Rule Summary and Fiscal Analysis (Part A)

Department of Commerce

Agency Name

Division of State Fire Marshal Division David Sauer Contact

8895 East Main Street Reynoldsburg OH 43068-0000 Agency Mailing Address (Plus Zip) <u>614-752-7096</u>

Phone

Fax

<u>1301:7-9-11</u>

AMENDMENT

Rule Number

TYPE of rule filing

Rule Title/Tag Line

Underground storage tank installer certification and training.

<u>RULE SUMMARY</u>

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: **3737.881**

5. Statute(s) the rule, as filed, amplifies or implements: **3737.881**

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:

Summary:

Rule 1301:7-9-11 establishes the certification and renewal requirements for

certified UST installers and certified course sponsors for the installation, replacement, removal, closure-in-place, out-of-service, change-in-service, major repair, and modification of underground storage tank (UST) systems.

Proposed amendments:

Rule 1301:7-9-11 is being amended to clarify the duties of UST installers when UST systems are being replaced. It has been industry practice, and BUSTR's intent, for a certified UST installer to oversee a UST's replacement. However, on rare occasions BUSTR has encountered UST owners or operators who did not understand that replacing a UST requires the expertise of a certified UST installer in the same way that a new UST installation would. BUSTR is therefore adding the term "replacement" in the paragraphs in which a certified installer's duties are described. The term is merely inserted to add clarity by ensuring that an installation occurring as part of an UST system replacement is overseen by a certified UST installer.

The rule is being amended to allow for a longer period of time for the submittal of renewal applications. Also, the rule is being amended to eliminate the requirement that UST installers have hands-on training as part of the UST installer certification process. Other changes are being made to correct cross-references and non-substantive items.

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:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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:

Page 3

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: 12/23/2011

(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

No change.

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:

For compliant UST owners and operators, there is no additional cost resulting from amendments to the rule. For the few owners and operators whose practice had been to replace USTs without using a certified UST installer, the cost of compliance would be approximately \$2400 (\$60.00 per hour x 40 hours of installer activities

per average replacement project) to contract with a certified UST installer. It is important to note, that replacing a UST system without using a certified UST installer is a violation of the existing rule, and an owner or operator who does so runs the risk of the costs of an enforcement action.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? No

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.

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Rule Number: 1301:7-9-11

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 ? 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 ? No

Please indicate the reasons for not providing the information.

The certification of installers is required by ORC 3737.881. As there are few if any programs of this nature, the Fire Marshal developed the training and certification requirements by drawing on the experience and expertise of BUSTR and the State Fire Academy.

(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 ? \mathbf{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 A – Organizations Consulted

Since January 2007, the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR) has held several meetings with stakeholders to discuss proposed changes to the BUSTR regulations. These meetings were open to the public and included representatives from a cross section of the regulated community. All participants were encouraged to participate in the open discussions and to submit written comments on any topic that concerned them. In July 2009, BUSTR initiated a web-based petition process to inform the public of the rule review process and to encourage the public to participate in amending the BUSTR regulations. BUSTR has received over 2,300 petitions requesting changes to the BUSTR regulations. Below is a list of dates when BUSTR held meetings with the public to discuss changes to the BUSTR regulations.

June 29, 2009, Web Based Petition Period Opens.

https://www.comapps.ohio.gov/sfm/fire_apps/fire/petition/ Copy of web page attached.

August 19, 2010, Web Based Comment Period Opens.

https://www.comapps.ohio.gov/sfm/fire_apps/fire/petition/ Copy of web page attached.

June 3, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

June 21, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

July 7, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

July 21, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

August 4, 2011, Meeting at the Ohio Division of Industrial Compliance.

6606 Tussing Road, Reynoldsburg, Ohio 43068 List of attendees attached.

August 18, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

September 8, 2011, Meeting at the Ohio Fire Academy.

8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

September 22, 2011, Meeting at the Ohio Fire Academy. 8895 East Main Street, Reynoldsburg, Ohio 43068

List of attendees attached.

October 6, 2011, Meeting at the Ohio Fire Academy. 8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

October 20, 2011, Meeting at the Ohio Fire Academy. 8895 East Main Street, Reynoldsburg, Ohio 43068 List of attendees attached.

	ommerce State Fire Marshal : Document Petition Comment Form PETITION/COMMENT INFORMATION	STR NOTE: You are outside of the BUSTR petition time period. Any petition submitted today will be considered during the next review cycle.	BUSTR's Rule Revelopment Process and Documents (PDF) UPDATED WITH NEW DATES Limited Report on Petitions – Detailed Report On All Submitted Petitions For BUSTR Rules 6, 7, 8, and 18 (PDF) we In-Line Applications BUSTR Petition / Comment Form	DE ENFORCEMENT NOTE: The Comment Period for the Ohio Fire Code opened on 4:26:2010 and will close on 10:31:2010.	e sources Draft Proposed Ohio Fire Code – including all changes made in the ROP iew Ohio Fire Code Rule Revision/Development Process and Documents (PDF) IIPDATED	
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Department of Commerce Division of State Fire Marshal

