

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

Agency Name

Division

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1301:7-9-11

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Underground storage tank installer certification and training.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **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 pursuant to ORC 106.03.

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 1301:7-9-11 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, major repair, and modification of UST systems.

The revisions to this rule are minor, including re-ordering the description of activities to be supervised by a certified installer to reflect the sequence in which they are normally performed, and several clarifying changes to the installer license renewal process.

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:

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Paragraphs (M)(2) and (N)(2) described training for UST installers that may be offered by the State Fire Marshal. Existing language allowed the State Fire Marshal to charge a fee for these trainings as "established by the state fire marshal". The statutory language that authorizes this rule, at Section 3737.881(D)(5) states that a fee is to be established in rule. These paragraphs are being revised to insert a specific fee for the trainings, and further specifies that the fee is only refundable in

the event of cancellation.

12. Five Year Review (FYR) Date: **5/17/2017**

(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.

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This rule will have no impact on current agency revenues or expenditures.

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:

Persons desiring to become certified as a UST installer must pay a \$150 application fee and a \$25 fee to take the certification exam. The annual renewal fee is \$150. A prospective UST installer must also complete an installer training program, offered by third parties. Third party instructors incur a \$200 fee for the application to conduct training, and have a \$150 annual renewal fee. These costs are likely recouped via tuition fees for the training course.

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.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

The rule requires certification of persons desiring to become UST installers and of persons desiring to sponsor an installer training program or an installer continuing education training program.

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**

A certification may be revoked pursuant to Chapter 119 of the Ohio Revised Code for a number of reasons, including fraud, misrepresentation, reckless violation of OAC Chapter 1301:7-9, failure to perform his or her duties, or obstruction of a certified UST inspector or an employee of the State Fire Marshal.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

An applicant to become a certified UST installer must submit an application form and an application fee. There is a separate, nominal fee to take the installer examination, and an annual certification renewal fee.

Similarly, applicants for sponsoring training programs must submit an application and application fee. An annual renewal fee also applies to approved training programs.

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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.

Ohio Township Association

Ohio Petroleum Marketers and Convenience Store Association

Ohio Municipal League

Ohio Fire Chiefs' Association

Ohio Environmental Council

Mid-Ohio Regional Planning Commission

County Engineers Association of Ohio

County Commissioners' Association of Ohio

Ohio Department of Development

Ohio EPA

- (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. The State Fire Marshal developed the training and certification requirements by drawing on the experience and expertise of BUSTR and the State Fire Academy, and did not rely upon outside sources.

- (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**