

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-19

Rule Type: No Change

Rule Title/Tagline: Underground storage tank operator training.

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.**

This rule describes the training and certification requirements for Class A, Class B, and Class C operators at UST sites. These classes typically represent owners, store managers, and store clerks, respectively. The federal Energy Policy Act of 2005 required states to promulgate rules to mandate these classes of UST operators

complete training regarding the various aspects of a UST's operation, maintenance, and recordkeeping.

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?**

The rule requires Class A, B, and C operators of underground storage tanks to undergo one-time training. Periodic refresher training is not required (unless an operator violates specific UST regulations). Class A and B operators have several choices for training at different costs:

- Operators may obtain free training from the state fire marshal
- Operators may use a third party trainer at an estimated cost of \$75 per person (based upon price lists for similar training for UST Installers per OAC 1301:7-9-11), or
- Tank owners may obtain a license to conduct training for \$200 and may train their own Class A and B operators.

The rule allows owners to train their Class C operators using qualified in-house personnel and training materials. It is believed that most owners train their own Class C operators during normal employee orientation training lasting less than an hour at little or no cost to the owner. If an owner hires additional personnel, the owner will be required to train the personnel using one of the previously-mentioned methods.

Persons applying for a license to train Class A and B operators pay an initial application fee of \$200 followed by an annual renewal fee of \$150 to the agency.

- 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.**

The BUSTR Program is funded primarily through two grants from the U.S. Environmental Protection Agency. The fees raised through any of BUSTR's rules, including this one, are devoted to a fund that supplies the state's required match, per the grant agreements, as well as for personnel essential to the program that are not otherwise covered by the grants.

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? Yes**

Yes. The rule provides for the certification of UST operators.

- 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. 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.

Additionally, a sponsor of an operator training program may have its certification suspended or revoked pursuant to Chapter 119 of the Ohio Revised Code for a number of reasons, including fraud, misrepresentation, noncompliance of the training program with this rule's requirements, or failure to retain the appropriate records.

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

Yes. Owners and operators must maintain documentation identifying certified operators as well as proof of training.

Persons wishing to sponsor training programs for Class A and Class B operators must submit an application to the State Fire Marshal, along with a \$200 application fee. If approved, the sponsor shall renew its certification annually through submission of a form and a \$150 renewal fee.

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. Gasoline-dispensing facilities are required to employ trained operators and organizations desiring to train those operators will need to develop their training programs and obtain approval from the state fire marshal

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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.

There will be no cost to local government entities to comply with this rule if they take advantage of the free training offered by the state fire marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little cost to local government entities.

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

The rule does not create any personnel costs, any new equipment or capital costs, or any indirect central service costs to local government entities. The rule does not create any operating costs beyond the time it takes for local government entities to send their personnel to free training offered by the State Fire Marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

B. New Equipment or Other Capital Costs

The rule does not create any personnel costs, any new equipment or capital costs, or any indirect central service costs to local government entities. The rule does not create any operating costs beyond the time it takes for local government entities to send their personnel to free training offered by the State Fire Marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

C. Operating Costs

The rule does not create any personnel costs, any new equipment or capital costs, or any indirect central service costs to local government entities. The rule does not create any operating costs beyond the time it takes for local government entities to send their personnel to free training offered by the State Fire Marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

D. Any Indirect Central Service Costs

The rule does not create any personnel costs, any new equipment or capital costs, or any indirect central service costs to local government entities. The rule does not create any operating costs beyond the time it takes for local government entities to send their personnel to free training offered by the State Fire Marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

E. Other Costs

The rule does not create any personnel costs, any new equipment or capital costs, or any indirect central service costs to local government entities. The rule does not create any operating costs beyond the time it takes for local government entities to send their personnel to free training offered by the State Fire Marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

- 5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**

BUSTR uses existing resources and facilities to provide free training to local government entities. The existing resources include federal grant funding specifically designated for this purpose.

There will be no cost to local government entities to comply with this rule if they take advantage of the free training offered by the state fire marshal for Class A and B operators. Local government entities may use their own qualified personnel to train their Class C operators at little or no cost.

If there are any costs, then these costs are the ordinary costs of conducting the business of local government entities 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?

The rule should not have any significant impact on economic development.

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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.)

OAC 1301:7-9-11 Underground storage tank installer certification and training.

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 Operator Training 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**