

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: UST Registration Rule

Rule Number(s): 1301:7-9-04

Date: _____

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This regulation addresses the registration of underground storage tanks (“USTs”). The provisions require owners of USTs to register them on annual basis, require newly-installed USTs to be registered, and require transfers of ownership to be reported. The documentation for the registrations and transfers is accompanied by a fee. The State Fire

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Marshal-BUSTR is proposing to increase the fee from \$50 to \$100 in order to financially support the state's UST program, which has been operating at a deficit for the past three years. Governmental entities are exempt from the fee.

Statement concerning division (E) of section 121.82 of the Revised Code.

Does the draft rule package require insurance and/or surety products as a condition of compliance?

This rule does not require insurance or a surety product as a condition of compliance.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3737.02(A) and R.C. 3737.88(A).

3. 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?

If yes, please briefly explain the source and substance of the federal requirement.

Yes, UST registration is a federal requirement that Ohio must adopt in order to maintain approval to administer the UST program. The equivalent federal regulation may be found at 40 CFR 280.22.

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

Not applicable.

5. 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)?

Beyond the obligation pursuant to 40 CFR 280.22 to provide UST data to the federal program, maintenance of a database of registered USTs keeps BUSTR and the public apprised of the number and types of UST sites in the state, and facilitates economic development by allowing property owners (current and prospective) to identify the presence of current and previously-removed USTs. The annual registration fee serves, along with federal grants, as the primary funding mechanism for the Ohio UST program. It also allows the State Fire Marshal-BUSTR to cover program costs that the federal grants do not address.

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

The decision to raise the registration fees for the first time since 1999 would be considered successful if it results in the stabilization of BUSTR's finances, thereby allowing the bureau to continue to operate the Ohio UST program in a consistent and efficient manner.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On December 8, 2017, the State Fire Marshal sent an e-mail, containing the draft rule amendment language and a summary of the reasoning for it, to all UST owners for whom the agency has e-mail contact information. There were 2,421 successful deliveries. At the same time, an identical e-mail was sent to approximately 30 trade associations and other stakeholders that BUSTR expects may have an interest in the regulation.

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

Out of approximately 2,450 persons/organizations notified by e-mail of the draft amended rule, BUSTR received 5 responses, all from individual UST owners. One commenter proposed that a UST with separate compartments should be registered as a single tank instead of registering the compartments separately. Because the compartments function independently and often contain different products, BUSTR has historically required the compartments to be registered individually and believes it should continue to do so. Generally, the other commenters objected to a fee of any amount and offered no alternatives to BUSTR's funding issues.

9. 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?

The proposed increase to the registration fee is supported by budget estimates developed by the Department of Commerce's Fiscal Section, which show an increasing shortfall in revenues to operate the Ohio UST program over the next several years if no change is made to the fee.

10. 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?

The State Fire Marshal considered varying levels of fees. Based on budget projections for the next five years prepared by the Department of Commerce's Fiscal Section, a \$50 increase was determined to be the most appropriate amount that would allow the Ohio UST program to achieve the objectives required both to maintain federal grant funds and meet its statutory duties, without operating at a deficit.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

This regulation merely requires completion of a registration or transfer of ownership form and payment of the fee; a performance-based regulation is not a practical option.

12. 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.

13. 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.

Once effective, the State Fire Marshal's Bureau of Testing & Registration will issue annual registration statements to UST owners across the state. The process used will be identical to that of previous years; the only thing that will change is the amount of the per tank fee.

Adverse Impact to Business

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

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

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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 the adverse impact (e.g., license fees, fines, employer time for compliance);

The regulation requires owners of new and existing USTs to submit the annual registration form and a per tank fee. Similarly, when ownership of a UST is transferred, a transfer form and fee are due.

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 fee for both registration and transfer would rise from \$50 to \$100 per tank. Completion and submission of the forms should take 30 minutes or less of employee time.

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

Outside of federal grants, which have decreased in recent years, the annual registration fee is the primary funding mechanism for Ohio’s UST program. It is used to provide the state match for those federal grants and to cover indirect costs and costs not addressed by the grants. The fee has not changed since 1999, and although SFM-BUSTR has implemented efficiency measures and eliminated staff positions through turnover, the program has operated at a deficit since 2014. The fee increase will stabilize the bureau’s funding, allowing it to continue inspections of UST sites across the state and to supervise cleanups where USTs have leaked into the soil and groundwater.

The impact to the regulated business community is **fully mitigated by the proposed \$50 decrease** in the annual per tank fee levied by the Petroleum UST Release Compensation Board (which establishes coverage for the UST owner with the Financial Assurance Fund). The Board is proceeding with a revision to its fee rule (OAC 3737-1-04) concurrently with this agency’s rulemaking. Therefore, when both are finalized, UST owners will see no net change in their 2018 per tank fees compared with 2017.

Regulatory Flexibility

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

There are no exemptions under the federal rule to register new and existing tanks or to notify the agency of a transfer of ownership.

17. 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 for failure to register a UST; a UST owner is always provided an opportunity to return to compliance before a fine or penalty is considered. The requirements to pay the annual registration or transfer of ownership fee do not qualify as paperwork violations, as that term is defined at R.C. 119.14(G)(2).

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

Staff members of both BUSTR and the Bureau of Testing & Registration are available during customary business hours to answer questions and assist UST owners to achieve and maintain compliance with the requirements of this rule.