.00 replacement part (labor not included) regarding changes to liquid measuring devices. As such, the rulemaking will comply with the requirements of the Oklahoma Small Business Regulatory Flexibility Act of 2002, 75 O.S. 2002 Supp., Section 501 *et seq.*

V. IMPACT ON SMALL BUSINESS

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

The classes potentially impacted are:

1. Storage tank owners and operators: The proposed rules will have a minimal impact on the class of small business storage tank owners and operators who operate storage tank systems in the state and use SIR as a means of inventory control. It is estimated that of the total group of owners and operators of storage tanks that might be impacted by these rule amendments, 11% will be classified as small businesses with 50 or fewer full or part-time employees. This statistical

estimate is based on statistics informally compiled by Commission Staff of the Petroleum Storage Tank Division. The small business operators registered with the Commission likely will experience some savings in the cost of doing business by having accurate and timely inventory that provides an early warning alert of fuel inventory loss.

2. Certain regulated entities: The proposed rules will have a minimal impact of the class of small business owners that use liquid measuring devices to sell PSTD regulated substances to the public. It is estimated that of the over 4,500 active facilities, fifty (50) are classified as small businesses with fifty (50) or fewer full-time employees using liquid measuring devices to sell regulated substances to the public. Therefore, roughly 1.1% of regulated facilities will be impacted by these rules. This estimate is based on statistics informally compiled by Commission Staff of the Petroleum Storage Tank Division. The small businesses selling directly to the public likely will experience savings in the cost of doing business by having accurate pricing displayed to the public, which can help curb discrepancies in perceived pricing.

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

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

Federal, state or local agencies or jurisdictions that by law enforce their own regulatory authority over petroleum storage tanks and liquid measuring devices concurrently with the Commission, including but not limited to municipalities, the Environmental Protection Agency, rural fire districts or the Fire Marshal, will not in any way enforce or implement the proposed amendments. Accordingly, there will be no cost to them.

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

Political subdivisions (as defined in 75 O.S. 1998 Supp., Section 250.3) that maintain regulated substance storage tanks or use liquid measuring devices to sell PSTD regulated substances to the public will have to comply with the proposed rules.

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

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

Due to the federal mandate, there are no less costly or less intrusive methods for achieving the purpose of the proposed rule amendments to SIR.

There are no less costly or less intrusive methods for achieving the purpose of the proposed rules regarding liquid measuring devices.

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

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

X. CONFORMANCE WITH FEDERAL STANDARDS

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

XI. RISK IF NOT IMPLEMENTED

If the proposed rules are not implemented, a risk of harm (both financial and physical harm) is possible. If the Commission does not adopt recently promulgated EPA rules, the regulated community could be subject to EPA preemption of the state administered program, resulting in EPA regulating Oklahoma storage tank owners and operators. Additionally, not implementing the proposed rules could lead to confusion regarding pricing among the regulated entities and the public.

XII. DATE

This Rule Impact Statement was prepared on the 28th day of September, 2016.

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