# Rule Summary and Fiscal Analysis (Part A)

**Department of Commerce** 

Agency Name

<u>Division of State Fire Marshal</u> <u>David Sauer</u>

Division Contact

8895 East Main Street Reynoldsburg OH 614-752-7096

**43068-0000** 

Agency Mailing Address (Plus Zip) Phone Fax

<u>1301:7-9-04</u> <u>AMENDMENT</u>

Rule Number TYPE of rule filing

Rule Title/Tag Line Registration of UST systems.

#### **RULE SUMMARY**

- 1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**
- 2. Are you proposing this rule as a result of recent legislation? No
- 3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: 119.03
- 4. Statute(s) authorizing agency to adopt the rule: 3737.02, 3737.88
- 5. Statute(s) the rule, as filed, amplifies or implements: 3737.02, 3737.88
- 6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Five year rule revision required under ORC 119.032

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule 1301:7-9-04 promulgates registration requirements for underground storage tanks authorized under the Revised Code sections 3737.02 and 3737.88.

Page 2 Rule Number: 1301:7-9-04

The rule is being amended to authorize a ten percent fee for registrations that arrive after the annual June 30th deadline. The additional fee is to be used to defray the costs of following up with noncompliant registrants. A ten percent late fee will be consistent with other fees levied by Division of State Fire Marshal. The registration fees themselves remain unchanged.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

*Not Applicable.* 

#### 12. 119.032 Rule Review Date: 12/23/2011

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date

Page 3 Rule Number: 1301:7-9-04

for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

#### FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0

The proposed amendment is not intended to result in any changes to the agency's budget. Any late fee collected as a result of the amendment will be used to defray the agency's additional costs incurred to collect the required registration fees. More importantly, the fee is intended to encourage facility owners and operators to submit their registrations on time, thereby avoiding the late fee. During the 2011-2012 registration cycle, approximately 1,262 UST registrations arrived after the annual deadline of June 30th. This amount is consistent with previous years' totals.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

For compliant UST owners and operators, there is no cost of compliance, because the late fee is only to be levied on registrants who do not register their USTs by June 30th in accordance with the existing rule. For noncompliant UST owners and operators, the cost of compliance would be \$5 per tank (based upon an average of three tanks per facility, the average late fee would amount to \$15 per facility).

The United States, the State of Ohio and political subdivisions are exempted from paying registration fees.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations?  $N_0$ 

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17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? Yes

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

Page E-1 Rule Number: 1301:7-9-04

# **Environmental Rule Adoption/Amendment Form**

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
- (A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? Yes

Please list each contact.

See Attachment A.

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

The requirements for registration notification of petroleum and hazardous substance UST systems are described in the Code of Federal Regulations (40 CFR 280 subpart B). The federal government requires states to register the tanks to maintain funding for underground storage tank regulatory programs.

Page E-2 Rule Number: 1301:7-9-04

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? No

Not Applicable

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No

# **Attachment A – Organizations Consulted**

Since January 2007, the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR) has held several meetings with stakeholders to discuss proposed changes to the BUSTR regulations. These meetings were open to the public and included representatives from a cross section of the regulated community. All participants were encouraged to participate in the open discussions and to submit written comments on any topic that concerned them. In July 2009, BUSTR initiated a web-based petition process to inform the public of the rule review process and to encourage the public to participate in amending the BUSTR regulations. BUSTR has received over 2,300 petitions requesting changes to the BUSTR regulations. Below is a list of dates when BUSTR held meetings with the public to discuss changes to the BUSTR regulations.

## June 29, 2009, Web Based Petition Period Opens.

https://www.comapps.ohio.gov/sfm/fire\_apps/fire/petition/ Copy of web page attached.

# August 19, 2010, Web Based Comment Period Opens.

https://www.comapps.ohio.gov/sfm/fire\_apps/fire/petition/Copy of web page attached.

