
Limited
Report on Comments

Summary of comments received to
revise the 2005 BUSTR Rules 6, 7, 8 and 18

**Ohio Department of Commerce
Division of State Fire Marshal**

Kimberly A. Zurz, Director

Donald C. Cooper, Interim State Fire Marshal

Prepared: November 3, 2010

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**Department
of Commerce**

Division of State Fire Marshal

Ted Strickland, Governor
Kimberly A. Zurz, Director
8895 East Main Street
Reynoldsburg, OH 43068
614.752.7161
614.752.7213 (Fax)
888.252.0803 (Toll-free)
800.750.0750 (TTY/TDD)
www.com.ohio.gov

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Further information on the Ohio Department of Commerce can be found at <http://www.com.state.oh.us/>

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Information on the BUSTR Rule Revision/Development Process

The Ohio Department of Commerce, Division of State Fire Marshal (SFM), Bureau of Underground Storage Tank Regulations (BUSTR), is conducting its periodic review of the existing BUSTR Rules (2005). To conform to the requirements of the federal Energy Policy Act of 2005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from, and ahead of, the remaining BUSTR rules, which are also under review.

The Four Steps of the BUSTR Rule Revision/Development Process

We value the input of all stakeholders and encourage the participation of all Ohioans in the rule revision/development process. Generally, this process involves four steps:

1. The Petition Period is when a stakeholder may submit a written petition to revise an existing or newly drafted rule and have the petition to be considered in the current revision cycle.
 - A report of all submitted petitions, along with the BUSTR Rules Work Group response to each of the petitions, will be published after the Petition Period closes. This report is called the “Report on Petitions” or “ROP.”
 - Although petitions for rule changes are accepted by SFM at any time, submissions made during the Petition Period (i.e., before the end of the Petition Period) are assured of being considered in the current revision cycle. Petitions submitted after the end of the Petition Period may not be considered until the next revision cycle.
2. The Comment Period is when a stakeholder may submit one or more written comments regarding one or more previously submitted petitions.
 - A compendium of all submitted comments, along with the BUSTR Rules Work Group response to each of the comments, will be published shortly after the comment period closes. This report is called the “Report on Comments” or “ROC.”
3. Ohio’s Formal Rule Adoption Process involves filing the new draft of the rules with the legislature, publishing those rules on the Register of Ohio, holding a mandatory public hearing, and going through the Joint Committee on Agency Rule Review (JCARR) process for final acceptance.
4. Publishing of the 2010 BUSTR Rules (hard copy and on-line versions).

With the publishing of this ROC, the formal rule adoption process starts. Once determined, dates for the mandatory public hearing will be published on the SFM web site at https://www.comapps.ohio.gov/sfm/fire_apps/fire/petition/docs/BUSTRRule.pdf.

Bureau of Underground Storage Tank Regulations (BUSTR)

DOCUMENT PETITION/COMMENT FORM

The Division of State Fire Marshal (SFM) welcomes suggestions for proposed rule changes from all interested parties. Use this form to submit proposed rule changes, and be sure to submit this form by the posted closing date. Visit the SFM web site at <http://www.com.ohio.gov/fire> or call BUSTR at (800) 686-2878 for information concerning closing dates or for information on the rule making process.

This is a: Petition to change new or existing code Comment on proposed code

First Name Middle Name Last Name

Company/Organization

Address

City State Zip Code

Email Address Phone Number

Re-type Email Address

Indicate Company/Organization Represented(if any)

1. Ohio Fire Code Section/Paragraph or Table Number/Petition Number

2. Other OFC Sections / Paragraphs or Tables Affected by This

3. Petition/Comment Recommends (check one): New Text Revised Text Deleted Text

4. Petition/Comment (include section/paragraph stated in full, proposed new or revised wording, or identification of wording to be deleted)
Note: Proposed text should be in legislative format, i.e., use underscores to denote wording to be inserted (inserted wording) and strike-through to denote wording to be deleted (~~deleted wording~~)

B I U abc

5. Statement of Problem and Substantiation for Petition/Comment:
(Note: State the problem that would be resolved by your recommendation; give the specific reason/purpose for your Petition/Comment, including copies of tests, research papers, fire experience, etc. If more than 200 words, it may be abstracted for publication.)

B I U abc

The information on this form may constitute a public record and is subject to disclosure in accordance with **R.C. 149.43**

By submitting a request for the inclusion of new or revised text to the Ohio Fire Code as described on this form, the person submitting such text agrees to forever waive all rights in any copyright(s) the submitter may have in any authorship contributions made to the Ohio Fire Code. This waiver includes any petition or comment in its original form as submitted or in any revised form. The submitter acknowledges and accepts that they will have no rights in any publications that use such contributions in the form as submitted or another similar form and certify that such contributions are not protected by the copyright of any other person or entity.

If you wish to provide any additional information/attachments, please email the documents along with your petition ID number to webcode@com.state.oh.us.

Fig. 1 – BUSTR Rules online petition/comment form that can be found and completed at: https://www.comapps.ohio.gov/sfm/fire_apps/fire/petition/FormBUSTR.aspx

The Principles of the Rule/Development Process

On June 30, 2009, BUSTR organized a “stakeholder meeting” at which SFM stakeholders, petroleum industry representatives, consultants, and subject matter experts met to exchange ideas with SFM employees. The purpose of this meeting was to (a) inform stakeholders of the rule development/revision process, (b) inform stakeholders of what to expect in the initial draft of a future rule (initial drafts of rules 6, 7, 18 and 19 were distributed), (c) solicit feedback from those present regarding the concepts presented by the SFM, and (d) have stakeholders inform the SFM of ideas and concerns, even if they have nothing to do with anything previously presented. At this meeting, there was no exchange or submission of written petitions or comments because the focus was on the exchange and explanation of concepts and ideas (although notes were likely taken).

Where requirements of the federal Energy Policy Act of 2005 necessitated the development of one or more new rules, BUSTR produced and distributed an initial draft of each rule (e.g., BUSTR Rules 6, 7, 18 and 19) once the bureau was well informed of the ideas, concerns and positions of stakeholders. These initial drafts then became the basis for the subsequent Petition Period, and suggestions for changes to them were submitted through the Online Petition/Comment Form (Fig. 1).

To conform to the requirements of the federal Energy Policy Act of 2005 for secondary containment and delivery prohibition, BUSTR Rules 6, 7, 8 and 18 are being considered separately from the remaining BUSTR rules. Only petitions received prior to the September 18, 2009, deadline were included and responded to in the ROP.

During the Petition Period, all interested stakeholders submitted petitions for proposed rule changes. Petitions for proposed rule changes may be submitted to SFM at any time, but submission prior to the closing date of the Petition Period provides stakeholders with the best chance of having the submitted petition considered in the current rule revision cycle. Petitions received after the Petition Period closes are considered in the next rule revision cycle. For example, the Petition Period for the current revision cycle closed on September 18, 2009. Each submitted petition is thoroughly researched, a response is developed, a Report on Petitions is developed (a.k.a., “ROP”), and a draft of the proposed rules (along with the ROP) is generated. Once completed, all of these items are recommended to the Department of Commerce for approval. Subsequently, the ROP is published on the SFM Website, drafts of the proposed rules released to stakeholders, and a public Comment Period begins. For Rules 6, 7, 8, & 18, a two-week public Comment Period began on August 19, 2010 and closed on September 3, 2010.

Comments on the Limited ROP were submitted on the Online Petition/Comment Form (Fig. 1). Each comment is thoroughly considered and researched, and a response is prepared and included in a Limited ROC. For the convenience of commenters, the Limited ROC only notes changes made in response to the comments that are submitted. (In this regard, to review the changes made pursuant to the Petition Period, please consult the Limited ROP.) The Limited ROC and a final draft of the BUSTR Rules are recommended to the Department of Commerce for approval. After approval, the Limited ROC is published and the final draft of the proposed rules is submitted through Ohio’s Formal Rules Adoption process.

