

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

Agency Name

Division

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1301:7-9-19

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Underground storage tank operator 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: **3737.88**5. Statute(s) the rule, as filed, amplifies or implements: **3737.88**

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:

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.

The revisions to this rule add walkthrough inspections to the list of topics in which Class A and Class B operators must be trained. The re-training requirement that was required of Class B operators under certain circumstances was expanded to include Class A operators, but made discretionary instead of mandatory. A number of formatting changes were made as well.

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:

An incorrect reference to the authorizing statute for this rule is being corrected. Paragraph (A) is being revised to change the reference from Section 3737.881 to 3737.88 of the Revised Code.

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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The rule will have no impact on 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:

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.

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? **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**

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**

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.

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.

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. 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.

The proposed 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.

(a) Personnel Costs

See response above.

(b) New Equipment or Other Capital Costs

See response above.

(c) Operating Costs

See response above.

(d) Any Indirect Central Service Costs

See response above.

(e) Other Costs

See response 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.

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.

7. Please provide a statement on the proposed rule's impact on economic development.

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

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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 ? **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

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