Ted Strickland, Governor Kimberty A. Zurz, Director

BUSTR Rule Revision/Development Process

The Ohio Department of Commerce, Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR) has begun its mandatory five year rule review for the existing <u>BUSTR administrative rules</u> and is simultaneously drafting new rules to conform to the requirements of the Energy Act of 2005 for three topic areas: (a) owner/operator training, (b) secondary containment, and (c) delivery prohibition. Thus, BUSTR is currently in the process of revising and/or writing four sets of administrative rules:

- L. All existing **BUSTR** administrative rules
- 2. New administrative rules for owner/operator training
- 3. New administrative rules for secondary containment
- 4. New administrative rules for delivery prohibition

Update as of August 2010: To conform to the requirements of the Federal Energy Policy Act of 2005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from the remaining BUSTR rules. All other BUSTR rules, including owner/operator training, will be considered later in the year.

BUSTR values the input of all stakeholders in the regulatory process and encourages your participation in the rule revision/development process.

Generally, the revision/development process involves four steps:

- 1. <u>Petition Period</u> is the period of time when a stakeholder may submit one or more written petitions via the online <u>Petition/Comment form</u> to suggest a revision to an existing, or newly drafted, rule.
 - A compendium of all submitted petitions, along with BUSTR's response to each of them, will be published shortly after the petition period closes. This will be called the "report on petitions" or "ROP."
 - For those who cannot access the online from, the SFM/Code Enforcement Bureau is available to assist.
- <u>Comment Period</u> is the period of time when a stakeholder may submit one or more written comments via the online <u>Petition/Comment form</u> regarding one or more previously submitted petitions.
 - A compendium of all submitted comments, along with BUSTR's response to each of them, will be published shortly after the comment period closes. This will be called the "report on comments" or "ROC."

Bureau of Underground Storage Tank Regulations. 1995 East Main Street Reynoldsburg, OH 43068 U.S.A.

614 1752 7938 Fax 614 1752 7942 TTY/TDO 800 1750 0750 www.com ohio.gov

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- 3. <u>Ohio's Formal Rule Adoption Process</u> that involves filing the new draft of the rules with the legislature (referred to as the "final draft" at this point), publishing the final draft in the <u>Register of Ohio</u>, holding a mandatory public hearing, and going through the Joint Committee on Agency Rule Review (JCARR) process for final acceptance.
- 4. Publishing and printing (hard copy and online) of the new and amended BUSTR Rules.

The Principles of the Rule/Development Process

Early in the process, especially where no rule currently exists (e.g., the requirements under The Energy Act of 2005), BUSTR will organize one or more "stakeholder meetings" where the stakeholders, industry representatives, and subject matter experts meet to exchange ideas with the SFM. The purpose of these verbal exchanges is to (a) inform stakeholders about the rule development/revision process, (b) inform stakeholders of what to expect in the initial draft of a future rule, (c) solicit feedback from those present regarding the concepts the SFM presents, and (d) have stakeholders inform the SFM of ideas and concerns, even if they have nothing to do with anything previously presented. At a stakeholder meeting, although there will likely be notes taken, there is generally no exchange or submission of written documents because the focus is on the exchange and explanation of concepts and ideas.

When new (usually Federal) requirements force the development of one or more new rules such as those required by The Energy Act of 2005—BUSTR produces and distributes an initial draft of each rule (e.g., <u>new administrative rules for owner/operator training and secondary</u> <u>containment</u>) once the bureau is well informed of the ideas, concerns and positions of stakeholders. This initial document then becomes the basis for the subsequent Petition Period, and suggestions for changes to it are submitted to BUSTR through the online <u>Petition/Comment</u> <u>Form</u>.

During the Petition Period, all interested stakeholders may file petitions for proposed BUSTR rule changes. Petitions on any topic may be submitted at any time during the year, but submission prior to the closing date of the Petition Period will provide the stakeholder with the best chance of having the submitted petition considered in the current rule revision cycle. Petitions received after the Petition Period closes will be considered in the next rule revision cycle. After the Petition Period closes, each petition is thoroughly researched, a response is developed (e.g., Report on Petitions or ROP), and a draft of the proposed BUSTR rule (along with the ROP) are recommended to the Department of Commerce for approval. After approval, the ROP is released on the SFM Website, the draft of the proposed BUSTR rule is released to stakeholders, and the Comment Period begins.

During the Comment Period, the Report on Petitions is available for review by any person via the SFM Website, and comments on the petitions may be submitted through the online <u>Petition/Comment Form</u>. After the Comment Period closes, each comment is thoroughly researched, a response is developed (e.g., Report on Comments or ROC), and a final draft of the proposed BUSTR rule (along with the ROC) are recommended to the Department of Commerce for approval. After approval, the ROC is released on the SFM Website and the final draft of the proposed BUSTR rule is submitted to Ohio's formal rules adoption process.

A list of dates relevant to this process can be found below under "Key Timeline/Dates."

