

Rule Summary and Fiscal Analysis (Part A)**Department of Commerce**

Agency Name

Division

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1301:7-9-06

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

**Design, construction, installation, operation, and maintenance
for UST systems.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
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: **3737.88**
5. Statute(s) the rule, as filed, amplifies or implements: **3737.88**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:
Five-year rule revision required pursuant to ORC 106.03.
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 1301:7-9-06 describes the requirements for installing and operating new and

existing UST systems.

More than 50% of current rule 1301:7-9-06 is being amended, thus the existing rule is being rescinded and the rule is being filed as a new rule under the same rule number.

Rule 1301:7-9-06 is being updated to meet the requirements of the federal regulations on which it is based. Those federal regulations, found at 40 CFR 280, Subparts B and C, were revised for the first time since 1988, effective October 18, 2015. The significant revisions to the rule include implementation of new federal requirements for: periodic checks of UST system components, compatibility of UST systems with tank contents, retrofit of older single wall UST systems, qualifications of persons performing work on UST systems, records retention for UST system components, and requirements for airport hydrant and field-constructed systems. Numerous standards relating to the construction and operation of UST systems were updated to match similar federal standards. Finally, a number of formatting changes were made to improve readability and clarity.

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:

Materials incorporated by reference in this rule are generally available to affected persons (including UST owners and operators, licensed UST contractors and inspectors, and members of the fire service) in the following manner:

1. All text or materials are published by either other governmental agencies, private organizations or industry associations. All of these publications may be obtained by the publishing companies that distribute this material nationally or by any person, without any restriction, from the organization that promulgated the material or text. Some of these reference materials are free and some may be purchased for a reasonable fee.
2. The incorporated material is also available for review at the Division of State Fire Marshal during regular business hours.

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:

Not Applicable.

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(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 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.

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This rule should not significantly change revenues or expenditures for the agency.

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:

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

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

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

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.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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

To the extent that the rule requires existing USTs to be upgraded or new components to be installed, it requires an owner or operator to obtain a permit under OAC 1301:7-9-10. The permit allows BUSTR to update its database on the USTs at the site.

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 USTs to be equipped with certain types of equipment to prevent

releases to the environment. Newly-installed systems will likely already have these, some older systems need to upgrade.

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Rule Number: **1301:7-9-06****Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

(a) Personnel Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

(b) New Equipment or Other Capital Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

(c) Operating Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

(d) Any Indirect Central Service Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

(e) Other Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-07.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

These costs are ordinary costs of conducting the business of the local government entity which will come from the normal operating budgets of the entities. Government entities with regular maintenance schedules can anticipate many of these costs ahead of time as part of the process of planning new construction and upgrade work.

7. Please provide a statement on the proposed rule's impact on economic development.

Compliance with the rule should have a positive impact on economic development by reducing the possibility of a release that requires the time and expense of corrective action. This will allow the local government owner to facilitate the sale or transfer of the property, if desired, and to allow the site to be re-used in an economically-beneficial manner.

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.
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(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.

Ohio Township Association

Ohio Petroleum Marketers and Convenience Store Association

Ohio Municipal League

Ohio Fire Chiefs' Association

Ohio Environmental Council

Mid-Ohio Regional Planning Commission

County Engineers Association of Ohio

County Commissioners' Association of Ohio

Ohio Department of Development

Ohio EPA

- (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.)

40 CFR Part 280, Subpart B - UST Systems: Design, Construction, Installation and Notification.

280.20 Performance standards for new UST systems.

280.21 Upgrading of existing UST systems.

40 CFR Part 280, Subpart C - General Operating Requirements.

280.30 Spill and overfill control.

280.31 Operation and maintenance of corrosion protection.

280.32 Compatibility.

280.33 Repairs allowed.

280.34 Reporting and recordkeeping.

280.35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

280.36 Periodic operation and maintenance walkthrough inspections.

40 CFR Part 280, Subpart K - UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems.

280.250 Definitions.

280.251 General Requirements.

280.252 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

Federal Guidelines located at
http://www.epa.gov/swerust1/fedlaws/epact_05.htm#grant.

-Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005.

-Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005.

-Grant Guidelines to States for Implementing the Delivery Prohibition Provision of the Energy Policy Act of 2005.

- Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005.

