



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Department of Commerce, Division of State Fire Marshal-BUSTR

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Underground Storage Tank Rules

Rule Number(s): 1301:7-9-01, 1301:7-9-02, 1301:7-9-03, 1301:7-9-04, 1301:7-9-05,
1301:7-9-06, 1301:7-9-07, 1301:7-9-10, 1301:7-9-11, 1301:7-9-12, 1301:7-9-13, 1301:7-9-15,
1301:7-9-16, 1301:7-9-17, 1301:7-9-18, 1301:7-9-19, 1301:7-9-20

Date of Submission for CSI Review: April 19, 2022

Public Comment Period End Date: April 29, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/___8___ rules (FYR? Yes)

Amended/___9___ rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impacts to businesses has the agency determined the rules create?

The rules:

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

The State Fire Marshal (“SFM”), Bureau of Underground Storage Tank Regulations (“BUSTR”) is authorized by ORC 3737.87, *et seq.* to administer the state’s underground storage tank (“UST”) program on behalf of U.S. EPA. These regulations direct owners and operators of USTs on all aspects of managing USTs that contain regulated substances, primarily petroleum products but also including hazardous substances. The rules describe the various portions of the program including registration, operation, maintenance, permitting, installation and removal of USTs, corrective actions, handling of petroleum contaminated soil, certification of tank installers and inspectors, operator training, delivery prohibition, and a revolving loan program which, when funded, allows municipalities to apply for zero interest loans to address contamination at unused UST sites.

As a result of the five-year review of the regulation, the State Fire Marshal-BUSTR has determined that no significant revisions are necessary at this time, and intends only to make

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revisions in order to comply with recent statutory changes regarding “incorporation by reference” of federal laws and regulations. Where such references are found in the BUSTR rules, language will be either added or revised to clarify that any federal laws and regulations referred to in a particular administrative regulation are those versions in effect at the time the Ohio rule becomes effective.

Of the seventeen rules that are included in this five-year review, nine (9) have at least one such federal reference and will require the new language. The remaining eight (8) rules do not and will be processed as No Change rules.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

| Rule Number | Authorizing Statute(s) |
|--------------------|-------------------------------------|
| 1301:7-9-01 | 3737.88(A) |
| 1301:7-9-02 | 3737.88(A) |
| 1301:7-9-03 | 3737.88(A), 3737.88(D) |
| 1301:7-9-04 | 3737.02(A), 3737.88(A) |
| 1301:7-9-05 | 3737.88(A), 3737.882(B) |
| 1301:7-9-06 | 3737.88(A) |
| 1301:7-9-07 | 3737.88(A) |
| 1301:7-9-10 | 3737.88(A) |
| 1301:7-9-11 | 3737.881(D) |
| 1301:7-9-12 | 3737.88(A), 3737.882(B) |
| 1301:7-9-13 | 3737.88(A), 3737.882(B) |
| 1301:7-9-15 | 3737.88(A) |
| 1301:7-9-16 | 3737.88(A), 3737.88(E), 3737.882(B) |
| 1301:7-9-17 | 3737.88(A), 3737.88(E), 3737.882(B) |
| 1301:7-9-18 | 3737.88(A) |
| 1301:7-9-19 | 3737.88(A) |
| 1301:7-9-20 | 3737.883(H) |

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes, this is a federal requirement that Ohio must adopt in order to maintain approval to administer the UST program. The equivalent federal regulations may be found at 40 CFR Part 280.

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- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

None of the rules that are required to implement a federal requirement contain provisions that exceed the federal requirement.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Compliance with these regulations greatly reduces the number of USTs that leak while in the ground. Such leaks have the potential to contaminate both the soil and groundwater (which can be a source of local drinking water). Additionally, the corrective action rules help assure that when leaks do occur, they are remediated by the appropriate responsible persons in a consistent fashion statewide. Upon completion of remediation, the property is well-positioned for redevelopment, thus providing an important economic benefit. Finally, the revolving loan fund rule provides an avenue by which municipalities can obtain zero interest loans (when funding is available) to clean up abandoned UST sites, ultimately returning them to productive use.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

SFM-BUSTR has seen a long-term decline in the number of leaking USTs requiring remediation, and since the inception of the program in 1988 has issued 31,601 findings of No Further Action (through the end of September 2021), allowing formerly contaminated properties to return to productive use. SFM-BUSTR believes that continuation of these rules are necessary to ensure that this trend continues.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

SFM-BUSTR contacted the following organizations via e-mail on January 14, 2022, to share its draft set of rule revisions:

API-Ohio

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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

An attachment to the e-mail provided the draft revised/amended language and noted exactly where the revisions were to be inserted.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

SFM-BUSTR received only one comment, by e-mail, and it did not relate to the proposed revisions. Rather, it was a question about a cross-reference in OAC 1301:7-9-13 that the commenter suspected may be incorrect. BUSTR staff reviewed the comment, and the rule development materials from the time the cross-reference was originally written. Staff confirmed that the cross-reference was correct and communicated that to the commenter.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Most of the rules are adapted directly from their federal equivalents in 40 CFR Part 280. Rules that utilize action levels require the evaluation of those levels (chemical concentrations above which action is required by the responsible person). SFM-BUSTR utilized Ohio EPA's Chemical Information Database and Applicable Regulatory Standards (CIDARS) to evaluate and set action levels for the chemicals of concern. CIDARS is the database used by Ohio EPA's Voluntary Action Program. The scientific data in CIDARS is based upon the most current science with respect to the effects of the chemicals, and is drawn from many sources.

