

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

Agency Name

**Division of State Fire Marshal**

Division

**Sarah W. Sofia**

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**1301:7-9-07**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Release 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:

Revising requirements from recent ORC 119.032 rule revision that have been found to be overly burdensome to UST owner/operators.

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.

Rule 1301:7-9-07(B)(4)(a) The requirements for sensors in containment sumps have been changed. Discriminating sensors are no longer required.

Rule 1301:7-9-07(B)(4)(b) The conditions for declaring a suspected release due to the presence of product in a containment sump have been changed. BUSTR believes the previous version is overly restrictive.

Rule 1301:7-9-07(F)(7) The rules no longer require Certified UST Installers to perform tightness testing. Certified UST Installers are still required to supervise all UST work requiring a permit.

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:

*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:

The fiscal analysis part B and environmental impact statement have been

re-formatted. No substantive changes have been made.

12. 119.032 Rule Review Date: **9/12/2005**

(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.

Not Applicable

Not Applicable

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:

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. This rule revision relaxes requirements for operating and maintaining leak detection devices as compared to the previous rule. A technical change has been made to allow the tank owner operator to use less expensive level detection equipment for containment

sumps. The requirement that Certified UST Installers supervise precision testing of UST systems has been waived. The Office of the State Fire Marshal believes this requirement adds cost to the UST owner operator without a commiserate increase in environmental protection.

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?

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

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.

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. An installation of 3 10,000 gallon UST systems will range 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? **Yes**

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.

The proposed rule amendment removes some requirements from the tank owner/operator and the cost of compliance is expected to be reduced. Both the existing rule and the proposed amendment impose restrictions on leak detection systems for UST systems beyond what is required in federal regulations. Two types of leak detection systems recognized by federal requirements are not permitted under these rules, soil gas monitoring and ground water monitoring. 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/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 systems.

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.

There are several leak detection options available to the owner or operator based on their specific circumstances. The option selected may have a significant impact on the cost of conducting leak detection. The following estimates are based on actual bids for work relating to the installation and upgrade of UST systems and leak detection systems.

(a) Personnel Costs

\$1,000 for installation, \$350 for annual testing.

(b) New Equipment or Other Capital Costs

Automatic tank gauge: \$5,500, Interstitial monitoring \$6,500, Leak detection for pressure piping \$1,200.

(c) Operating Costs

\$0

(d) Any Indirect Central Service Costs

\$35 permit fee

(e) Other Costs

\$0

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.

The rule should not have any significant impact on economic development.

**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.

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.)

40 C.F.R. 280.40 General Requirements for all UST systems.

40 C.F.R. 280.41 Requirements for petroleum UST systems.

40 C.F.R. 280.42 Requirements for hazardous substance UST systems.



40 C.F.R. 280.43 Methods of release detection for tanks.

40 C.F.R. 280.44 Methods of release detection for piping.

40 C.F.R. 280.45 Release detection recordkeeping.

American Petroleum Institute Publication 1621-01

- (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 ? **Yes**

What is the rationale for not incorporating the federal counterpart?

The proposed rule amendment removes some restrictions on who can perform various maintenance activities and is less stringent than the rule it is replacing. Both the existing rule and the proposed amendment impose restrictions on allowable leak detection systems beyond what is allowed in federal regulations. Two types of leak detection systems recognized by federal law are not allowed under these rules, soil gas monitoring and ground water monitoring. 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 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.

- (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**

Not Applicable

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ACT ON REVIEW

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