#### June 3, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

# June 21, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

## July 7, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

#### July 21, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

#### August 4, 2011, Meeting at the Ohio Division of Industrial Compliance.

6606 Tussing Road, Reynoldsburg, Ohio 43068 List of attendees attached.

#### August 18, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

#### September 8, 2011, Meeting at the Ohio Fire Academy.

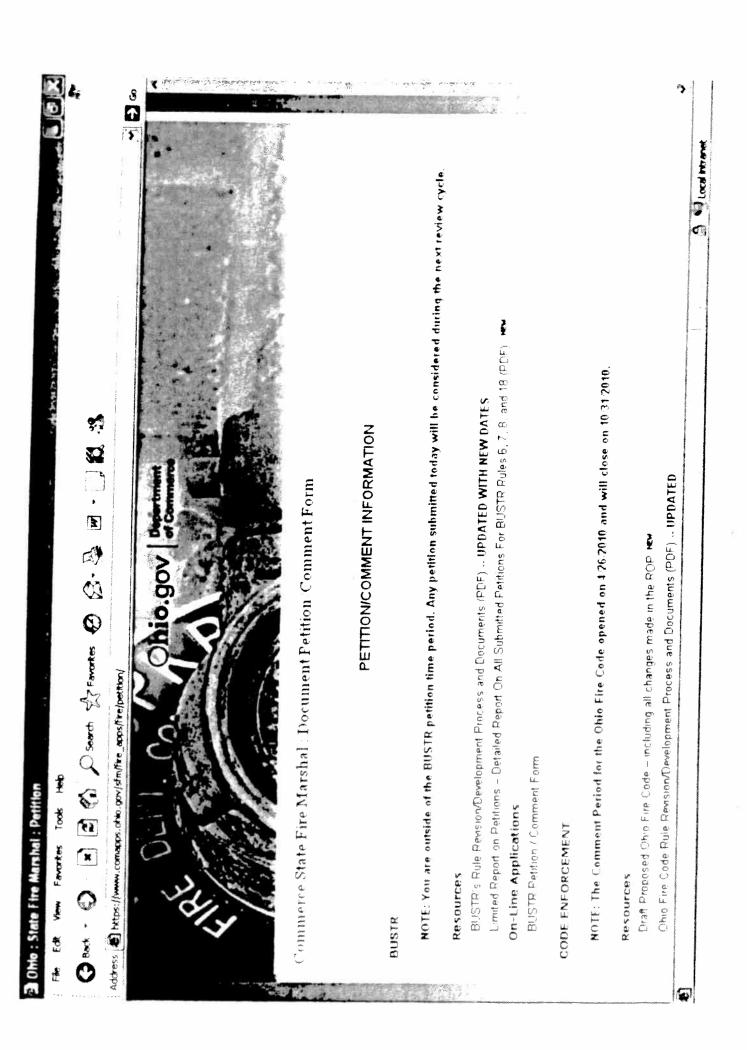
8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

# **September 22, 2011, Meeting at the Ohio Fire Academy.** 8895 East Main Street, Reynoldsburg, Ohio 43068

List of attendees attached.

October 6, 2011, Meeting at the Ohio Fire Academy. 8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

October 20, 2011, Meeting at the Ohio Fire Academy. 8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.





# **BUSTR Rule Revision/Development Process**

The Ohio Department of Commerce, Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR) has begun its mandatory five year rule review for the existing <u>BUSTR</u> administrative rules and is simultaneously drafting new rules to conform to the requirements of the Energy Act of 2005 for three topic areas: (a) owner/operator training, (b) secondary containment, and (c) delivery prohibition. Thus, BUSTR is currently in the process of revising and/or writing four sets of administrative rules:

- 1. All existing BUSTR administrative rules
- 2. New administrative rules for owner/operator training
- 3. New administrative rules for secondary containment
- 4. New administrative rules for delivery prohibition

Update as of August 2010: To conform to the requirements of the Federal Energy Policy Act of 2005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from the remaining BUSTR rules. All other BUSTR rules, including owner/operator training, will be considered later in the year.

BUSTR values the input of all stakeholders in the regulatory process and encourages your participation in the rule revision/development process.

Generally, the revision/development process involves four steps:

- 1. <u>Petition Period</u> is the period of time when a stakeholder may submit one or more written petitions via the online <u>Petition/Comment form</u> to suggest a revision to an existing, or newly drafted, rule.
  - A compendium of all submitted petitions, along with BUSTR's response to each of them, will be published shortly after the petition period closes. This will be called the "report on petitions" or "ROP."
  - For those who cannot access the online from, the SFM/Code Enforcement Bureau is available to assist.
- Comment Period is the period of time when a stakeholder may submit one or more written
  comments via the online Petition/Comment form regarding one or more previously submitted
  petitions.
  - A compendium of all submitted comments, along with BUSTR's response to each of them, will be published shortly after the comment period closes. This will be called the "report on comments" or "ROC."