BUSTR Rule Revision/Development Process Workgroup

The SFM's BUSTR Rules Workgroup (BUSTR WG) includes the following:

- BUSTR Legal Counsel
- BUSTR Bureau Chief
- BUSTR Bureau Assistant Chief
- BUSTR Environmental Supervisor
- SFM Deputy Division Counsel

After reviewing, researching, and thoughtfully considering each comment, the workgroup makes a recommendation to the State Fire Marshal who authorizes its inclusion in this document.

Ohio BUSTR Rules Workgroup Actions

In the ROP and ROC, the BUSTR WG shall take one of the following actions in response to each petition or comment:

1. Accept – Accept the petition as submitted.
2. Reject – Reject the petition as submitted.
3. Accept in Principle – Accept the petition in principle but with changes in the proposed wording. This action also includes accepting the petition/comment only in part.

The BUSTR WG actions “Reject” and “Accept in Principle” shall include a statement by the BUSTR WG, preferably technical in nature, on the reason for the action. Every attempt in the ROC is taken to make such a statement sufficiently detailed so as to convey the BUSTR WG's rationale for its action. A petition that does not include all the information required (e.g., all fields in the form) may be rejected by the BUSTR WG for that reason.

If duplicate petitions or comments are received with all the same recommendation and with similar substantiation for the proposal, the BUSTR WG may combine these proposals into a single or several proposals with multiple submitters. In this case, the statement of the problem and the substantiation for the proposal shall be a general summary of the submitted material.

A submitter of a petition or comment may withdraw the petition/comment before the published petition/comment closing date. Proposals/comments cannot be withdrawn after the established proposal/comment closing date.

A number of BUSTR WG responses reference “Federal Guidelines”. The “Federal Guidelines” mean the Grant Guidelines associated with the federal Energy Policy Act of 2005. Copies of the Grant Guidelines may be found at the following web sites:

- Secondary Containment-<http://www.epa.gov/swerust1/fedlaws/secondco.htm>
- Delivery Prohibition-<http://www.epa.gov/swerust1/fedlaws/delvyproh.htm>

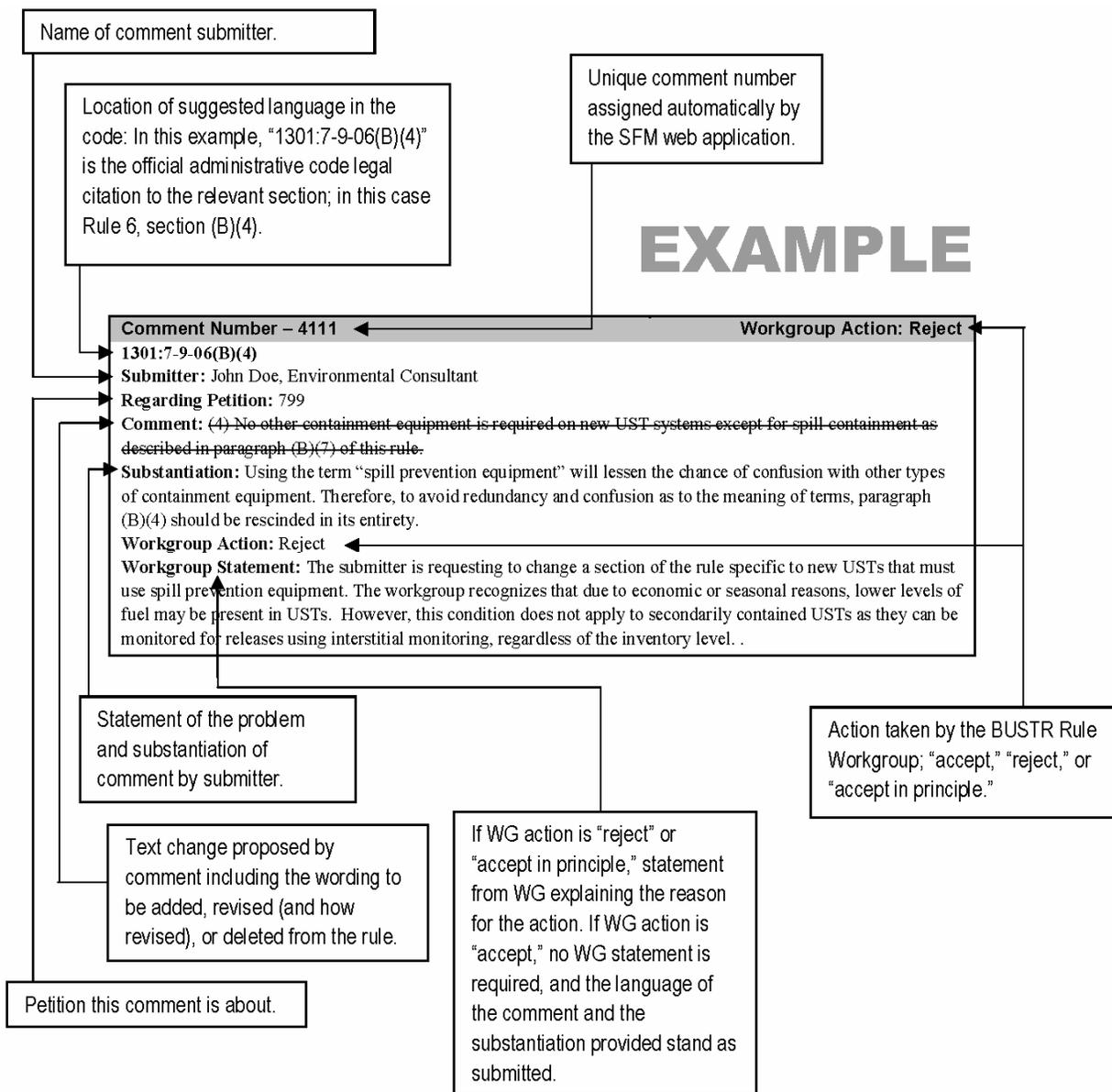
If a petition or comment is submitted with an inaccurate rule number or legal code citation, the BUSTR WG will renumber these petitions or comments in order to correctly cite the exact part of the rule that the petition or comment addresses. The comments in this Limited ROC are listed in rule number order, thus making it easier for the reader to follow the rule changes as they appear in the draft rules. Ultimately, the BUSTR WG must conform to Legislative Services Commission Guidelines for rule numbering.

Some non-substantive changes (e.g., addressing acronyms, capitalization, verb tense and other minor punctuation issues) may be made by the BUSTR WG to the proposed rules without petitions or comments. These changes are identified in the proposed rules using underline/strikeout edits.

Some proposed rule changes may affect other BUSTR rules that are not a part of this Limited ROC. The BUSTR WG will make every effort to minimize these occurrences. The SFM will develop policies to address any interpretations that are needed.

Format of Comments in the ROC

Comments in this report shall be formatted as shown here:



When duplicate comments are submitted, a table is included with each comment that, for all duplicates, shows the comment numbers along with the commenter’s name, company, and location. Note that the substantiations for each of these duplicate comments are not always exactly identical. If the substantiation for two duplicate comments are sufficiently different, they are considered separate and unique comments.

Also, in the interest of conveying the full and accurate message and intent of each commenter, the language of each comment is reproduced here precisely as it was entered into the comment form.

