

FILED
DEC 10 2019

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 165:15, FUEL INSPECTION

CAUSE NO. RM 201900005

CHAPTER 15 RULES ADOPTED BY THE COMMISSION
AT A PUBLIC HEARING ON DECEMBER 10, 2019

TITLE 165. CORPORATION COMMISSION
CHAPTER 15. FUEL INSPECTION

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-2. Definitions

In addition to the terms defined in 17 O.S. §§ 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"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(40) 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.~~

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Approval seal" means ~~an inspection label or tag pasted on the face of a dispenser indicating its official approval, showing day, month, and year.~~

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or **"Calibration"** means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

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

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

~~**"Dry hose type"** means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.~~

"Face of the dispenser" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the dispenser where the unit price, volume dispensed, and dollar amount of the sale appear.

~~**"Fuel"** or **"motor fuel"** means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.~~

"Fuel Specialist" means any field inspector employed by the Compliance and Inspection Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

"Formal Enforcement Action" means the process of ensuring compliance with Commission regulations, rules, orders, requirements, standards, and/or state law when a violation occurs and PSTD initiates an enforcement Complaint under the contempt procedure in OAC 165:5 Subchapter 19 to be heard at the Commission by an Administrative Law Judge or the Commissioners.

"Gasoline" means a volatile unleaded fuel that is suitable for use in a spark ignition, internal combustion engine.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Important building" means a building that is considered not expendable in an exposure fire.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the dispenser that signifies the amount relative to a quantity measured by a measuring device.

~~**"Isooctane"** means a pure hydrocarbon 2,2,4 trimethylpentane used as a reference fuel that has an octane rating of one hundred.~~

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or "liquid fuel device" means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, motor oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl used as a component in gasoline.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Measuring device" or "meter" means ~~all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, motor oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose~~ a measuring device as defined in 17 O.S. § 303(23).

"Motor fuel" or "fuel" means any petroleum product, oxygenate, or blend of products, that is suitable for use as a fuel in an internal combustion or diesel engine.

"NACE" means the National Association of Corrosion Engineers.

"N-heptane" means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

"Observation Well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Octane", or "octane number", or "octane rating" means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Petroleum" means ~~antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel~~ the substances as set forth in 17 O.S. § 303(31). It does not include 100% biodiesel, compressed natural gas, liquid natural gas, methanol, ~~and or~~ propane.

"Primary indicating elements" or "recording elements" means those principal visual indicating elements and recording elements that may be used by an owner or operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated by PSTD as a fleet and commercial facility.

"Private airstrip" means ~~a personal residential takeoff and landing facility attached to the airstrip owner's residential property.~~

"PSTD" means Petroleum Storage Tank Division.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel as set forth in 17 O.S. § 305. It does not include compressed natural gas, liquid natural gas ~~and or~~ propane.

"Retail device" means a measuring device or mechanism designed for single deliveries of PSTD regulated substances to individual land, air, and water vehicles.

"Retail-level facility" means ~~all places of business where a service station, convenience store or any other facility selling a PSTD regulated substances are dispensed or delivered directly into~~

~~the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers substance that is open to the general public.~~

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or "seal" or "lock/locking mechanism" means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use with the intent to permanently close or return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

"Transport calibration" or "truck calibration" means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or "UST" means ~~a regulated storage tank and individual compartments, including underground piping,~~ "Storage tank" as defined in 17 O. S. § 303(40) that has 10 percent (10%) or more of its volume beneath the surface of the ground.

"Underground storage tank system" means ~~an underground storage tank a closed-plumbed system including, but not limited to the underground storage tank(s), the individual storage tank compartments, and any connected aboveground or underground piping, dispensers the lines, dispenser for a given product, containment sump, if any, and ancillary equipment or transport a delivery truck that is connected to the storage tank system.~~

~~"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.~~

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 11. ACCESSIBILITY AND ASSISTANCE

165:15-3-32. Retail-outlet facility with aboveground storage tanks

(a) At a retail-outlet facility with aboveground storage tanks, the owner or operator must provide a safe means of returning motor fuel to the storage tank or tanks used in checking the calibration of the measuring devices.

(b) When the fuel return opening to the storage tank is reached only by the use of steps, stairs, or a ladder, or is not located at ground level, the owner or operator must:

- (1) Provide safe containers with sufficient volume to complete a required inspection.
- (2) Label each container with the particular contents of product being stored.
- (3) Store containers outside the diked area.
- (4) Properly dispose of the product used in checking the calibration in accordance with applicable law.

SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES

165:15-13-1. General identification and color coding requirements

- (a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the overfill sump lids to identify the type, grade, or quality of regulated substance they contain.
- (b) East of 99 degrees west longitude, color coded markings must be:
- (1) Unleaded motor fuel, 91 octane or above: red.
 - (2) Unleaded motor fuel, 89 or 90 octane: blue.
 - (3) Unleaded motor fuel, 86 through 88 octane: white.
 - (4) Diesel motor fuel: yellow.
 - (5) Kerosene: brown.
 - (6) Dyed diesel: half yellow, half red.
 - (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
 - (8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
 - (9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.
 - ~~(9)(10) Biodiesel: bronze with yellow and black border around lid.~~
 - ~~(10)(11) Ethanol-blending tank for E85: orange with black "X" and a black border around lid.~~
- (c) West of 99 degrees west longitude, color coded markings must be:
- (1) Unleaded motor fuel, 90 octane or above: red.
 - (2) Unleaded motor fuel, 88 or 89 octane: blue.
 - (3) Unleaded motor fuel, 86 or 87 octane: white.
 - (4) Diesel motor fuel: yellow.
 - (5) Kerosene: brown.
 - (6) Dyed diesel: half yellow, half red.
 - (7) Unleaded 87 octane E10: white with black "X" and a black border around lid.
 - (8) Premium unleaded 91 octane E10: red with black "X" and a black border around lid.
 - (9) E15: E15 tanks must be designated "E15" in black with a black border around lid, and the colors referenced above for unleaded motor fuel, 86 through 91 octane, should be used for the lid.
 - ~~(9)(10) Biodiesel: bronze with yellow and black border around lid.~~
 - ~~(10)(11) Ethanol-blending tank for E85: orange with black "X" and a black border around lid.~~
- ~~(d) Products containing extenders (oxygenates) such as ethanol shall be designated by the addition of a black border around a black "X".~~
- ~~(e)(d)~~ Vapor-recovery connections and manholes shall be marked with orange circles.
- ~~(f)(e)~~ Observation and monitoring wells shall be marked with a black triangle on a white background.
- ~~(g)(f)~~ At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.
- ~~(h)(g)~~ The tag labeling and color coding must be waterproofed and fuel-proofed material so that the type, grade, or quality of the motor fuel is readily visible to persons adding to or taking a sample from the line or storage tank.

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 7. MONEY VALUES AND VOLUMES DISPENSED

165:15-15-35. Money value display and computation

(a) **On a retail device.** Money value computations (on a retail device) must be of the full computing type in which the money value at a single unit price, or at each of a series of unit prices, is computed for every delivery within either the range of measurement of the liquid measuring device or the range of the computing elements, whichever is less. Any analog money value indication must not differ from the mathematically computed money value (Quantity X Unit Price = Sales Price), for any delivered quantity, by an amount greater than one-half the value of the money value division. Value graduations must be supplied and accurately positioned. The value of each graduated interval must be 1 cent.

(b) **"Cash" discount.** When a discount for "cash" is offered, the discount must be paid inside the store, the discount is to be calculated, and the customer informed of the discounted amount. The cash discount price must not be posted on a marquee or remote billboards unless it is explicitly called a "cash price".

(c) **Retail dispensing devices used in contract sales.** Those retail motor fuel dispensing devices used in contracted sales, which are normally unattended and accessed and actuated by keys, cards and/or other coding mechanisms and which are not accessible to the general public, are not required to display unit prices nor to make money value computations for every delivery.

(d) **Airport dispensing devices.** Those retail motor fuel dispensing devices installed at airports for use in fueling aircraft are not required to display unit prices nor to make money value computations for every delivery.

(e) **Advertised price.** The price per gallon charged at the dispenser must be the same price advertised on the facility's marquee and remote billboards. The price per gallon advertised on the facility's marquee and remote billboards must be the same price charged at the dispenser.

SUBCHAPTER 19. INSPECTIONS, NOTICES OF VIOLATION, FIELD CITATIONS, AND FORMAL ENFORCEMENT ACTIONS

165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any statute, rule, requirement or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(b) Each violation that can have an NOV issued is listed in this Chapter, OAC 165:16, 165:25, and 165:26.

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further PSTD enforcement action may occur if the violation is not corrected. If the violation cannot be corrected, the violation will be referred to the PSTD Compliance and Inspection Manager or Director's designee who may initiate Formal Enforcement Action or issue a Field Citation.

(2) At PSTD's discretion, ~~egregious~~-serious violations can be immediately turned over to the Commission's Judicial and Legislative Services Division for Formal Enforcement Action.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

- (c) A Notice of Violation will state the following information:
 - (1) A clear description of the violation(s).
 - (2) A date by which the violation(s) are required to be corrected.
 - (3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.
- (d) NOV(s) are issued to the owner or operator of the storage tank facility. If the owner or operator is not present, NOVs can be given to store personnel, but all notifications and/or correspondence will be mailed or electronically delivered to the owner and/or operator.

165:15-19-4. Re-inspection, Formal Enforcement and Field Citation

- (a) After the date that the violation is required to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.
- (b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:
 - (1) Refer the violation to the Division's Compliance and Inspection Manager or the Director's designee who may initiate Formal Enforcement Action or issue a Field Citation; and/or
 - (2) Shut down the storage tank ~~facility~~ system pending a correction of the problem or a hearing on the issue.

165:15-19-5. Issuance of a Field Citation and payment of fine or hearing

- (a) The storage tank owner or operator can either pay the amount of the fine as stated in the Field Citation or request a hearing.
- (b) The tank owner or operator will have thirty (30) days from the date the Field Citation was issued to pay the fine.
 - (1) A fine may be paid with cash, a money order, check or electronic method approved by the Commission. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the Field Citation must be sent with the payment to ensure proper credit.
 - (2) Payment of a fine within the thirty (30) day timeframe will not be considered an agreement or disagreement with the Field Citation.
- (c) If the storage tank owner or operator disagrees with the Field Citation, they may appear at the hearing at the Commission as provided in the Field Citation. ~~If found guilty at the hearing in violation of PSTD rules at the time the Commission order is issued,~~ the tank owner or operator must pay the amount of the fine, as well as an administrative cost of \$250.00.
- (d) ~~If a Field Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double.~~ Refusal to comply with an order of the Commission may result in an additional fine to be levied after notice and hearing in an amount as allowed by law, and shutdown of the ~~facility~~ storage tank system for failure to pay fines.
- (e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement action.
- (f) ~~An appeal from~~ Any exceptions to the hearing must be made in accordance with OAC 165:5.
- (g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.