

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-18

Rule Type: No Change

Rule Title/Tagline: Delivery prohibition for USTs.

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 and 06/04/2027
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
5. **What statute(s) does the rule implement or amplify?** 3737.88
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 1301:7-9-18 describes the requirements for prohibiting delivery to USTs that are noncompliant with certain provisions of BUSTR regulations. Owners and operators that fail to equip their UST systems with release detection, corrosion protection, spill prevention or overfill prevention are potentially subject to an order prohibiting delivery of petroleum and hazardous substances to their USTs, and a red tag may be

affixed to the fill pipe of the UST. It will be unlawful for anyone, including delivery drivers, to drop petroleum or hazardous substances into USTs that have been red tagged.

SFM-BUSTR is filing this rule as a No Change rule.

- 8. Does the rule incorporate material by reference? No**
- 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.**

Not Applicable

- 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?**

This rule establishes a method of enforcement when a UST owner or operator is out of compliance with certain provisions of the state's release prevention UST regulations, OAC 1301:7-9-06 and -07. Therefore, there is no direct cost of compliance under the rule. It will not cost directly affected persons any money if they maintain their UST systems in compliance with state and federal regulations. Failure to comply with UST regulations could lead to delivery prohibition which in turn could lead to a drop in business revenue or, for members of the general public, having to purchase fuel from other locations. However, such costs would vary widely based on local conditions and cannot be determined with any accuracy.

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**

Yes. This rule establishes a method of enforcement when a UST owner or operator is out of compliance with certain provisions of the state's UST regulations related to a failure to equip a UST with necessary release detection and spill prevention equipment. The rule describes a procedure by which, if the owner or operator does not install the proper equipment, the State Fire Marshal could issue an order that prevents the UST from receiving any more product until the violation is cured.

C. **Does this rule require specific expenditures or the report of information as a condition of compliance? No**

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**

Yes. If the rule is applied to a gasoline-dispensing facility because it refuses to install the necessary equipment, the resulting order to halt future fuel deliveries would result in a reduction of revenue.

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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.

This rule establishes a method of enforcement when a UST owner or operator is out of compliance with certain provisions of the state's UST regulations. Therefore, there is no direct cost of compliance under this proposed rule. It will not cost directly affected persons any money if they maintain their UST systems in compliance with state and federal regulations. Failure to comply with UST regulations could lead to delivery prohibition which could mean that government entities may face a cost of compliance in the form of having to purchase fuel from another location. Specific costs with respect to having to buy fuel from another location vary too widely to determine accurate or precise results.

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

See response to "Estimated Cost of Compliance", above.

B. New Equipment or Other Capital Costs

See response to "Estimated Cost of Compliance", above.

C. Operating Costs

See response to "Estimated Cost of Compliance", above.

D. Any Indirect Central Service Costs

See response to "Estimated Cost of Compliance", above.

E. Other Costs

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.

The proposed rule will not cost affected persons any money if they maintain their UST systems in compliance with state and federal regulations. The costs of obtaining fuel from another provider are ordinary costs of conducting the business of the local government entity which will come from the normal operating budgets of the entities.

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

This rule should not have any significant impact on economic development. Fuel from USTs is readily available at competitive rates from numerous locations throughout the state.

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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 C.F.R. 280.30 Spill and overfill control.
40 C.F.R. 280.31 Operation and maintenance of corrosion protection.
40 C.F.R. 280.32 Compatibility.
40 C.F.R. 280.33 Repairs allowed.
40 C.F.R. 280.34 Reporting and recordkeeping.

Federal Guidelines located at:

<https://www.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant>

-Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005.
-Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005.
-Grant Guidelines to States for Implementing the Delivery Prohibition Provision of the Energy Policy Act of 2005.

- (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**