Index of Comments in Rule Number Order

Rule 6

| | | | | |
|-----------------|-------------|----------------------|------------------|---|
| Comment Numbers | 2451 & 2474 | 1301:7-9-06(C)(6)(b) | Re Petition 999 | 1 |
| Comment Numbers | 2452 & 2475 | 1301:7-9-06(C)(7)(a) | Re Petition 1998 | 1 |
| Comment Numbers | 2453 & 2476 | 1301:7-9-06(C)(7)(b) | Re Petition 1831 | 2 |
| Comment Numbers | 2454 & 2477 | 1301:7-9-06(C)(7)(c) | Re Petition 2413 | 3 |
| Comment Number | 2504 | 1301:7-9-06(C)(7)(c) | Re Petition 2413 | 3 |
| Comment Number | 2505 | 1301:7-9-06(C)(7)(d) | Re Petition 1833 | 3 |
| Comment Number | 2497 | 1301:7-9-06(C)(7)(d) | Re Petition 1833 | 4 |
| Comment Numbers | 2455 & 2478 | 1301:7-9-06(C)(7)(d) | Re Petition 1833 | 4 |
| Comment Numbers | 2456 & 2479 | 1301:7-9-06(D)(3)(a) | Re Petition 1835 | 5 |
| Comment Numbers | 2457 & 2480 | 1301:7-9-06(E)(1) | Re Petition 1845 | 6 |

Rule 7

| | | | | |
|-----------------|-------------|-------------------------|------------------|----|
| Comment Numbers | 2458 & 2481 | 1301:7-9-07(B)(6) | Re Petition 1391 | 8 |
| Comment Numbers | 2459 & 2482 | 1301:7-9-07(B)(6)(b) | Re Petition 1362 | 8 |
| Comment Numbers | 2460 & 2483 | 1301:7-9-07(C)(7) | Re Petition 1369 | 9 |
| Comment Numbers | 2461 & 2484 | 1301:7-9-07(C)(8) | Re Petition 1374 | 10 |
| Comment Numbers | 2462 & 2485 | 1301:7-9-07(D)(2)(d)(i) | Re Petition 1646 | 11 |
| Comment Numbers | 2463 & 2486 | 1301:7-9-07(D)(3)(a) | Re Petition 1400 | 11 |
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| Comment Numbers | 2464 & 2487 | 1301:7-9-07(F)(1)(b) | Re Petition 1408 | 12 |
| Comment Numbers | 2465 & 2488 | 1301:7-9-07(F)(2)(c) | Re Petition 1417 | 13 |
| Comment Numbers | 2466 & 2489 | 1301:7-9-07(F)(5) | Re Petition 1431 | 14 |

Rule 18

| | | | | |
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| Comment Number | 2506 | 1301:7-9-18(B) | Re Petition 543 | 16 |
| Comment Numbers | 2467 & 2490 | 1301:7-9-18(B) | Re Petition 543 | 16 |
| Comment Number | 2511 | 1301:7-9-18(C)(2) | Re Petition 44 | 18 |
| Comment Numbers | 2468 & 2491 | 1301:7-9-18(C)(2)(f) | Re Petition 2424 | 18 |
| Comment Number | 2507 | 1301:7-9-18(D)(1) | Re Petition 551 | 19 |
| Comment Numbers | 2469 & 2492 | 1301:7-9-18(D)(1) | Re Petition 551 | 19 |
| Comment Number | 2450 | 1301:7-9-18(D)(1)(b) | Re Petition 551 | 20 |
| Comment Numbers | 2470 & 2493 | 1301:7-9-18(D)(3)(d) | Re Petition 1915 | 21 |
| Comment Number | 2508 | 1301:7-9-18(D)(4) | Re Petition 543 | 22 |
| Comment Number | 2509 | 1301:7-9-18(D)(5) | Re Petition 2428 | 22 |
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| Comment Number | 2510 | 1301:7-9-18(E) | Re Petition 2010 | 24 |
| Comment Numbers | 2473 & 2496 | 1301:7-9-18(F)(3) | Re Petition 2012 | 25 |

RULE 6

Comment Numbers - 2451 & 2474

Workgroup Action: Reject

1301:7-9-06(C)(6)(b)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2451 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2474 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 999

Comment: (b) Existing UST systems that were internally lined but were not equipped with supplemental cathodic protection systems shall be taken out of service no later than ~~twelve months~~ five years after the effective date of this rule, unless the UST system is be modified to meet the cathodic protection requirements of paragraphs (D)(1) through (D)(2)(d)(iv)(b) of this rule.

Substantiation: The SFM notes in response to the petitioners (See response to petition 999 and related petitions) that the time frame proposed would allow a significant period of time to pass between the effective date of the rule and the deadline; however, the workgroup does not justify its reasons for such a short timeframe. This short timeframe places an unnecessary burden on the owner and operator for a UST system to obtain the necessary financing, engage appropriate contractors, obtain necessary permits, and perform the installation; particularly owners and operators of multiple sites requiring upgrade and/or desiring to replace the UST. While the addition of cathodic protection is an option, it cannot be assumed that existing tanks can or should be upgraded by adding a cathodic protection system. Further, this short timeframe discourages UST replacement by failing to allow adequate time for an owner and operator to make such a significant investment in a site. Owners and operators will need more than one year to comply with this requirement if they elect to replace the UST to comply with this paragraph; s. In addition, it is important to note this requirement is more likely to impact small tank owners who are less prepared to make the investment necessary to meet this requirement. Recent statistics developed by the Petroleum Underground Storage Tank Release Compensation Board indicates that over 90% of the owner/operators are small tank owners owning six tanks or less. The proposed modified language would require an owner and operator wishing to add cathodic protection to an existing UST to obtain approval within twelve months of the effective date of the rule in accordance with paragraph OAC 1301:7-9-(C)(6)(b) or replace the UST in accordance with OAC 1301:7-9-(C)(7)(a) within five years.

Workgroup Action: Reject

Workgroup Statement: The revision to OAC 1301:7-9-06(C)(6)(b) is meant to clarify that lined tanks located in sensitive areas must either be retrofitted with cathodic protection or be taken out of service. The workgroup appreciates the time and money expended in replacing lined tanks in sensitive areas that do not have proper cathodic protection. Tanks in sensitive areas, however, were never qualified to be lined in the first instance, as BUSTR’s rules in their entirety demonstrate. Because of the time and cost in replacing tanks or retrofitting them with cathodic protection, BUSTR is providing a twelve-month grace period.

Comment Numbers - 2452 & 2475

Workgroup Action: Reject

1301:7-9-06(C)(7)(a)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2452 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2475 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1998

Comment: (a) If work causes an existing UST to be replaced, the UST and all piping and containments associated with the UST shall be equipped, operated and maintained pursuant to the new UST and containment requirements defined in paragraph (B)(1) and (B)(3) through (B)(3)(a) of this rule;

Substantiation: The SFM rejected the petitioner’s proposal (See response to petition 1998 and related petitions) to remove the requirement for piping to meet secondary containment requirements when a UST is replaced. The workgroup notes in their comments that federal trends are to require the replacement of single wall tanks with secondarily contained tanks and single wall piping with secondarily contained piping. While this may be true, the federal trend is not to require the complete UST system replacement when a tank is replaced. The *USEPA Grant Guidelines to States for Implementing the Secondary Containment Provision of The Energy Policy Act Of 2005*

specifically states (under the topic *When Is Secondary Containment Required?*) that “If an existing underground tank is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced piping.” Further, the SFM did not acknowledge or address the petitioner’s concerns related to the significant additional financial burden a complete UST system replacement would place on the owner/operator if a tank were in need of replacement (in particular for larger facilities such as a truck stop where there may be hundreds of feet of piping between the UST and the dispenser islands) nor the disincentive this requirement has on smaller tank owners or operators from upgrading their underground storage tank. While the workgroup notes that the BUSTR leak autopsy has identified piping as a major source of releases, the requirements to upgrade the piping (addressed in paragraph (C)(7)(b) of this rule) and to install under dispenser containment (addressed in (C)(7)(c) of this rule) are intended to address this issue. In addition, it is important to note that requirements such as this have a significant impact on a large percentage of the owner/operators of underground storage tanks systems. Recent statistics developed by the Petroleum Underground Storage Tank Release Compensation Board indicates that over 90% of the owner/operators are small tank owners owning six tanks or less.

