

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

Agency Name

Division of State Fire Marshal

Division

Sarah W. Sofia

Contact

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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:

Not Applicable.

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

(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:

See Attachment B

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 A)

Department of Commerce, State Fire Marshal

Agency Name

Bureau of Underground Storage Tank Regulations, Peter A. Chace, Bureau Chief

Division & Contact

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Agency Mailing Address (Plus Zip)

Phone

Fax

Please check the appropriate TYPE of rule filing; check ONLY ONE.

Table with 4 columns: Amendment, New, Rescission, No Change. All cells are empty.

1301:7-9-07

Rule Number

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 X NO

2. Are you proposing this rule as a result of recent legislation? YES NO X

If YES, state Bill Number SB/HB General Assembly Sponsor

3. Statute prescribing the procedure in accordance with which the agency is required to adopt the rule:

119.03 X

111.15

Other (specify)

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 you are 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:

Not applicable.

12. 119.032 Rule review date: **August 5, 2005**

(If 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: At 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** (circle one) either **revenues/expenditures** (circle one) 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 rule will not 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:

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 **No** _____

If YES, you must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. SB 33 of the 120th General Assembly. (If NO, you do not need to include Part B of the Rule Summary and Fiscal Analysis with this rule when filing.)

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R.C. 121.39?
Yes **No** _____

If YES, you must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. H.B. 106 of the 121st General Assembly. (If NO, you do not need to attach the form to the rule when filing.)

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 | (d) 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. This amendment will expand the pool of individuals qualified to perform tank tightness testing and is expected to lower the cost of compliance due to increased competition. Otherwise the rule amendment will not significantly impact the cost of compliance.

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.

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 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 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.

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. This amendment will expand the pool of individuals qualified to perform tank tightness testing and is expected to lower the cost of compliance due to increased competition. Otherwise the rule amendment will not significantly impact the cost of compliance.

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?

Yes No

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

Yes No

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

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 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 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.

- (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?

Yes No

If YES, please explain why?

First Name	Last Name	Company	Address 1	City	State	Zip Code	Phone	Email	Initial
Paul	Backo	EMPACO Equipment Corp.	P. O. Box 536	Richfield	OH	44287	(330) 659-9394	backop@empacoequipment.com	
Mark	Brandwiede	Red Leonard Associates	4530 Bridgetown, Suite 2	Cincinnati	OH	45248	(513) 574-9500	mbrandria@aol.com	
Dave	Enthar	Buid-Mor Ports Petroleum Company, Inc.	P. O. Box 21267	Columbus	OH	43221	(614) 274-4300	dave@buid-mor.com	
Barry	Henderson	U.S. Training and Safety Institute	P. O. Box 1046	Wooster	OH	44691	(330) 264-1885	barry@fuelmart.com	
James	Hill		P. O. Box 36714	Canton	OH	44735	(330) 962-5980	idhill1@hotmail.com	
Scott	Hiser	Speedway SuperAmerica LLC	500 Speedway Drive	Enon	OH	45323	(937) 864-6515	RSHiser@ssallc.com	
Dennis	Maddy	Maddy Petroleum	351-5 Lowery Ct.	Groveport	OH	43125	(888) 836-9668	sales@maddypetro.com	
Keith	Martin	Speedway SuperAmerica LLC	P. O. Box 1500	Springfield	OH	45501	(937) 863-6995	klmartin@ssallc.com	
David	Miller	American Electric Power					(614) 716-1293	dammiller@aep.com	
Dave	Mitchell	Reliable Construction Services	P. O. Box 143	Dayton	OH	45404-0143	(937) 461-2250	dmitchell@reliacon.com	
Anissa	Nelson	ECS Compliance Plus	7400 Skyline Drive, Ste. A	Columbus	OH	43235	(614) 760-7682	anelson@ecsconsult.com	
Sam	Patterson	BP					(412) 680-0518	patterst@bp.com	
Karen	Reese	FirstEnergy Corp. Convenience Store Association	76 South Main Street	Akron	OH	44308	(330) 384-5948	reeseek@firstenergycorp.com	
Jennifer	Rhoads						(614) 792-5212	jrhoads@opmca.org	
James	Rocco	Sage Risk Solutions, LLC	360 Heritage Road	Aurora	OH	44242	(330) 562-9391	jrocco@sagerisk.com	
Al	Rumpke	ARA Petroleum Contractor Training	6939 Crearcreek Road	Hillsboro	OH	45133	(937) 393-1156	biotech@bright.net	
C.J.	Schultz	Tanknology	470 Schrock Road, Suite L	Columbus	OH	43229	(614) 436-7600	cjschultz@tanknology.com	
Brian	Stull	JGD Associates, Inc. Modern American Safety Training	92 Moore Road	Avon Lake	OH	44012	(440) 933-6825	bstull@jgdpe.com	
Steve	Thickstun		P. O. Box 89	Reynoldsburg	OH	43068	(614) 252-0565	steve@advfuel.com	
Ray	Wirt	American Electric Power					(330) 323-5525	erwirt@aep.com	

