

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-13

Rule Type: Amendment

Rule Title/Tagline: Petroleum UST Corrective Action.

Agency Name: Department of Commerce

Division: Division of State Fire Marshal

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I. Rule Summary

1. **Is this a five year rule review? Yes**
 - A. **What is the rule's five year review date? 6/7/2022**
2. **Is this rule the result of recent legislation? No**
3. **What statute is this rule being promulgated under? 119.03**
4. **What statute(s) grant rule writing authority? 3737.88, 3737.882**
5. **What statute(s) does the rule implement or amplify? 3737.88, 3737.882**
6. **What are the reasons for proposing the rule?**

Five-year rule review required pursuant to ORC 106.03

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule 1301:7-9-13 describes requirements for the investigation of suspected releases of petroleum from UST systems, and corrective action for confirmed releases. The rule requires identification of the complete vertical and horizontal extent of contamination and the review and implementation of corrective actions sufficient to protect human health and the environment. Levels of chemicals of concern that are protective of

human health and the environment are developed using a risk-based approach that incorporates known health risks of specific chemicals as well as information about their rate of transport through the environment that can change depending on site specific conditions.

The only revision to the rule being proposed at this time is a clarification that where a federal statute or regulation is cited within the rule, language is added or revised to clearly indicate that the version of the federal statute or regulation is that which is in effect at the time this administrative rule is adopted. This language occurs at subparagraph (S)(4).

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

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.

Additionally, there is one instance of incorporated material consisting solely of a group of certain federal regulations, which is readily available online.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

Not Applicable

Not Applicable

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Rule 1301:7-9-13 covers all types of corrective actions ranging from a single tank tightness test (approximately \$500) to the remediation of a major release that impacts soil and drinking water supplies that can ultimately cost several hundred thousand dollars. It is important to note that owners and operators who are compliant with the financial responsibility rule (OAC 1301:7-9-05) and in good standing with the Petroleum UST Compensation Board ("Petro Board") are eligible to have all reasonable costs reimbursed, less a deductible.

With respect to this rule as a whole, it is not possible to quantify the specific costs of compliance because each release is unique in terms of amount of product spilled or released, the extent of it, and its impacts to soil, groundwater, surface waterways, and human health. Overall, however, the average cost of UST corrective action is \$135,000. This includes the on-site work, analysis of data, and preparation of any required reports.

The cost estimates provided in support of the revised rules in this chapter were derived from a combination of sources including the Petroleum Underground Storage Tank Release Compensation Board, quotes from environmental consultants, and BUSTR's staff experience.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
- 15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

- 16. Was this rule filed with the Common Sense Initiative Office? Yes**
- 17. Does this rule have an adverse impact on business? Yes**
- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

- 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**

Pursuant to ORC 3737.882(C)(2), violations of most BUSTR rules, including this one, are subject to a statutory civil penalty of up to \$10,000 per violation, per day. As a practical matter, violators are provided opportunities to return to compliance well before a civil penalty is considered.

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

The rule describes various environmental investigations and activities intended first to determine the extent of a release, and then to remediate it. Each of these results in a report to the State Fire Marshal so that an owner or operator's progress may be verified and assistance can be provided to make certain that the work is being performed accurately.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

Any of the environmental investigations described by this rule will have a cost, although if the UST owner or operator has maintained a certificate of coverage with the Petroleum UST Release Compensation Board, he or she can be reimbursed for all approved costs above a deductible.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?**

Not Applicable

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Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	Yes
B. County Government	Yes
C. Township Government	Yes
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

Rule 1301:7-9-13 covers all types of corrective actions ranging from a single tank tightness test (approximately \$500) to the remediation of a major release that impacts soil and drinking water supplies that can ultimately cost several hundred thousand dollars. It is important to note that owners and operators who are compliant with the financial responsibility rule (OAC 1301:7-9-05) and in good standing with the Petroleum UST Compensation Board ("Petro Board") are eligible to have all reasonable costs reimbursed, less a deductible.

With respect to this rule as a whole, it is not possible to quantify the specific costs of compliance because each release is unique in terms of amount of product spilled or released, the extent of it, and its impacts to soil, groundwater, surface waterways, and human health. Overall, however, the average cost of UST corrective action is \$135,000. This includes the on-site work, analysis of data, and preparation of any required reports.

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3. Is this rule the result of a federal government requirement? Yes

A. If yes, does this rule do more than the federal government requires? No

- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

Not Applicable

- 4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**

A. Personnel Costs

Please see response to "Estimated Cost of Compliance", above.

B. New Equipment or Other Capital Costs

Please see response to "Estimated Cost of Compliance", above.

C. Operating Costs

Please see response to "Estimated Cost of Compliance", above.

D. Any Indirect Central Service Costs

Please see response to "Estimated Cost of Compliance", above.

E. Other Costs

Please see response to "Estimated Cost of Compliance", above.

- 5. Please explain how the local government(s) will be able to pay for the increased costs associated with the 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. The costs are reimbursable by the Petroleum Underground Release Compensation Board.

- 6. What will be the impact on economic development, if any, as the result of this rule?**

The proposed amendments should have a positive impact on economic development. This will allow properties to return to compliance, achieve "no further action" status, facilitate the sale or transfer of the property, and allow the site to be re-used in an economically-beneficial manner.

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Part C - Environmental Rule Questions

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.

API-Ohio
County Commissioners' Association of Ohio
County Engineers Association of Ohio
Ohio Chamber of Commerce
Ohio Contractors Association
Ohio Council of Retail Merchants
Ohio Department of Development
Ohio Department of Transportation
Ohio Environmental Council
Ohio Fire Chiefs' Association
Ohio Hospital Association
Ohio Manufacturers' Association
Ohio Municipal League
Ohio Petroleum Contractors Association
Ohio Petroleum Marketers and Convenience Store Association, nka Ohio Energy and Convenience Association

Ohio Petroleum UST Release Compensation Board
Ohio School Boards Association
Ohio Township Association

- (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 CFR 280 Subpart E: Release Reporting, Investigation, and Confirmation

- 280.50 Reporting of suspected releases.
- 280.51 Investigation due to off-site impacts.
- 280.52 Release investigation and confirmation steps.
- 280.53 Reporting and cleanup of spills and overfills.

40 CFR 280 Subpart F: Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

- 280.60 General.
- 280.61 Initial response.
- 280.62 Initial abatement measures and site check.
- 280.63 Initial site characterization.
- 280.64 Free product removal.
- 280.65 Investigations for soil and groundwater cleanup.
- 280.66 Corrective action plan.
- 280.67 Public participation.

For action levels: Ohio EPA's Chemical Information Database and Applicable Regulatory Standards (CIDARS) database for evaluation and establishment of new action levels for the chemicals of concern.

- (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**