Workgroup Action: Reject

Workgroup Statement: BUSTR is charged, in part, with ensuring that UST systems are adequately constructed and installed so as to avoid releases of regulated substances in order to protect human health and the environment. BUSTR leak autopsy data indicates that piping and piping connections are a major source of petroleum releases. When piping is secondarily contained, it is more likely to prevent a release to the environment. Consequently, BUSTR has made it a priority to replace single walled piping in UST systems in Ohio with piping that has secondary containment. The workgroup’s approach is consistent with federal trends requiring secondary containment for USTs and piping. The workgroup, however, appreciates the potential costs of compliance, which it always takes into consideration when promulgating regulations. Indeed, the workgroup believes it has found a fair and balanced resolution of addressing cost of compliance while protecting human health and the environment. In drafting (C)(7)(a), the workgroup would make the replacement of the UST an event that triggers piping replacement because it would be more cost effective to replace piping while the UST is being replaced (i.e., the owner has the opportunity to plan the event well in advance and schedule work to cause a minimal impact to day-to-day operations). For existing tanks and piping, that the replacement of the tank triggers secondary containment requirements is consistent with federal trends that require both double wall USTs and piping. The comment suggests this is not the trend and, as substantiation, quotes two sentences from the Federal Guidelines to suggest that the requirements to install double wall USTs and piping are mutually exclusive. The workgroup interprets the language differently. With respect to timing and the specific interplay between requirements for USTs and for piping, the Federal Guidelines are silent, which indicates that the federal government has left that determination to each state. It should be noted that this requirement will not affect tank owners who already have double wall piping installed at their sites. Only tank owners with high risk single wall piping will need to install the safer double wall piping, and in most cases, tank owners will be able to control the timing and circumstance leading to the replacement of the UST and the associated single wall piping. The cost of shutting down a station to investigate a piping release can easily cost thousands of dollars a day in lost revenue for small operators and tens of thousands of dollars a day in lost revenue for large operators. It makes good business sense to minimize the risk posed by single wall piping by replacing the piping at the same time that the UST is replaced.

Comment Numbers - 2453 & 2476

Workgroup Action: Accept

1301:7-9-06(C)(7)(b)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2453 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2476 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1831

Comment: If piping is installed, replaced, modified, or undergoes major repair that affects more than fifty percent (50%) of an existing piping run measured as the length of the pipe between the connection at the UST and the

furthest dispenser or use location associated with that UST connection that routinely contains regulated substances, then the piping and associated containments shall to be equipped, operated and maintained pursuant to the new piping and containment requirements defined in paragraphs (B)(2) and (B)(3) of this rule.; and
Substantiation: The SFM rejected the petitioner’s proposal (See response to petition 1831 and related petitions); however, the SFM did address several of the issues raised by the petitioners. It is important to note that the petitioners also proposed modifications to the closure requirements and definitions to address issues related to the replacement of piping. In issuing a report on petitions for this rule without addressing other rules, the SFM in rejecting this petition has not addressed these other issues. Further, the terminology and requirements of many of the UST rules are interrelated and issuance of this rule without addressing other rules may result in additional changes to this rule. In rejecting this petition, is the SFM also rejecting the related issues OAC 1301:7-9-02 and OAC 1301:7-9-12? The proposed change addresses what appears to be a typo in the draft rule. The length of the pipe should refer to the “use location associated with that UST” rather than the “use located associated with that UST.”
Workgroup Action: Accept

Comment Numbers - 2454 & 2477 **Workgroup Action: Accept In Principle**

1301:7-9-06(C)(7)(c)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2454 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2477 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 2413

Comment: (c) If a new motor fuel dispenser is installed where there previously was no motor fuel dispenser at an existing UST site then new containment shall be installed pursuant to paragraph (B)(1)(c)(iv) of this rule;

Substantiation: The reference to under dispenser containment requirements should be specifically to (B)(1)(c)(iv). The general reference to (B)(1)(c) would inadvertently suggest that containment must be installed at all piping transition points when a dispenser is replaced.

Workgroup Action: Accept In Principle

Workgroup Statement: The workgroup accepts the comments in principle; however, the workgroup proposes to amend paragraph (C)(7)(c) to reference the installation, operation and maintenance as directly defined in paragraph (D)(5) and (D)(6). The SFM proposed, by separate comment #2504, the following language:

(c) If a new motor fuel dispenser is installed where there previously was no motor fuel dispenser at an existing UST site then a new containment shall be installed pursuant to paragraphs (D)(5) and (D)(6) ~~(B)(1)(c)~~ of this rule.

Comment Number - 2504 **Workgroup Action: Accept**

1301:7-9-06(C)(7)(c)

Submitter: Division of State Fire Marshal

Regarding Petition: 2413

Comment: (c) If a new motor fuel dispenser is installed where there previously was no motor fuel dispenser at an existing UST site then a new containment shall be installed pursuant to paragraphs (D)(5) and (D)(6) ~~(B)(1)(c)~~ of this rule.

Substantiation: Petition #2413. The reference in the paragraph should be changed to clarify that containments are required only under dispensers (and not in other locations) when new motor fuel dispenser are installed. Directly citing the design, construction and operational requirements for containments found in paragraphs (D)(5) and (D)(6) will accomplish this.

Workgroup Action: Accept

Comment Number - 2505 **Workgroup Action: Accept**

1301:7-9-06(C)(7)(d)

Submitter: Division of State Fire Marshal

Regarding Petition: 1833

Comment: (d) If an existing motor fuel dispenser is replaced with another motor fuel dispenser and the piping, flex connector or shear valve is also replaced then a new containment shall be installed pursuant to paragraphs (D)(5) and (D)(6) ~~(B)(1)(c)~~ of this rule, except when the piping, flex connector, or shear valve is being replaced but the existing motor fuel dispenser is not being replaced.

Substantiation: Petition #1833. The reference in the paragraph should be changed to clarify that containments are

required only under dispensers (and not in other locations) when existing motor fuel dispenser are replaced. Directly citing the design, construction and operational requirements for containments found in paragraphs (D)(5) and (D)(6) will accomplish this.

Workgroup Action: Accept

Comment Number - 2497

Workgroup Action: Accept In Principle

1301:7-9-06(C)(7)(d)

Submitter: Christina Polesovsky, Ohio Petroleum Marketers and Convenience Store Association

Regarding Petition: 1833

Comment: (d) If an existing motor fuel dispenser is replaced with another motor fuel dispenser and the piping; prior to the flex connector, or and shear valve is also modified or replaced or if an island is to be replaced then new containment shall be installed pursuant to paragraph (B)(1)(c)(iv) of this rule ~~except when the piping, flex connector, or shear valve is being replaced but the existing motor fuel dispenser is not being replaced.~~

Substantiation: This is a comment to supplement the previous comment submitted. The petitioners in their comments noted that the closure assessment requirements that will be triggered by the installation of the under dispenser containments will not only result in an additional cost to an already costly dispenser replacement, but will discourage the upgrade to under dispenser containment and other investment in a UST site. The petitioners proposed that these two issues needed to be considered together and proposed specific changes to OAC 1301:7-9-12. In the SFM response, the workgroup recognized that this paragraph affects closure assessments, however, deferred any action on the closure assessment until Rule 12 is reviewed. These issues should not be separated. These requirements individually provide an added financial burden on an owner and operator but together may make the replacement of a dispenser prohibitive. When faced with the opportunity to upgrade an island or make other modifications to a facility such as adding a canopy as the result of the need to upgrade a dispenser, the cost of complying with both of these requirements will be major considerations. This seems counterproductive and does not go very far in encouraging owners and operators to upgrade their dispensers or UST systems. The decisions on the replacement of a dispenser have to take into account both of these requirements and the SFM consideration of this paragraph should also consider both requirements together.