ACTION: Withdraw Proposal

DATE: 09/13/2005 9:04 AM

Cost analysis of Compliance with Rule 1301:7-9-07 of the Administrative Code

- I. There are several leak detection options available to the owner or operator based upon their specific circumstances. The option selected may have a significant impact on the cost of conducting leak detection. The cost analysis provided below summarizes the costs associated with various options for leak detection available to the owner or operator of an UST system.

The installation cost for a leak detection system on an UST ranges from \$3,525 to \$6,240. These costs represent the one time installation cost of the leak detection equipment. The operation and maintenance cost of these systems are minimal and are difficult to quantify due to the automated nature of these methods. As an alternative to the installation of leak detection equipment, BUSTR currently allows the use of statistical inventory reconciliation at an annual cost of approximately \$173.

The cost of leak detection for underground piping varies depending on the nature of the piping used in the system. For piping that carries product under pressure, the costs include \$1,208 for the installation of monitoring equipment and \$222 for annual tightness testing on the piping. As an alternative to pressure piping, owners and operators can use suction piping. Suction piping is monitored through the same general leak detection methods for the associated UST at a combined cost of between \$3,525 to \$6,240 for the entire US system. An additional cost associated with suction piping is \$222 for tightness testing every thirty-six (36) months. Statistical inventory reconciliation is available as a leak detection method on suction piping in conjunction with the UST. The annual cost of statistical inventory reconciliation for the combined UST system is \$173.

In addition, the costs associated with the installation, upgrade or repair of the leak detection system include approximately \$954 for testing, permitting and supervision (\$982 for hazardous substance UST systems). The testing, permitting and supervision costs for installing or upgrading a leak detection system are included in the testing, permitting and supervision costs for either the installation or upgrade of an UST system. Therefore, if an owner or operator installs or upgrades an UST system in accordance with Rule 1301:7-9-06 of the Administrative Code at the same time a leak detection system is installed or upgraded, there are no additional testing, permitting or supervisions costs.

The information relied upon in the preparation of this fiscal analysis was obtained from consultants and contractors who submitted copies of actual bids for work relating to the installation and upgrade of UST systems and leak detection systems. Some costs are specifically addressed in the BUSTR rules such as permit, inspection and application fees. In addition, owners, operators and equipment suppliers provided cost information related to the installation and upgrade of UST systems and leak detection systems. A detailed breakdown of these costs follows:

- A. Average cost of leak detection for UST's (all options available):

Automatic tank gauging:	\$5,500*
Interstitial monitoring:	\$6,500*
Other BUSTR approved methods (per year):	\$ 175**

- B. Average cost of leak detection for pressurized underground piping (all options available):

Leak detection for pressure piping:	\$1,200
Annual line tightness test.	\$ 250

C. Average cost of leak detection for suction underground piping (all options available):

Line tightness test every thirty-six (36) months:	\$ 250***
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D. Costs associated with the installation and maintenance of leak detection (each cost required):

Final tightness test after installation or maintenance:	\$ 350
Permits	\$ 35
Certified inspector on site:	\$ 130
Certified installer on site:	\$ 460
Purchase of professional reference standards:	<u>\$ 30</u>

Total:	\$ 1,005
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* The costs associated with these methods of leak detection for both the UST and the associated underground piping are one time installation costs. The leak detection equipment, once installed, should have minimum operational costs.

** Currently BUSTR has approved only statistical inventory reconciliation as an alternative leak detection method. The cost indicated above is the annual cost for this method.

*** The rule also provides that no additional leak detection is required for suction piping if the piping is properly designed to allow product to flow back into the UST in the event of a loss in suction. Therefore, if the piping run is properly designed there will be no additional costs imposed for leak detection on the piping.

II. The Fire Marshal, in adopting this rule, relied upon the following documents and technical standards:

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