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About Completing the Online Petition/Comment Form

Where a rule currently exists (e.g., <u>BUSTR</u> administrative rules), petitions for changes to these existing rules may be submitted anytime using the online <u>Petition/Comment Form</u>.

A petition or comment must be submitted electronically, but anyone without access to the online forms may request assistance from BUSTR (see contact info below). The electronic Petition/Comment form has buttons that will assist the user in correctly formatting text in the petition. New (added) text must be underlined (e.g., <u>new words used</u>) and deleted text must be identified by strikeout (e.g., <u>words deleted</u>). All petitions and comments must be submitted electronically no later than 5:00 pm on the day of the deadline identified below. The Petition/Comment Form can be accessed by clicking here.

Questions about the rule revision/development process can be directed to BUSTR at:

Division of State Fire Marshal	800-686-2878 (Ohio Toll Free) or
8895 E. Main Street.	614-752-7938
Reynoldsburg, Ohio. 43068	email: webbustr@com.state.oh.us

To receive email notification of updates placed on the BUSTR Website including changes to the Agenda and when submissions and postings have been made please sign up by sending an email to: webbustr@com.state.oh.us.

Instructions for Submitting the Petition/Comment Form:

1. Please Use Only the Online Petition/Comment Form Provided:

- a. Petitions and/or comment submissions on any other form, or in any format, will not be accepted.
- b. For those who cannot access the online form, SFM/BUSTR is available to assist.

2. One Petition/Comment Form per Suggested Change/Comment:

- a. A single Petition/Comment form must be submitted for each requested change and/or comment. BUSTR can not track multiple comments or requests contained within a single Petition/Comment form.
- b. The Petition/Comment form must be completed in its entirety in order to be considered in the rule development/revision process.

3 Please Save a Copy of Your Submitted Petition/Comment

Page 3 of 4

Key Timeline Dates;

Please note that asterisk (*) denotes items of interest and are addressed below.

06/29/09	Petition Period OpensBUSTR is accepting Petitions on the following:1. All existing BUSTR administrative rules2. New administrative rules for owner/operator training3. New administrative rules for secondary containment4. New administrative rules for delivery prohibition
07/30/09** 100pm – 400pm	Meeting of Stakeholders at Ohio Fire Academy (map) The voluntary meeting will be followed by a voluntary Stakeholder Intra- Industry Meeting***
09/18/09	Petition Period Closes
0 8/19/10	BUSTR Publishes Limited ROP on BUSTR Web Site for BUSTR Rules 6, 7, 8 and 18****
08/19/10	Comment Period Opens for BUSTR Rules 6, 7, 8 and 18
09/03/10	Comment Period Closes for BUSTR Rules 6, 7, 8 and 18
ТВА	BUSTR Publishes Limited ROC on the BUSTR Web site for BUSTR Rules 6, 7, 8 and 18
ТВА	 Ohio's Formal Rule Adoption Process Draft filed with Legislative Service Commission (LSC) Draft published in the Register of Ohio JCARR process

TBA Rules Accepted, Published and Printed

* NOTE: In the event that the ROP is published after the date listed, all subsequent timeline dates will be adjusted accordingly.

** In the interest of achieving an improved understanding of the new BUSTR rule revision/writing process and meeting customer needs, a few agenda items from the previously discussed agenda have been adjusted.

*** The intra-industry meeting is intended as an opportunity for stakeholders to discuss amongst themselves potential petitions and/or comments of the BUSTR rules BUSTR personnel may attend, but will not facilitate the discussion, and will only participate by providing information about BUSTR.

**** To conform to the requirements of the Federal Energy Policy Act of 3005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from the remaining BUSTR rules. All other BUSTR rules, including owner/operator training, will be considered later in the year.

Bureau of Underground Storage Tank Regulations 1995 East Main Street Reynoldaburg, OH 43068 U.S.A.

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BUSTR Underground Storage Tank Rule Meeting August 4, 2011

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BUSTR Underground Storage Tank Rule Meeting September 8, 2011

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BUSTR RULE MEETING - SEPTEMBER 22, 2011	TELEPHONE NUMBER	614-728-5120	614-752-8963	614 - 995 - 4246	MCH / ROBERD (230) 562.9391	(614)752-7095	1/222-22-4/1	440-232-9945	12-505-8421	(614) 752-7928	330 264 , 201															
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BUSTR Underground Storage Tank Rule Meeting, October 6, 2011

	NAMEZ I	ORGANIZATION	TELEPHONE NUMBER	Email
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9	David Source	BUSTR	(bid) 752-7096	avid. Suer @ com. state. ob. ur
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8	Breen HENDERON	PORS PEROWN		Brees @ FUD MART. Co.M.
6	DavidBIEMEL	OPMCA	614 QUT 86486	Solomer Domca. Org
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****	Starr Kichmond	PUSTRUB	614 752 - 8963	Srichmond @ petrobourd.or,
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BUSTR Underground Storage Tank Rule Meeting, October 20, 2011

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