Workgroup Action: Accept In Principle

Workgroup Statement: The comment is a supplement to earlier comments #2455 and #2478 that the workgroup accepted. The workgroup also accepts comment #2497 in principle. A closure assessment may be required when under dispenser containment work is performed. Closure assessment requirements are defined in Rule 1301:7-9-12 of the Administrative Code, and are not open for comment as part of this limited report on comments. Petitions and comments relating to Rule 1301:7-9-12 of the Administrative Code will be addressed in the future.

Comment Numbers - 2455 & 2478

Workgroup Action: Accept In Principle

1301:7-9-06(C)(7)(d)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2455 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2478 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1833

Comment: (d) If an existing motor fuel dispenser is replaced with another motor fuel dispenser and the piping; prior to the flex connector, or and shear valve is also modified or replaced or if an island is to be replaced then new containment shall be installed pursuant to paragraph (B)(1)(c)(iv) of this rule ~~except when the piping, flex connector, or shear valve is being replaced but the existing motor fuel dispenser is not being replaced.~~

Substantiation: The reference to under dispenser containment requirements should be specifically to (B)(1)(c)(iv). The general reference to (B)(1)(c) would inadvertently suggest that containment must be installed at all piping transition points when a dispenser is replaced.

The SFM in rejecting the petitioner's proposal (See response to petition 1833 and related petitions) on when under dispenser containment is required for the replacement of an existing dispenser on one hand notes that USEPA dictates under dispenser containment when the dispenser and connecting equipment is replaced but goes on to agree with the petitioner's comments that the determination of connecting equipment is at the discretion of the state. Flex hoses and shear valves should not be considered connecting equipment for purposes of this requirement. It is not uncommon for an owner/operator to replace a flex hose or shear valve during a dispenser replacement or have to replace a flex hose or shear valve due to damage in an accident. These are components that are commonly replaced

and it is good practice to replace them when replacing a dispenser. These components can be replaced with no disruption to the underground piping; whereas installation of the under dispenser containment would require substantial modifications to the piping, electrical, and island. The replacement of these components regardless of the circumstance should be considered routine maintenance or normal operational upkeep to prevent an underground storage tank system from releasing product.

The SFM also states that “working on the dispenser and the connecting equipment as part of a major repair (e.g., repairing a damaged dispenser that caused a release) will not lead to the requirement to install under dispenser containment.” This will not be the case since many damaged dispensers will need to be replaced rather than repaired while in place or on the site and the replacement of these dispensers cannot be planned in advanced. Further, the SFM did not acknowledge or address the petitioner’s concerns related to the significant additional financial burden the installation of an under dispenser containment would place on the owner/operator anytime a dispenser and shear valve or flex hose is replaced nor the disincentive this requirement has on upgrades of existing equipment. The inclusion of flex hoses and shear valves as connecting equipment whose replacement would require under dispenser containment is a major disincentive for the replacement of these components during dispenser replacement. We are proposing that under dispenser containment be required under two circumstances where a new dispenser is added or where an existing dispenser is replaced that requires changes to the island or underground piping. Under this proposal, we would include modifications to the main piping run between the tank and dispenser island including the transitional fitting on that pipe or work on a dispenser island as the triggers for the requirement for under dispenser containment. This is consistent with requirements in other states such as Pennsylvania which requires under an existing dispenser be installed “when a vertical riser, interconnected piping and fittings are replaced below the shear valve, involving a major modification (excavation takes place).” Pennsylvania notes in their Technical Guidance No. 257-0900-011 (Storage Tank Modification and Maintenance Issues) that the term major modification includes an activity directly affecting the tank portion of the storage tank system or an activity directly affecting an underground component of the storage tank system “that is accessible only by breaking ground within the extent of the original tank and piping installation excavation.”

Workgroup Action: Accept In Principle

Workgroup Statement: The workgroup accepts the comments in principle; however, the workgroup proposes to amend paragraph (C)(7)(c) to reference the installation, operation and maintenance as directly defined in paragraph (D)(5) and (D)(6). The SFM proposed, by separate comment #2505, the following language:

(d) If an existing motor fuel dispenser is replaced with another motor fuel dispenser and the piping prior to the flex connector and shear valve, ~~flex connector or shear valve is also replaced~~ is also modified or replaced or if an island is to be replaced, then a new containment shall be installed pursuant to paragraphs (D)(5) and (D)(6) ~~(B)(1)(e)~~ of this rule, ~~except when the piping, flex connector, or shear valve is being replaced but the existing motor fuel dispenser is not being replaced.~~

Comment Numbers - 2456 & 2479

Workgroup Action: Reject

1301:7-9-06(D)(3)(a)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2456 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2479 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1835

Comment: (a) Piping not within containments that is in contact with the ground or continuously submerged in water more than six months annually shall be protected from corrosion in one of the following manners:

Substantiation: The SFM rejected the petitioner’s proposal (See response to petition 1835 and related petitions). The Merriam-Webster dictionary defines the term ground in a number of different ways, none of which include the SFM interpretation that being submerged in water is the same as being in contact with the ground. The closest reference to water in the definition of ground is that ground is at the bottom of a body of water. With that being said, the petitioner’s have not proposed that metallic components of a UST system should not be corrosion protected when submerged in water, but rather proposed a clarification to recognize that piping can periodically be submerged in water due to seasonal issues or in containments due to surface water infiltration. While use of the phrase “frequently submerged in water” is subjective, the removal of the word “frequently” does not address the concerns raised by the petitioner’s or provide clarity on when corrosion protection is required. The proposed rule suggests that if there is any possibility that a metallic piping component could every possibly be submerged for any period of time, then corrosion protection is required. This would result in a large number of separate sacrificial anodes or other methods of corrosion protection being installed on steel unions, short pipe nipples, and flex hoses requiring

maintenance and inspection regardless of how often water may be present or whether these components are in a containment (the rule does not make a distinction between groundwater and any other form or source of water). Further, piping and flex connectors in containments are in a containment and water can be removed and the piping can be visually inspected for corrosion. Why is corrosion protection necessary to be consistent with state and federal law when both state and federal law refer to contact with the ground? Why would corrosion protection be required in a containment? Submersion in water for underground piping or flex connectors may be seasonal or related to specific rain events. Is the SFM suggesting that if a section of piping is submerged in water after a rain event 2 days a year, that the piping should be corrosion protected? What is the justification for such a requirement? Should piping in a containment be corrosion protected? What criteria will the SFM use to determine if corrosion protection is required? If six months is overly broad, what time frame would the SFM consider reasonable? The proposed language provides clarification that corrosion protection is not required within a containment and provides a guideline for determining when piping is considered submerged for purposes of requiring corrosion protection.

