

**FILED**

OCT 04 2016

**BEFORE THE CORPORATION COMMISSION OF OKLAHOMA**

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

IN THE MATTER OF A PERMANENT )  
RULEMAKING OF THE )  
OKLAHOMA CORPORATION COMMISSION ) CAUSE NO. RM 201600011  
AMENDING OAC 165:25, UNDERGROUND )  
STORAGE TANKS )

**RULE IMPACT STATEMENT**

This Rule Impact Statement addresses proposed amendments to the Oklahoma Corporation Commission's ("Commission") proposed rules 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: provides a definition that coincides with the Environmental Protection Agency's ("EPA") new definition of underground storage tank; makes definitional changes and inclusions; requires owner/operator address change; requirement to notify the Commission on transfer of ownership; requires notification to the Commission when changing the percentage of additive to fuel in excess of 10% ethanol, and 20% biodiesel; requires retention of release detection records for three (3) years instead of one (1) year; mandates current map depicting the tank system layout; requires walkthrough inspections to be performed in accordance with EPA rules; allows system shutdown if Commission requirements are not met; makes certain grammatical and punctuation changes; updates applicable codes and standards to the most current versions; requires evidence of financial responsibility in line with EPA requirements; alerts holders of financial security interest in tank systems that they are subject to EPA requirements; expands rule to include specific tank standards; requires certain tank pit preparation; establishes when a Commission licensed Underground Storage Tank ("UST") installer/remover must be onsite; requires person making a fuel drop to ascertain tank capacity in relationship to fuel being dropped; requires persons to establish overflow prevention equipment functions properly; expands spill bucket testing; expands methodology for corrosion protection; clarifies that the Commission only regulates storage tank systems that contain regulated substances; clarifies frequency of inspections and tests; clarifies when pipes can be repaired or must be removed; expands when a tank system can be properly identified as temporarily out of use ("TOU") and the requirements for establishing TOU status; requires notification of return to service of TOU tank systems; clarifies what must be removed at tank closure and Commission's Petroleum Storage Tank Division's ("PSTD") approval of fill material if closed in place; provides reference for removal/closure sampling; requires monitoring in a partial use compartmentalized tank; adopts EPA updated measures for release

detection methods; specifies that inventory control must be performed every thirty (30) days instead of monthly; requires a Commission licensed environmental consultant to perform site assessments, with vapor and groundwater monitoring wells checked every thirty (30) days and a copy of the results of such check kept onsite; requires interstitial monitoring results to be performed every thirty (30) days; expands automatic tank gauging requirements and specifies leak status of tanks to be determined every thirty (30) days; requires statistical inventory reconciliation ("SIR") to be performed every thirty (30) days, and adopts EPA updated measures for SIR use; establishes monitoring requirements for piping as every thirty (30) days; expands system tests and further clarifies interstitial monitoring; expands inspection compliance and documents to be presented at facility inspections; provides for electronic fine payment when available; updates Appendix S to correlate to EPA requirements; expands continuous leak detection requirements for automatic tank gauging ("ATG") to thirty (30) days; reconciles 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 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 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 underground storage tanks doing business within the state. 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 underground 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 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 in certain circumstances, adopt a federal standard regarding Statistical Inventory Reconciliation ("SIR"). The proposed amendments 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. The federal rules are applicable to Oklahoma underground storage tank operators 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) and 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. Underground storage tank owners and operators: The proposed rules will have a minimal impact on the class of small business underground storage tank owners and operators who operate underground storage tank systems in the state and use statistical inventory reconciliation as a means of inventory control. It is estimated that of the total group of owners and operators of underground storage tanks that might be impacted by these rule amendments, 11% will be classified as small businesses with fifty (50) or fewer full or part-time employees. This 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 savings in the cost of doing business by having accurate and timely inventory that provides an early warning alert of fuel inventory loss.

**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 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 underground petroleum storage tanks 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 rules.

**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 and the environment and in the proposed form, does so without burden or with only a slight 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 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 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, resulting in EPA regulating Oklahoma storage tank owners and operators.

## **XII. DATE**

This Rule Impact Statement was prepared on the 26<sup>th</sup> day of September, 2016.

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