- 3. Ohio's Formal Rule Adoption Process that involves filing the new draft of the rules with the legislature (referred to as the "final draft" at this point), publishing the final draft in the Register of Ohio, holding a mandatory public hearing, and going through the Joint Committee on Agency Rule Review (JCARR) process for final acceptance.
- 4. Publishing and printing (hard copy and online) of the new and amended BUSTR Rules.

# The Principles of the Rule/Development Process

Early in the process, especially where no rule currently exists (e.g., the requirements under The Energy Act of 2005), BUSTR will organize one or more "stakeholder meetings" where the stakeholders, industry representatives, and subject matter experts meet to exchange ideas with the SFM. The purpose of these verbal exchanges is to (a) inform stakeholders about the rule development/revision process, (b) inform stakeholders of what to expect in the initial draft of a future rule, (c) solicit feedback from those present regarding the concepts the SFM presents, and (d) have stakeholders inform the SFM of ideas and concerns, even if they have nothing to do with anything previously presented. At a stakeholder meeting, although there will likely be notes taken, there is generally no exchange or submission of written documents because the focus is on the exchange and explanation of concepts and ideas.

When new (usually Federal) requirements force the development of one or more new rules—such as those required by The Energy Act of 2005—BUSTR produces and distributes an initial draft of each rule (e.g., new administrative rules for owner/operator training and secondary containment) once the bureau is well informed of the ideas, concerns and positions of stakeholders. This initial document then becomes the basis for the subsequent Petition Period, and suggestions for changes to it are submitted to BUSTR through the online Petition/Comment Form.

During the Petition Period, all interested stakeholders may file petitions for proposed BUSTR rule changes. Petitions on any topic may be submitted at any time during the year, but submission prior to the closing date of the Petition Period will provide the stakeholder with the best chance of having the submitted petition considered in the current rule revision cycle. Petitions received after the Petition Period closes will be considered in the next rule revision cycle. After the Petition Period closes, each petition is thoroughly researched, a response is developed (e.g., Report on Petitions or ROP), and a draft of the proposed BUSTR rule (along with the ROP) are recommended to the Department of Commerce for approval. After approval, the ROP is released on the SFM Website, the draft of the proposed BUSTR rule is released to stakeholders, and the Comment Period begins.

During the Comment Period, the Report on Petitions is available for review by any person via the SFM Website, and comments on the petitions may be submitted through the online Petition/Comment Form. After the Comment Period closes, each comment is thoroughly researched, a response is developed (e.g., Report on Comments or ROC), and a final draft of the proposed BUSTR rule (along with the ROC) are recommended to the Department of Commerce for approval. After approval, the ROC is released on the SFM Website and the final draft of the proposed BUSTR rule is submitted to Ohio's formal rules adoption process.

A list of dates relevant to this process can be found below under "Key Timeline/Dates."

# About Completing the Online Petition/Comment Form

Where a rule currently exists (e.g., <u>BUSTR</u> administrative rules), petitions for changes to these existing rules may be submitted anytime using the online <u>Petition/Comment Form</u>.

A petition or comment must be submitted electronically, but anyone without access to the online forms may request assistance from BUSTR (see contact info below). The electronic Petition/Comment form has buttons that will assist the user in correctly formatting text in the petition. New (added) text must be underlined (e.g., new words used) and deleted text must be identified by strikeout (e.g., words deleted). All petitions and comments must be submitted electronically no later than 5:00 pm on the day of the deadline identified below. The Petition/Comment Form can be accessed by clicking here.

Questions about the rule revision/development process can be directed to BUSTR at:

Division of State Fire Marshal

800-686-2878 (Ohio Toll Free) or

8895 E. Main Street.

614-752-7938

Reynoldsburg, Ohio. 43068

email: webbustr@com.state.oh.us

To receive email notification of updates placed on the BUSTR Website including changes to the Agenda and when submissions and postings have been made please sign up by sending an email to: webbustr@com.state.oh.us.