(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 1

Compliance cost estimates for OAC 1301:7-9-06 and 1301:7-9-07

Rules 1301:7-9-06 and 1301:7-9-07 taken together address the design, installation, operation, and maintenance of UST systems and the methods of release detection for those UST systems. The rules are adaptations of federal equivalents, found at 40 CFR Part 280 Subparts B, C, and D.

These rules are being rescinded and replaced due to the amount of changes made as a result of an overhaul to the federal regulations upon which Ohio's are based. Although the new rules still contain language that already exists in the current version of the rules, this language describes upgrade standards that existing UST systems were required to have met in 1998; the expenditures for those upgrades were made nearly two decades ago. Taken together, the existing and new requirements account for only a small portion of the overall cost of a UST installation, which averages about \$100,000 per UST system.

The provisions of the new (replacement) rules include a number of new and revised requirements that were adopted by U.S. EPA and became effective on October 18, 2015. This represented the first revisions to these federal rules since they were originally promulgated in 1988. In addition to the new and revised requirements, certain types of UST systems that previously had been deferred from regulation were now included

The new and revised requirements and their estimated costs are as follows:

- **Automatic Tank Gauging (ATG) system** UST systems containing fuel solely for use by emergency generator systems had previously been deferred from the requirement to utilize an ATG system or other method of release detection. That deferral was removed by the revised federal requirements. While the cost of adding an ATG system to an existing UST is estimated at over \$40,000, BUSTR allows owners and operators to use methods that are far less costly, e.g., statistical inventory reconciliation (SIR), which costs about \$400 per year for an SIR vendor to analyze fuel usage records.
- **Spill Protection Equipment** This equipment is required to be tested for tightness once every three years at an average cost of \$50 per tank.
- **Overfill Protection Equipment** This equipment is required to be tested for tightness once every three years at an average cost of \$50 per tank.
- **Sumps** Containment sumps are required to be tested for tightness once every three years at an average cost of \$150.
- **Automatic Line Leak Detectors** These are to be tested for tightness annually at an average cost of \$185 per line.

- **Calibration** Leak detection equipment will need to be calibrated annually at an average cost of about \$200 per UST system.
- **Walkthrough Inspections** The revisions to the rules require owners and operators to conduct periodic walkthrough inspections of spill prevention and release prevention equipment to assure that it is in good operating condition. BUSTR expects that the vast majority of owners and operators will simply assign this task to an employee as part of his or her regularly assigned duties; no added cost would be incurred. If the walkthroughs are contracted out, BUSTR estimates the cost at \$250 per year.
- **Flex Lines/Shear Valves** Repairs to flex lines and shear valves were previously categorized as routine maintenance and could be performed without a permit or an inspector. However, over the past five years, BUSTR has detected a rise in releases attributable to improper repair of these components. These types of repairs have thus been reclassified as “modifications” (as they were prior to 2012) and a permit and use of a certified UST inspector will be necessary. The permit fee is \$35 and hiring a certified UST inspector is estimated to cost \$300 (3 hours of time @ \$100/hour).
- **Standards** Contractors performing installations, repairs, removals, etc., will need to comply with updated standards written by Underwriters Laboratories, the American Petroleum Institute, the National Fire Protection Association, and other similar organizations. Consultants routinely purchase updated standards when they become available, but if any have not yet done so, the new standards referenced in the rules will cost an estimated \$1200. Manufacturers of UST components will also have to meet new standards, but there are relatively few such manufacturers and they operate nationally; thus, the cost of purchasing the new standards, when spread across their operations, is less than \$50 per state.

Two types of UST systems are now subject to regulation after being deferred since 1988: airport hydrant fuel distribution systems and field-constructed systems. Because they have never been regulated, they will likely incur the most significant cost to come into compliance. U.S. EPA estimated that the base cost for an airport hydrant fuel distribution system would be approximately \$139,000, while that for a field-constructed system will be around \$24,000 (an airport hydrant system is much more extensive, typically containing hundreds of feet of piping that will require upgrades). BUSTR is only aware of three (3) airport hydrant systems in Ohio and believes that a similarly small number of field-constructed USTs exist.

The cost estimates provided in support of the revised rules in this chapter were derived from a combination of sources including the Petroleum Underground Storage Tank Release Compensation Board, quotes from UST consultants, the Regulatory Impact Analysis prepared by U. S. EPA in support of its July 15, 2015, final rule revisions, and BUSTR’s staff experience.