

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-04

Rule Type: Amendment

Rule Title/Tagline: Registration of UST systems.

Agency Name: Department of Commerce

Division: Division of State Fire Marshal

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 7/31/2022
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3737.02, 3737.88
5. **What statute(s) does the rule implement or amplify?** 3737.02, 3737.88
6. **What are the reasons for proposing the rule?**

Revenue raised by UST registration and transfer of ownership fees is the primary funding mechanism for the State Fire Marshal- Bureau of Underground Storage Tank Regulation (BUSTR) outside of federal grants. The fee revenues are used as the state match for those grants and also to cover indirect and other costs that the federal grants do not address. Due to recent reductions in the amount of the grant monies received, BUSTR has been operating at a deficit for the past three years and that trend will continue absent an increase in the fee.

The fee has not changed since 1999, and based on budget projections prepared by the Department of Commerce's Fiscal section, an increase is necessary to stabilize BUSTR's

finances. SFM-BUSTR is proposing to increase the fee from \$50 to \$100. The impact on UST owners will be fully offset by the \$50 reduction in the per tank fee associated with the mandatory participation in the Petroleum UST Release Compensation Board's Financial Assurance Fund. The Board is pursuing its fee reduction through a separate rulemaking (OAC 3737-1-04), which will be completed simultaneously with this action.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

Rule 1301:7-9-04 promulgates registration requirements for underground storage tanks authorized under the Revised Code sections 3737.02 and 3737.88 and currently authorizes a fee of \$50 per tank for new installations, annual registration, and transfers of ownership. Governmental entities are exempt from payment of the fee.

The rule is being amended to increase the fee to \$100 per tank.

8. Does the rule incorporate material by reference? No

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

Not Applicable

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Not Applicable

II. Fiscal Analysis

11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

This will increase revenues.

\$870,000

Currently, the fees generated by compliance with this rule totaled approximately \$870,000 in FY2017. If the fee is increased from \$50 to \$100 per tank, the amount raised should double. BUSTR does not anticipate a higher-than-normal noncompliance

rate as a result of the increased fee because the it is offset by a \$50 reduction in per tank fees levied by the Petroleum UST Release Compensation Board.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

The annual cost of compliance to UST owners will be \$100 per tank or tank compartment. The fee is also owed when the ownership of a UST system transfers. The United States, the State of Ohio, and political subdivisions are exempt from paying any fees under this rule, although they must file registration or transfer of ownership forms for USTs that they own. The cost of preparing a registration form or transfer of ownership form is nominal.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes

III. Common Sense Initiative (CSI) Questions

15. Was this rule filed with the Common Sense Initiative Office? Yes

16. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

The rule requires USTs to be registered annually.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes

Pursuant to ORC 3737.882(C)(2), violations of most BUSTR rules, including this one, are subject to a statutory civil penalty of up to \$10,000 per violation, per day. As a practical matter, violators are provided opportunities to return to compliance well before a civil penalty is considered.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

The rule requires a \$100 fee per tank and a submission of registration, change in ownership and change of product forms.

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Part C - Environmental Rule Questions

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.

BUSTR sent an e-mail to all UST owners for whom the agency has e-mail contact information, with a total of 2,421 successful deliveries. The e-mail contained the draft rule language and the rationale.

Additionally, an e-mail was sent to several trade associations and other stakeholders that could have an interest in the rulemaking:

Ohio Township Association
Ohio Petroleum Marketers and Convenience Store Association
Ohio Municipal League
Ohio Fire Chiefs' Association
Ohio Environmental Council
County Engineers Association of Ohio
County Commissioners' Association of Ohio
Ohio EPA
Ohio Department of Transportation
API-Ohio

Associated Food & Petroleum Dealers
Ohio Chamber of Commerce
Ohio Contractors Association
Campbell Oil Company
Certified Oil Company
Circle K
Englefield Oil Company
Ohio School Boards Association
Petroleum UST Release Compensation Board
Kroger Company
Pilot Travel Centers
Speedway
Santmyer Oil Company
True North
Saneholtz-McKarns
Swift Oil
Giant Eagle
Triumph Energy
The Hartley Company
Meijer, Inc.
Barney's Convenience Mart, Inc.
Bulk Carriers Transportation Equipment Co.
First Energy Corporation
Greater Cleveland Automotive Dealers Association
Ohio Trucking Association
Ohio Hospital Association
Ohio Cleaner's Association
Ohio Council of Retail Merchants
Slattery Oil Company
Sierra Club
Thompson Petroleum
Travel Centers of America
United Dairy Farmers

(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 280.22, Notification requirements). The federal government requires states to register the tanks for regulatory accountability purposes.

- (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**