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12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Most of the regulations in this package are direct adaptations of their federal equivalents found at 40 CFR Part 280, and SFM-BUSTR believes that it is appropriate to maintain them in their current form. SFM-BUSTR did not receive any input from stakeholders that suggested that an alternative regulatory approach was needed, and consequently determined that retaining the present substance and format for the rules was the correct course.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

While a considerable amount of the rule language is, and is required to be, based on federal rule language, there are important instances where the federal language is not prescriptive, and SFM-BUSTR have included performance-based concepts. In particular, when corrective actions are necessary under OAC 1301:7-9-13, UST owners and operators have the ability in some circumstances to propose a course of action intended to meet the action levels at a site.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The State Fire Marshal, acting through BUSTR, has exclusive jurisdiction over petroleum USTs in Ohio; no other state agency has rules that address such USTs.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

These rules were initially adopted and implemented in this format in the early 1990s, except for rules 1301:7-9-16 and 1301:7-9-17 (1995), rules 1301:7-9-18 and 1301:7-9-19 (2012), and rule 1301:7-9-20 (2014). SFM-BUSTR has received no information from UST owners that they have ever been inconsistently or unpredictably applied.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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a. Identify the scope of the impacted business community:

The primary business community that is affected by these rules are owners of gasoline service stations. Other types of businesses that own USTs are impacted as well; examples of these can include dry cleaners, stand-alone oil change facilities and auto repair shops that perform oil changes, manufacturing facilities, and any business that may fuel vehicles on-site (rental car lots, warehousing facilities, etc.)

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance):

The nature of the adverse impacts includes annual UST registration, maintenance of a financial responsibility mechanism, requirement to obtain a permit before performing significant work on a UST system, maintenance of records, and submission of reports in order to demonstrate compliance, and training employees to properly operate and maintain UST systems. Most of these tasks will require at least a nominal amount of employee time to conduct the tasks and complete the necessary documentation.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The overall impact will vary considerably because it includes not only fixed costs (triennial tightness tests for various components at around \$200 per tank, annual registration fees of \$100 per tank, a permit fee for UST work of \$35 per tank, \$150 application fees for certification as an installer or inspector, etc.), but open-ended costs in the case of corrective action, which are highly dependent on the severity and extent of the contamination. The cost of closure of USTs will vary based on the number of USTs being removed and the amount of piping and dispensers that are taken out along with the tank or tanks. Establishment and maintenance of financial responsibility is variable, too, depending on which assurance mechanism an owner selects. It should be noted, though, that compliance with the financial responsibility rule will allow a UST owner or operator to be reimbursed by the Petro Fund for most corrective action costs. Specific costs noted above are drawn from an average of estimates obtained from UST contractors or, in the case of registration and permit fees, from the rules themselves.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

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A release of petroleum products or hazardous substances to the environment can endanger public health and threaten drinking water sources, and a release from a UST is particularly troublesome because it occurs out of sight and often over a long period of time. Preventing releases and addressing those that do occur are the primary goals of the federal program that the State Fire Marshal, through BUSTR, implements via these rules. This program is the exclusive means by which the state of Ohio can ensure that USTs are installed, operated, and maintained appropriately, consistently, and by trained and qualified personnel; and, when releases do occur, ensure that they are remediated as quickly and as cost-effectively as possible. This allows the property to return to beneficial use and promotes redevelopment. BUSTR believes that the rules are supported by the need to prevent and remediate releases of petroleum or hazardous substances from USTs and are in the interest of both the general public and the regulated community.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions provided under the federal rule, with which these rules must comply. With respect to alternative means of compliance, several of the rules contain provisions that allow an owner or operator to request alternative methods of compliance, which SFM-BUSTR can approve for good cause shown. These provisions are available to all persons, not just small businesses.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties associated with an initial finding of violation; a UST owner or operator is always provided an opportunity to return to compliance before a fine or penalty is considered.

20. What resources are available to assist small businesses with compliance of the regulation?

SFM-BUSTR personnel, including the bureau chief and supervisors, in-house legal counsel, and the full staff of UST inspectors and environmental specialists, are permanently available to answer questions about the rules and work with the regulated community to achieve and maintain compliance in as efficient and economic fashion as possible.

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