Workgroup Action: Reject

Workgroup Statement: The comment states that “[w]hile use of the phrase ‘frequently submerged in water’ is subjective, the removal of the word ‘frequently’ does not address the concerns raised by the petitioner’s or provide clarity on when corrosion protection is required.” The workgroup disagrees. Deletion of the word “frequently” makes it clear that, as the workgroup has previously stated, corrosion protection is required for any metallic underground pipe or flex connector that routinely contain regulated substance that is in contact with the ground or submerged in water at the time of such contact no matter how brief. The workgroup believes that the lack of any qualifier to the word “submerged” provides more clarity than the six-month timeframe suggested in the comment. Indeed, the six-month timeframe suggested in the comment would actually create more day-to-day work for owners or operators than the workgroup’s alternative. At some length, the comment also addresses the definition of “ground,” presumably because the workgroup states in its workgroup statement that “submerged in water is the same as being in contact with the ground.” The workgroup admits that this statement was confusing and now clarifies it intended to say that being submerged in water is, in its potential effect, the equivalent of being in contact with the ground. Whether in contact with the ground or submerged in water, an ion exchange occurs with pipes or flex connectors. Therefore, the rule was drafted to require corrosion protection under either circumstance to address the common denominator in both circumstances: conditions for ion exchange leading to corrosion. By petition #2415, the rule was revised to be consistent with requirements under state and federal laws, which requires corrosion protection at all times for metallic underground piping or flex connectors that routinely contain regulated substance that are in contact with the ground.

Comment Numbers - 2457 & 2480

Workgroup Action: Reject

1301:7-9-06(E)(1)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2457 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2480 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1845

Comment: (1) All UST systems shall be properly installed, modified and repaired in accordance with the manufacturer's instructions, Petroleum Equipment Institute Publication RP100-2005; "Recommended Practices for Installation of Underground Liquid Storage Systems", American Petroleum Institute Publication 1615-01; "Installation of Underground Petroleum Storage Systems", ~~National Fire Protection Association Publication NFPA 30-08 "Flammable and Combustible Liquids Code"~~, ~~National Fire Protection Association Publication NFPA 30A-08 "Motor Fuel Dispensing Facilities and Repair Garages"~~, ~~National Fire Protection Association Publication NFPA 407-01 "Standard for Aircraft Fuel Servicing"~~, and applicable Steel Tank Institute installation instructions. Where there is a conflict between requirements the more protective requirement shall prevail.

Substantiation: The SFM rejected the petitioner’s proposal (See response to petition 1845 and related petitions). In 2005 the SFM elected to adopt the International Fire Code (IFC) as the model code for the Ohio Fire Code. Prior to the adoption of the IFC as the model code, the Ohio Fire Code utilized NFPA standards as the model code. The references to the NFPA codes in the underground storage tank regulations were appropriate at that time. The IFC and the Ohio Fire Code address the same issues as the NFPA codes and were specifically adopted as adequate for the state of Ohio and refer to NFPA codes were appropriate and necessary. Tank owners/operators are required to comply with the Ohio Fire Code along with the underground storage tank regulations under OAC 1301:7-9. The SFM notes in its response to petitioners that “for BUSTR’s purposes, a reference to the Ohio Fire Code may refer to the unintended version of the NFPA or be under inclusive” and cites the fire code’s reference to the NFPA 30A-

1990 with respect to filling stations offering self-service. This reference is very specific to requirements of ORC 3741-14 which requires that a filling station offering self-service be operated in accordance with NFPA 30A-1990. This reference does not address the installation, modification or repair of underground storage tank systems. Further this rule indicates that where there is a conflict, the more protective requirement shall prevail. Is the SFM suggesting that the Ohio Fire Code is not adequate for addressing underground storage tanks? If the Ohio Fire Code is inadequate, why has there not been petitions submitted by the SFM to address these inadequacies? What specific issues addressed in NFPA 30 and NFPA 30A are the SFM referring to? If there are requirements in the NFPA codes that the owner/operator should be using that are not addressed or inadequately addressed by the Ohio Fire Code and the UST regulations, what are they? In light of the fact that the Ohio Fire code is based on the International Fire Code and references NFPA codes where appropriate, references to the NFPA publications are inappropriate and should not be included in this rule.

Workgroup Action: Reject

Workgroup Statement: As stated in the Report on Petitions, the workgroup is making direct references to the NFPA because, in some instances, the Ohio Fire Code may only refer to an NFPA standard that does not completely encompass the BUSTR standard. Moreover, the workgroup is including direct references to the NFPA to provide stakeholders, or those persons offering interpretation of our rules, a more direct reference to the governing standards. Otherwise, stakeholders would be required to first consult the Ohio Fire Code to find the potentially applicable section of the NFPA and then second consult the NFPA. The revision addresses such inefficiency by deleting an unnecessary step in order to provide assistance to stakeholders in finding the applicable standards.

RULE 7

Comment Numbers - 2458 & 2481**Workgroup Action: Accept****1301:7-9-07(B)(6)****Submitters:**

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2458 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2481 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1391

Comment: (6) If a method of UST release detection authorized in paragraph (B)(1) of this rule is found to be defective, owners and operators shall immediately ~~repair or replace~~ cause the method of release detection to undergo routine maintenance, modification or major repair.

(a) While the method of release detection ~~is being repaired or replaced~~ undergoes routine maintenance, modification or major repair, owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule in order to meet the requirements of paragraphs (B)(1) of this rule.

(b) Owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule for a period of up to sixty days after the last passing result obtained in accordance with paragraphs (B)(1) of this rule. Afterwards, owners and operators shall take the UST system out of service in accordance with rule 1301:7-9-12 of the Administrative Code until such time as the routine maintenance, modification or major repair of that the release detection method is repaired or replaced complete.

Substantiation: No petition was submitted for this paragraph; however, in rejecting the petitioner's proposal for paragraph (D)(2)(c)(ii)(b) of this rule (See response to petition 1931 and related petitions), the SFM noted that the use of the terms repair and replace would suggest a permit is always required. The SFM further notes that the original proposed language provides more flexibility. The petitioners in their comments for the proposed change to paragraph (D)(2)(c)(ii)(b) of this rule noted that the proposed language had been changed to be consistent with previous language associated with a defective release detection device such as in (B)(6). As a result, the proposed change is intended to address the issues with the terms "repair and replace" expressed by the workgroup in their response to petitions for paragraph (D)(2)(c)(ii)(b) of this rule.

Workgroup Action: Accept

Comment Numbers - 2459 & 2482**Workgroup Action: Reject****1301:7-9-07(B)(6)(b)****Submitters:**

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2459 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2482 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1362

Comment: (b) Owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule for a period of up to sixty days after the last passing result obtained in accordance with paragraphs (B)(1) of this rule. Afterwards, owners and operators shall take the UST system out of service in accordance with rule 1301:7-9-12 of the Administrative Code until such time that the release detection method is repaired or replaced.

Substantiation: The SFM rejected the petitioner's proposal (See response to petition 1362 and related petitions). SFM's response to petitions state that the petitioner is requesting to change a section of the rule specific to new USTs that must use interstitial monitoring. This is not the case since OAC 1301:7-9-7(C)(7), which addresses release detection for existing tanks, specifically references this paragraph thereby making this paragraph applicable to existing UST systems as well. The workgroup correctly points out in its response to petitions for this paragraph that it refers specifically to defective release detection equipment; however, the petitioners were not trying to extend the time period for release detection equipment that was found to be defective. Rather the petitioners were suggesting that a longer period of time (90 days) be allowed to achieve a successful test using an automatic tank gauge when levels of motor fuel in the tank are too low to achieve a successful test. This typically occurs when fuel levels in tanks are low during the transition to seasonal fuels and in situations when lower turnover of some fuels (e.g., premium gasoline) result in low levels of fuel in the UST due to the higher costs of motor fuel. The SFM response to petitions does not address this concern.

In addition, a separate petition was submitted for OAC 1301:7-9-7(C)(7) related to the proposed change for this

paragraph to specifically include the situation when an automatic tank gauge is unable to conduct a successful test due to the fuel level in the tank. In recognition of the workgroup comments that these two paragraphs refer to defective release detection equipment, we are recommending that additional language be added to paragraph (C)(7) to address the specific situation discussed above related to the achieving a successful test from an automatic tank gauge.

