

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-07

Rule Type: Amendment

Rule Title/Tagline: Release detection methods and requirements for 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? Yes**
 - A. **What is the rule's five year review date? 6/7/2022**
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? 3737.88**
5. **What statute(s) does the rule implement or amplify? 3737.88**
6. **What are the reasons for proposing the rule?**

Five-year rule review required pursuant to ORC 106.03.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule 1301:7-9-07 describes the requirements for installing and operating release detection on new and existing UST systems. The only revision to the rule being proposed at this time is a clarification that where a federal statute or regulation is cited within the rule, language is added or revised to clearly indicate that the version of the

federal statute or regulation is that which is in effect at the time this administrative rule is adopted. This language occurs at subparagraph (H)(1).

8. **Does the rule incorporate material by reference? Yes**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

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 from the publishing companies that distribute this material nationally or 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.

Additionally, there is one instance of incorporated material consisting solely of a group of certain federal regulations, which is readily available online.

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. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

Not Applicable

Not Applicable

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

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
15. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

16. **Was this rule filed with the Common Sense Initiative Office? Yes**
17. **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**

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 affirm that licensed personnel are overseeing the work being performed and to ensure that BUSTR's database is accurate.

- 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 and to undergo and document periodic operational checks to prevent releases to the environment. Newly-installed systems will likely already have these, some

older systems need to be upgraded. Also, where testing or the equipment indicates a release may have occurred, it is required to be reported to BUSTR.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

The rule requires USTs to be equipped with certain types of equipment and to undergo and document periodic operational checks to prevent releases to the environment.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?**

Not Applicable

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	Yes
B. County Government	Yes
C. Township Government	Yes
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

3. Is this rule the result of a federal government requirement? Yes

- A. If yes, does this rule do more than the federal government requires? No**
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

Not Applicable

4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:

A. Personnel Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

B. New Equipment or Other Capital Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

C. Operating Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

D. Any Indirect Central Service Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

E. Other Costs

Please see Attachment 1 for a discussion of the combined costs for this rule and rule 1301:7-9-06.

5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.

There are no new requirements as a result of the proposed revision. As to existing requirements, the costs are ordinary costs of conducting the business of the local government entity which will come from the normal operating budgets of the entities. The costs are not immediate, and government entities with regular maintenance schedules can anticipate these costs ahead of time as part of the process of planning new construction and upgrade work.

6. What will be the impact on economic development, if any, as the result of this rule?

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.

Rule Summary and Fiscal Analysis

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.

API-Ohio
County Commissioners' Association of Ohio
County Engineers Association of Ohio
Ohio Chamber of Commerce
Ohio Contractors Association
Ohio Council of Retail Merchants
Ohio Department of Development
Ohio Department of Transportation
Ohio Environmental Council
Ohio Fire Chiefs' Association
Ohio Hospital Association
Ohio Manufacturers' Association
Ohio Municipal League
Ohio Petroleum Contractors Association
Ohio Petroleum Marketers and Convenience Store Association, nka Ohio Energy and Convenience Association

Ohio Petroleum UST Release Compensation Board
Ohio School Boards Association
Ohio Township Association

- (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 D – Release Detection

280.40 General requirements for all UST systems.
280.41 Requirements for petroleum UST systems.
280.42 Requirements for hazardous substance UST systems.
280.43 Methods of release detection for tanks.
280.44 Methods of release detection for piping.
280.45 Release detection recordkeeping.

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
<https://www.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#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.

The cost of a new secondarily contained UST installation for a typical gas station averages \$120,000 (which is typical standard build even without the UST regulations). After installation, the rules require UST systems to be properly operated and maintained. While the 2022 revisions to rules 1301:7-9-06 and -07 are administrative in nature and impose no new requirements on the regulated community, in the previous rule review cycle (2017), a number of relatively minor requirements were added. The estimated costs of compliance with those provisions of the two rules are updated as follows:

- **Release Detection:** This equipment is required to be tested for the purposes of maintaining and calibrating once every three years at an average cost of \$180 per tank.
- **Spill Protection Equipment:** This equipment is required to be tested for tightness once every three years at an average cost of \$85 per tank.
- **Overfill Protection Equipment:** This equipment is required to be tested for tightness once every three years at an average cost of \$85 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 functionality annually at an average cost of \$185 per line.
- **Cathodic:** Cathodic protection systems utilized as a means of corrosion protection are required to be tested for tightness once every three years at an average cost of \$145.
- **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 at a cost estimated at \$1200.

The cost estimates provided in support of the revised rules in this chapter were derived from quotes from UST consultants and from BUSTR staff experience.