

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

Agency Name

Division

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1301:7-9-18

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Delivery prohibition for USTs.**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: **3737.88**
5. Statute(s) the rule, as filed, amplifies or implements: **3737.38**
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 1301:7-9-18 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. The revisions to this rule are non-substantive, simply correction of formatting and of one typographical error. In paragraph (A), the list of UST systems to which the rule does not apply was deleted; it is not needed because this is addressed in rule 1301:7-9-01(E).

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:

Not Applicable.

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 does not change revenues or expenditures for the agency. The delivery prohibition process is incorporated into the existing enforcement structure of 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:

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 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.

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.

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? **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**

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**

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

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.

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. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **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.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost 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.

Please see response to Question #2, above.

(a) Personnel Costs

Please see response to Question #2, above.

(b) New Equipment or Other Capital Costs

Please see response to Question #2, above.

(c) Operating Costs

Please see response to Question #2, above.

(d) Any Indirect Central Service Costs

Please see response to Question #2, above.

(e) Other Costs

Please see response to Question #2, above.

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.

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.

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. Fuel from USTs is readily available at competitive rates from numerous locations throughout the state.

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 ? **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
http://www.epa.gov/swerust1/fedlaws/epact_05.htm#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**