Workgroup Action: Reject

Workgroup Statement: The workgroup established the temporary options for alternative leak detection under OAC Rule 1301:7-9-07(B)(6)(b) in March 2005 to provide options to tank owners whose equipment used for leak detection is defective (i.e., broken). The options under (B)(6)(b) were to give a reasonable accommodation to an owner with broken leak detection equipment, as opposed to forcing that owner to take a tank out of service. The options were intended to address one-time or infrequent occurrences and not intended to allow owners that run low fuel levels on a routine basis to avoid performing required monthly leak detection. The workgroup has no empirical evidence suggesting the sixty-day timeframe is unreasonable or that it does not carry out the intention of the rule to provide alternatives to owners with broken equipment.

Comment Numbers - 2460 & 2483

Workgroup Action: Reject

1301:7-9-07(C)(7)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2460 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2483 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1369

Comment: (7) If a method of UST release detection authorized in paragraph (C)(1)(a) of this rule is found to be defective, owners and operators shall immediately cause the method of release detection to undergo routine maintenance, modification or major repair ~~comply with paragraph (B)(6)(a) through (B)(6)(b) of this rule and may use product inventory control as a method of UST release detection.~~

(a) While the method of release detection undergoes routine maintenance, modification or major repair, owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule in order to meet the requirements of paragraphs (C)(1)(a) of this rule.

(b) Owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule for a period of up to sixty days after the last passing result obtained in accordance with paragraphs (C)(1)(a) of this rule. Afterwards, owners and operators shall take the UST system out of service in accordance with rule 1301:7-9-12 of the Administrative Code until such time that the release detection method is repaired or replaced.

(c) If an automatic tank gauge is found not to be defective, but cannot conduct a successful release detection test during a thirty-day period due to low levels of regulated substance in the tank, owners and operator may use product inventory control as a method of UST release detection for a period of up to ninety days after the last passing result obtained in accordance with paragraphs (C)(1)(a) of this rule.

Substantiation: The SFM rejected the petitioner's proposal (See response to petition 1369 and related petitions). Two sets of related petitions were submitted to address the time frame during which inventory control can be used in place of an in tank test conducted by an automatic tank gauging system. The first set of petitions proposed a change to paragraph (B)(6)(b) to extent the period of time inventory control could be used from sixty days to ninety days. This proposal was rejected by the SFM (See response to petition 1362 and related petitions). The second related set of petitions for paragraph (C)(7) proposed language to incorporate the circumstance when an in tank test could not be successfully conducted by an automatic tank gauge due to low fuel levels in the tank. SFM's response to petitions for paragraph (B)(6)(b) state that the petitioner is requesting to change a section of the rule specific to new USTs that must use interstitial monitoring. This is not the case since OAC 1301:7-9-07(C)(7), which addresses release detection for existing tanks, specifically references this paragraph thereby making this paragraph applicable to existing UST systems as well. The workgroup correctly points out in its response to petitions for both paragraphs (B)(6)(b) and (C)(7) that they refer specifically to defective release detection equipment; however, the petitioners where not trying to extend the time period for release detection equipment that was found to be defective. Rather the petitioners were suggesting that a longer period of time (90 days) be allowed to achieve a successful in tank test using an automatic tank gauge when levels of motor fuel in the tank are too low to achieve a successful test. This typically occurs during the transition to seasonal fuels and in situations when lower turnover of some fuels (e.g., premium gasoline) result in low levels of fuel in the UST due to the higher costs of motor fuel. Further, based on the SFM response to petitions and specifically as a result of the ultimate references to paragraph (B)(1) in paragraphs

(B)(6)(a) through (B)(6)(b) and in paragraph (C)(7) of this rule, it is inappropriate to apply those paragraphs to existing UST systems since paragraph (B)(1) is only applicable to new UST systems with interstitial monitoring. As a result, and in recognition of the workgroup comments that these two paragraphs refer to defective release detection equipment, the proposed change to paragraph (C)(7) is intended to reference the appropriate release detection requirements for existing UST systems, provide a requirement parallel to the requirements for new UST systems, and to address the specific circumstance where a successful in-tank test cannot be conducted due to the fuel level in the tank. In addition, the proposed change is intended to address the issues with the terms “repair and replace” expressed by the workgroup in their response to petitions for paragraph (D)(2)(c)(ii)(b) of this rule.

Workgroup Action: Reject

Workgroup Statement: State and federal laws require a valid method of monthly leak detection. As stated in response to Comment # 2459, the purpose of the temporary options under OAC Rule 1301:7-9-07(B)(6)(b) is to address those one-time or infrequent occurrences when leak detection equipment breaks or is mechanically defective. Based on the experience of BUSTR inspectors and management, sixty days is a reasonable timeframe for allowing an owner or operator to replace and install new leak detection equipment. Neither (C)(7) nor (B)(6)(b) is intended to provide alternative options of leak detection for owners or operators who, by choice, run low levels of fuel such that an automatic tank gauge cannot conduct a successful release detection test during a thirty-day period. It is possible to address low levels of fuel through other means, such as an approved variance to use SIR. As stated previously, the workgroup has no empirical evidence suggesting that the sixty-day time frame is unreasonable or that it does not carry out the intention of the rule to provide alternatives to owners with broken equipment.

Comment Numbers - 2461 & 2484

Workgroup Action: Reject

1301:7-9-07(C)(8)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2461 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2484 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1374

Comment: (8) If work is performed on an existing UST system in order to meet the requirements of paragraph (C)(7) of rule 1301:7-9-06 of the Administrative Code, then the UST, piping or containments equipment affected by the work shall meet the release detection requirements for new UST systems as described in paragraphs (B)(1) through (B)(3) of this rule except that:- (a) Containments under dispensers for existing UST systems that are subject to visual inspection are not required to meet the release detection requirements for new UST systems until fifty percent (50%) or more of the dispensers at the UST site are so equipped.

Substantiation: In rejecting the petitioner’s proposal (See response to petition 1374 and related petitions), the SFM notes that piping and containment work usually occurs simultaneously with the installation of an under dispenser containment and that since piping and containments usually share common leak detection components by meeting the leak detection requirements for piping, the owner will also be meeting the leak detection requirements for the containment at no additional cost. This is not the case and it is unclear how the workgroup came to this conclusion since OAC 1301:7-9-07 (C)(7)(c) and (C)(7)(d) require under dispenser containment to be installed when a dispenser is replaced. Under these circumstances, piping would only be modified to the extent necessary to install the dispenser containment. It is more likely that under dispenser containment will be installed one dispenser at a time or one island at a time over long time periods at sites with single wall piping and line leak detectors resulting in a single sensor at a site. The workgroup notes in their response that the federal guidelines permit the states to determine requirements for release detection in containments, but do not allow the state to determine a threshold for monitoring of the under dispenser containment. In the definition of under dispenser containment, however, the federal guidelines require that the under dispenser containment must “allow for visual inspection and access to the components in the containment system and/or be monitored.” The guidelines do not provide any additional guidance on monitoring other than is currently in the federal UST regulations. This appears to provide flexibility with respect to monitoring of these containments. Further, line leak detection systems are in place to monitor for releases from the piping and the installation of the under dispenser containments by themselves provide substantial added protection from releases under a dispenser. As a result, the requirement for continuous monitoring of these containments should be deferred until there are a significant number of units installed at a UST site.

Workgroup Action: Reject

Workgroup Statement: BUSTR is charged, in part, with ensuring that UST systems are adequately constructed and installed so as to avoid releases of regulated substances in order to protect human health and the environment.

