

FILED
JAN 04 2018

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

**COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA**

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION AMENDING)
OAC 165:26, ABOVEGROUND STORAGE)
TANKS)

CAUSE NO. RM 201700012

RULE IMPACT STATEMENT

This Rule Impact Statement addresses proposed rule amendments to the Oklahoma Corporation Commission's ("Commission") to amend OAC 165:26 *et seq.*, Aboveground 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 and modifying definitions to make them consistent with the same definitions in Chapters 15 and 25; clarifying regulated aboveground storage tanks and tank systems, operators of a storage tank systems, identifying ownership of storage tank systems, and owners who are uncooperative and/or unwilling to follow Commission requirements; clarifying substances that the PSTD regulates at retail facilities; further clarifying the status of temporarily out of use tanks; making grammatical corrections; establishing procedures for orders issued by the Commission; encouraging public participation in Commission hearings; streamlining the process for administrative review of an application for a variance; establishing a designated format within a required timeframe to notify, report and/or schedule required reports, forms, and activities, and establish enforcement for non-compliance; clarifying and broadening the responsibility for submission of installation paperwork; updating "monthly" to "thirty (30) day" terminology for release detection already required in the rules; requiring a certificate of destruction for USTs that are being used as ASTs when they are closed so they cannot be re-used; requiring all tank system records to be transferred to the new owner at no charge and that PSTD will be notified when a mailing address changes; requiring that testing be performed by certified testers, if applicable, and performed according to the manufacturer's instructions; establishing a timeframe to submit repair records; allowing for individual compartments within a storage tank to be permitted; excluding permits for tanks permanently out of use; changing license renewal from every two years to annual; making grammatical corrections and clarifying the current process for when inspectors issue a Notice of Violation to make it consistent with other Chapters; changing the licensing period to one (1) year; clarifying grounds for license penalties and disciplinary action for storage tank licensees; requiring notification prior to completion of installation work; requiring the installation of product lines be consistent with NFPA 30A standard 4.3.6.1; adding responsibility for ensuring releases of fuel do not occur; making the language to be consistent with the same rule in Chapter 25; making grammatical corrections and clarifying when dispensers must have containment; changing monthly to "thirty (30) day" terminology already established in the rules; prohibiting two hoses being coupled together; allowing the use of a longer hose at facilities where the AST is located within a fenced area; requiring that the location

of switches or circuit breakers be consistent with NFPA 30A 6.7 and PEI RP200-08 13.4 standards; requiring a tank that fails must be closed or upgraded before it can be used again; expanding areas for release discovery; adding electronic means for release reporting and expanding release reporting responsibility to be consistent with Chapter 29; establishing enforcement action for reporting violations; making the rule for notices of violation and citations to be consistent with Chapter 25; establishing how PSTD will send correspondence; correcting the statute citation and rule clarification; matching the correct rule citation for the violations and correcting the terminology associated with a penalty.

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 aboveground storage tanks doing business within the state. The classes affected will bear the cost, if any, of these proposed rules. 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 aboveground storage tank owners were mailed a post card 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 January 11, 2018, and January 25, 2018, and by the Commission *en banc* at the hearing on February 15, 2018.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED RULES

The classes benefiting from the amendments include regulated entities, owners and operators of aboveground 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 amendments will not adversely impact other political subdivisions of the state.

The Commission does not consider the proposed rules ultimately having a material adverse effect on small business; (staff estimates a small incremental cost annually for some storage tank owners with compartmentalized tanks or temporarily out of use tanks) 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. Aboveground storage tank owners and operators: The proposed rules will have a minimal impact on the class of small business aboveground storage tank owners and operators who operate compartmentalized storage tank systems and/or who have temporarily out of use storage tanks in the state. It is estimated that of the total group of owners and operators of storage tanks that might be impacted by these rule amendments, 17% 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.

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 aboveground 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 ENVIRONMENT, 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 charge of the Petroleum Storage Tank Division to protect human health, safety and the environment and in the proposed form, do so without burden or 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 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) may be present to regulated entities.

XII. DATE

This Rule Impact Statement was prepared on the 4th day of January, 2018.

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