

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

Agency Name

Division Of State Fire Marshal

Division

Kevin Schmidt

Contact

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1301:7-9-07

Rule Number

RESCISSION

TYPE of rule filing

Rule Title/Tag Line

Leak detection requirements and methods for 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: **3737.88**

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 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 1301:7-9-07 defines leak detection requirements for UST systems.

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:

Referenced standards are generally available to all affected parties. The reference standards can easily be purchased from the standard making organization. The affected parties typically will be professional engineers or otherwise professionals in the field of underground storage tank installation, removal and repair. These parties would be expected to already own these standards in order to conduct their business.

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:

It was infeasible for the agency to file the text electronically due to copyright issues with the standards making organizations. The standards are generally available.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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

Texts are obsolete and are being replaced with new reference standards.

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: **11/24/2004**

(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.

\$0

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:

The cost for leak detection for new UST systems can vary widely depending on the type and size of the tank and associated piping and ancillary equipment. BUSTR solicited price quotes from UST installers for a typical installation of three 10,000 gallon UST systems, and received cost estimates ranging from \$3,500 to \$7,000, per UST system for typically installed electronic leak detection equipment.

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.

Rule Summary and Fiscal Analysis (Part B)

1. Does the proposed rule have a fiscal effect on any of the following (please check each that applies)?
- | | | | | | | | |
|----------------------|---|--------------|---|---------------|---|----------------------------|---|
| (a) School Districts | X | (b) Counties | X | (c) Townships | X | (c) Municipal Corporations | X |
| _____ | | _____ | | _____ | | _____ | |

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.

A cost analysis of compliance with this rule is included in Attachment B. The cost for leak detection for new UST systems can vary widely depending on the type and size of the tank and associated piping and ancillary equipment. BUSTR solicited price quotes from UST installers for a typical installation of 3 10,000 gallon UST systems, and received cost estimates ranging from \$3,500 to \$7,000 per UST system for typically installed electronic leak detection equipment.

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?

X _____
Yes 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.

This rule revision imposes additional restrictions on leak detection systems for UST systems beyond what is required in federal regulations. UST systems using soil gas monitoring or ground water monitoring will have to replace these systems with other valid methods of leak detection (these leak detection systems are allowed federal regulations). These methods detect the presence of a release by sampling environmental media, and are being disallowed for the following reasons: they are technically complex and require a sophisticated owner or operator to be used properly, contamination is not detected until after the release has had a chance to become extensive, and proper use makes these systems more expensive than more commonly used leak detection systems. As many owners and operators mis-report installed observation wells as "ground water monitoring systems" it is not possible to say exactly how many systems may be impacted, evidence from field compliance reports are that these systems are very rare. Any owner or operator of a UST system may apply for a variance from the Fire Marshal to continue to use these systems if they can demonstrate that they are being used properly and are appropriate for the UST system.

The elimination of monthly monitoring as a substitute for annual tightness testing is more stringent than federal requirements. This change is justified by the fact that piping systems are the most likely source of releases on UST systems, and that the agency has concerns about the long term integrity of many types of piping in common use in Ohio, justified by USEPA and state studies.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the costs 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.

A cost analysis of compliance with this rule is included in Attachment B. The cost for leak detection for new UST systems can vary widely depending on the type and size of the tank and associated piping and ancillary equipment. BUSTR solicited price quotes from UST installers for a typical installation of 3 10,000 gallon UST systems, and received cost estimates ranging from \$3,500 to \$7,000 per UST system for typically installed electronic leak detection equipment.

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.

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

This rule should not have any significant impact on economic development should occur.

Rule # 1301:7-9-07

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?

 x
 Yes No

If YES, please list each contact.

See Attachment A

If NO, please explain why affected organizations were not contacted.

(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?

 X
 Yes No

Rule # 1301:7-9-07

If 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).

See Attachment B.

If NO, please indicate the reasons for not providing the information.

(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?

 X
Yes No

If YES, is the proposed rule or rule amendment more stringent than its federal counterpart?

 X
Yes No

If YES, what is the rationale for not incorporating the federal counterpart?

This rule revision imposes additional restrictions on leak detection systems for UST systems beyond what is required in federal regulations. UST systems using soil gas monitoring or ground water monitoring will have to replace these systems with other valid methods of leak detection (these leak detection systems are allowed federal regulations). These methods detect the presence of a release by sampling environmental media, and are being disallowed for the following reasons: they are technically complex and require a sophisticated owner or operator to be used properly, contamination is not detected until after the release has had a chance to become extensive, and proper use makes these systems more expensive than more commonly used leak detection systems. As many owners and operators mis-report installed observation wells as "ground water monitoring systems" it is not possible to say exactly how many systems may be impacted, evidence from field compliance reports are that these systems are very rare. Any owner or operator of a UST system may apply for a variance from the Fire Marshal to continue to use these systems if they can demonstrate that they are being used properly and are appropriate for the UST system.

The elimination of monthly monitoring as a substitute for annual tightness testing is also more stringent than federal requirements. This change is justified by the fact that piping systems are the most likely source of releases on UST systems, and that the agency has concerns about the long term integrity of many types of piping in common use in Ohio, justified by USEPA and state studies.

- (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?

 X
Yes No

If YES, please explain why?

In addition to the phasing out of soil gas and ground water vapor monitoring, two additional requirements are proposed that are more stringent than the rule this is proposing to amend. The requirement for inventory control for UST systems dispensing motor or aviation fuel was added to make the BUSTR regulations consistent with the "Ohio Fire Code", which contains a similar requirement. The elimination of monthly monitoring as a substitute for annual tightness testing is also more stringent than previous rule requirements. The requirement for a Certified UST Installer to supervise all tightness testing has been added, the current rule requires this for most tightness testing scenarios but not for tests associated with three year maintenance checks of pressurized piping or those done for suspected release investigations.