# Instructions for Submitting the Petition/Comment Form:

- 1. Please Use Only the Online Petition/Comment Form Provided:
  - a. Petitions and/or comment submissions on any other form, or in any format, will not be accepted.
  - b. For those who cannot access the online form, SFM/BUSTR is available to assist.
- 2. One Petition/Comment Form per Suggested Change/Comment:
  - a. A single Petition/Comment form must be submitted for each requested change and/or comment. BUSTR can not track multiple comments or requests contained within a single Petition/Comment form.
  - b. The Petition/Comment form must be completed in its entirety in order to be considered in the rule development/revision process.
- 3 Please Save a Copy of Your Submitted Petition/Comment

#### Key Timeline Dates:

Please note that asterisk (\*) denotes items of interest and are addressed below.

06/29/09	Petition Period Opens
	BUSTR is accepting Petitions on the following:
	1. All existing BUSTR administrative rules
	2. New administrative rules for owner/operator training
	3. New administrative rules for secondary containment
	4. New administrative rules for delivery prohibition
	Promotion
07/30/09**	Meeting of Stakeholders at Ohio Fire Academy (map)
100pm - 400pm	The voluntary meeting will be followed by a voluntary Stakeholder Intra-
•	Industry Meeting***
	,
09/18/09	Petition Period Closes
08/19/10	BUSTR Publishes Limited ROP on BUSTR Web Site for BUSTR Rules 6,
	7, 8 and 18****
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08/19/10	Comment Period Opens for BUSTR Rules 6, 7, 8 and 18
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TBA	BUSTR Publishes Limited ROC on the BUSTR Web site for BUSTR
	Rules 6, 7, 8 and 18
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TBA	Ohio's Formal Rule Adoption Process
	- Draft filed with Legislative Service Commission (LSC)
	- Draft published in the Register of Ohio
	,

- Draft published in the Register of Ohio
- JCARR process

#### TBA Rules Accepted, Published and Printed

- NOTE: In the event that the ROP is published after the date listed, all subsequent timeline dates will be adjusted accordingly
- \*\* In the interest of achieving an improved understanding of the new BUSTR rule revision/writing process and meeting customer needs, a few agenda items from the previously discussed agenda have been adjusted.
- \*\*\* The intra-industry meeting is intended as an opportunity for stakeholders to discuss amongst themselves potential petitions and/or comments of the BUSTR rules. BUSTR personnel may attend, but will not facilitate the discussion, and will only participate by providing information about BUSTR.
- \*\*\*\* To conform to the requirements of the Federal Energy Policy Act of 2005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from the remaining BUSTR rules. All other BUSTR rules, including owner/operator training, will be considered later in the year

BUSTR Underground Storage Tank Rule Meeting, June 3, 2011

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BUSTR Underground Storage Tank Rule Meeting July 7, 2011

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BUSTR Rule Meeting July 21, 2011

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BUSTR Underground Storage Tank Rule Meeting August 4, 2011

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BUSTR Underground Storage Tank Rule Meeting September 8, 2011

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BUSTR RULE MEETING - SEPTEMBER 22, 2011

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BUSTR Underground Storage Tank Rule Meeting, October 6, 2011

	ORGANIZATION	TELEPHONE NUMBER	Email
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	Bush	1014 995 4246	William. Vedus @ CAM. State OH.US
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	15th Colory		Jaco Sac Lex. Con
Richmond	PUSTRUB	614 752-8963	Srichmond @ actroboad.or.
Marle Schimidt Hu	ull/B?	440-232-4445	mschmidt (a hulling.com

BUSTR Underground Storage Tank Rule Meeting, October 20, 2011

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-	Heven Brichbaum	BUSTR		Steven, Michbaum & com, state oh. Us
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က	There Thicks full	MASTIAKS	(HM) 252-8422	Stevele adv Fuel. com
4	Shery Krapo	SFM / TLR		Sheril, Kraps @ com. state. oh. us
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9	ELLEN MILLER	SFM / BUSTING	614.72-16:13	EMILLON (8) COM STATE OF THE
7	William Vedra	SFH BUSTR	614 495-4246	614 495-4246 William. Vedor OCON. STATE OH.UK
	Verne Ord	SFM/BUSTR	260L-ESL-HP)	Vexne . Crolo cora , state . A. us
ŋ	ster Lichmond	PUSTREB	614-752-8963	srichmond & petroboard. are
2	Mark Shim it	Hull 187	440-232-9445	mschmidt a hulling com
*-	Loni Stevens	BuSTR	914-387-7350	014-387-7350 LON, SKVEUSO COM. State, dUS
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