

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF AN EMERGENCY)
RULEMAKING OF THE)
OKLAHOMA CORPORATION COMMISSION) CAUSE NO. RM 201600006
AMENDING OAC 165:25, UNDERGROUND)
STORAGE TANKS)

RULE IMPACT STATEMENT

This Rule Impact Statement addresses proposed emergency rule amendments to the Oklahoma Corporation Commission's ("Commission") to amend OAC 165:25 *et seq.*, Underground Storage Tank 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: providing a definition to coincide with the Environmental Protection Agency's ("EPA") new definition of underground storage tank; expand continuous leak detection requirements for automatic tank gauging ("ATG") to 30 days; and reconcile the Commission's statistical inventory reconciliation ("SIR") to mirror that of EPA. EPA requires that every state that administers the underground storage tank program in lieu of EPA must submit a new state program application and be re-certified by EPA to continue to administer the state program for underground storage tanks. In order to do so, this emergency rulemaking is being proposed so that the Commission can immediately submit its state program application.

II. CLASSES OF PERSONS WHO WILL MOST LIKELY BE AFFECTED BY THE PROPOSED EMERGENCY RULES, INCLUDING CLASSES WHICH WILL BEAR THE COST OF THE PROPOSED EMERGENCY 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 underground storage tanks doing business within the state. The proposed emergency rules change operating procedures, practices and requirements.

The Commission in its Notice of Proposed Emergency 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 emergency rulemaking provide written comments stating cost impact information to the Commission. All registered underground storage tank owners were mailed a post card advising of

the Notice of Proposed Emergency 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 conference on July 28, 2016, and by the Commission *en banc* at the hearing on September 1, 2016.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED EMERGENCY RULES

The classes benefiting from the amendments include 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 no direct adverse economic impact upon the affected parties. The emergency amendments will not adversely impact other political subdivisions of the state.

The economic impact of the implementation of these proposed emergency rules will be the continued effectiveness of regulation. The Commission does not consider the proposed emergency rules having an adverse effect on small business; and as such, the emergency 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 emergency 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. Underground storage tank owners and operators: The proposed emergency rules will not have an adverse impact on the class of small business underground storage tank owners and operators who operate underground storage tank systems in the state. It is estimated that of the total group of owners and operators of underground storage tanks that might be impacted by these emergency rule amendments, 40% 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 through the continued effectiveness and efficiency of rule implementation.

VI. PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY TO IMPLEMENT AND ENFORCE THE PROPOSED EMERGENCY RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED EMERGENCY 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 emergency rules, and that there will be no immediate increase in agency expenses as a result of the emergency amendments.

Federal, state or local agencies or jurisdictions that by law enforce their own regulatory authority over petroleum storage tanks 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 EMERGENCY RULES

Political subdivisions (as defined in 75 O.S. 1998 Supp., Section 250.3) that maintain regulated underground petroleum storage tanks will have to comply with the proposed emergency rules.

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

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

There are no less costly or less intrusive methods for achieving the purpose of the proposed emergency rules.

IX. EFFECT OF THE PROPOSED EMERGENCY RULES ON THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT AND, IF THE PROPOSED EMERGENCY 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 EMERGENCY RULES WILL REDUCE THE RISK

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

X. CONFORMANCE WITH FEDERAL STANDARDS

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

XI. RISK IF NOT IMPLEMENTED

If the proposed emergency rules are not implemented, a risk of harm (both financial and physical harm) is present. If Commission adaptation of recently promulgated EPA rules is not adopted, the regulated community could be subject to EPA preemption of the state administered program, with EPA regulating Oklahoma storage tank owners and operators.

XII. DATE

This Rule Impact Statement was prepared on the 22nd day of July, 2016.

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