BUSTR leak autopsy data indicates that piping and piping connections are a major source of petroleum releases. These connections almost always occur in containments; and consequently, it makes a lot of sense to install sensors in these containments. The sooner a release is detected in a containment, the less of the chance that the release can escape into the environment. It is estimated that it costs a few hundred dollars to install and maintain a sensor in a containment. This is a small price to pay when compared to the cost of shutting down a station to investigate a release. A typical release can easily cost thousands of dollars a day in lost revenue for small operators and tens of thousands of dollars a day in lost revenue for large operators. It makes good business sense to minimize the risk of a release by installing sensors in containments. The Federal Guidelines require that under dispenser containment “allow for visual inspection and access to the components in the containment system and/or be monitored.” Sensors satisfy the federal requirement for monitoring, and sensors operate 24 hours a day, thus giving owners immediate notice if a release occurs in a containment. The cost of having a store employee check a containment every day would exceed the cost of a sensor and would put the employee at an unnecessary risk. BUSTR regulations (effective March of 2005) require sensors in containments when new UST systems are installed; thus, in order to maintain consistency, it is both reasonable and cost effective to require the installation of sensors when work is performed on existing UST systems.

Comment Numbers - 2462 & 2485

Workgroup Action: Accept

1301:7-9-07(D)(2)(d)(i)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2462 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2485 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1646

Comment: (i) Underground piping that conveys regulated substances under suction shall be monitored for loss of vacuum indicated by inability to dispense regulated substances or erratic operation of the pump. Within twenty-four (24) hours of an UST owner and operator ~~suspecting a loss of discovering vacuum loss~~, the owner and operator shall initiate an investigation of the cause of the loss of vacuum, ~~and determine whether the component is defective, but not leaking~~. If an owner and operator is unable to make a determination of the loss of vacuum, then the loss of vacuum shall be considered a suspected release as defined in O.A.C. 1301:7-9-13(C)(34) and the owner and operator shall comply with O.A.C. 1301:7-9-13(F)(2). If the loss of vacuum is determined to be due to a leaking component is leaking it shall constitute a release as defined in O.A.C. 1301:7-9-13(C)(25) and the owner and operator shall comply with O.A.C. 1301:7-9-13(F).

Substantiation: The SFM accepted the petitioner’s proposal in principle (See response to petition 1646 and related petitions and SFM petition 2417); however, the workgroup has made substantial revisions (See SFM petition 2417) to the petitioner’s proposal, in particular, excluding the description of loss of vacuum. It is important that this description be included in this paragraph. In addition, it is more appropriate to “suspect” a loss of vacuum than “discover” a loss of vacuum because mechanical problems in a pump may appear to be a loss of vacuum. The proposed changes are intended to clarify the process and remove redundancies.

Workgroup Action: Accept

Comment Numbers - 2463 & 2486

Workgroup Action: Reject

1301:7-9-07(D)(3)(a)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2463 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2486 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1400

Comment: (a) Containment systems shall be continuously monitored with sensors capable of detecting a release of a regulated substance before the release reaches the lowest penetration in the containment system. Sensors shall be located in every containment except that:-

(i) Containments under dispensers for existing UST systems that are subject to visual inspection are not required to meet the release detection requirements for new UST systems until fifty percent (50%) or more of the dispensers at

the UST site are so equipped.

Substantiation: In rejecting the petitioner’s proposal (See response to petition 1400 and related petitions), the SFM notes that piping and containment work usually occurs simultaneously with the installation of an under dispenser containment and that since piping and containments usually share common leak detection components by meeting the leak detection requirements for piping, the owner will also be meeting the leak detection requirements for the containment at no additional cost. This is not the case and it is unclear how the workgroup came to this conclusion since OAC 1301:7-9-07 (C)(7)(c) and (C)(7)(d) require under dispenser containment to be installed when a dispenser is replaced. Under these circumstances, piping would only be modified to the extent necessary to install the dispenser containment. It is more likely that under dispenser containment will be installed one dispenser at a time or one island at a time over long time periods at sites with single wall piping and line leak detectors resulting in a single sensor at a site. The workgroup notes in their response that the federal guidelines permit the states to determine requirements for release detection in containments, but do not allow the state to determine a threshold for monitoring of the under dispenser containment. In the definition of under dispenser containment, however, the federal guidelines require that the under dispenser containment must “allow for visual inspection and access to the components in the containment system and/or be monitored.” The guidelines do not provide any additional guidance on monitoring other than is currently in the federal UST regulations. This appears to provide flexibility with respect to monitoring of these containments. Further, line leak detection systems are in place to monitor for releases from the piping and the installation of the under dispenser containments by themselves provide substantial added protection from releases under a dispenser. As a result, the requirement for continuous monitoring of these containments should be deferred until there are a significant number of units installed at a UST site.

Workgroup Action: Reject

Workgroup Statement: The comment states that adding sensors to containments is a burdensome process and that sensors should not be required until a majority of containments are worked on. BUSTR records show that most leaks at facilities occur in under-dispensers and above tank-tops. Therefore, while the workgroup appreciates the burden that adding sensors may cause certain facilities, the sensors will assist in detecting release from areas where releases, if any, are most likely to occur.

Comment Number - 2449

Workgroup Action: Reject

1301:7-9-07(D)(3)(a)

Submitter: Karen Reese, FirstEnergy Corp.

Regarding Petition: 1400

Comment: (D)(3)(a) - Revise as follows: (a) Containment systems shall be continuously monitored with sensors capable of detecting a release of a regulated substance before the release reaches the lowest penetration in the containment system and sensors shall be located in every containment except that: (i) Containments under dispensers at existing UST sites may be monitored monthly by visual examination until fifty percent (50%) or more of the dispensers at the UST site are so equipped.

Substantiation: Containments under dispensers may be installed one at a time over a long period of time. Added continuous monitoring under this scenario is unnecessarily burdensome. Monitoring the new containments visually on a monthly basis would provide release detection while relieving the burden of installing sensors until the majority of the dispensers are so equipped.

Workgroup Action: Reject

Workgroup Statement: The comment states that adding sensors to containments is a burdensome process and that sensors should not be required until a majority of containments are worked on. BUSTR records show that most leaks at facilities occur with piping located under dispensers and above tank-tops. Therefore, while the workgroup appreciates the burden that adding sensors may cause certain facilities, the sensors will assist in detecting releases from areas where releases are most likely to occur.

Comment Numbers - 2464 & 2487

Workgroup Action: Reject

1301:7-9-07(F)(1)(b)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2464 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2487 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1408

Comment: (b) Tightness testing of the interstice of secondarily contained UST shall be conducted in accordance

with manufacturer’s guidelines or standards, an applicable test method specified in an industry code or engineering standard, or a test method approved by follow the manufacturer’s testing requirements or other requirements approved by the manufacturer, the state fire marshal, or a third party who has demonstrated proficiency in tightness testing to the state fire marshal. The tightness test of the interstice of the secondarily contained UST shall comply with one of the following:

(i) If the interstice is a liquid filled system and the liquid level in the tank top reservoir maintains its level for 1 hour;
or

(ii) If the interstice is pumped to a vacuum state of a minimum of 10 in Hg and the vacuum level holds its reading for 1 hour; or

(iii) If the interstice is pressured with an inert gas to a maximum of 5 psi and that pressure holds its level for 1 hour.

Substantiation: In the SFM’s response to petitioner’s (See response to petition 1408 and related petitions), the SFM notes that the term “generally accepted industry practice” is too broad. While we agree that this may be the case, we are not aware of manufacturer’s testing requirements that apply to the interstice of secondarily contained UST or piping that have been in service or specific performance standards for the testing of in-service interstitial spaces. Manufacturer’s testing requirements for interstitial spaces typically refer to testing during the installation of the UST and include a visual inspection of the tank or piping. Use of a broad term allows consideration of a larger range of potential tests. Testing of in-service interstitial spaces has generally been conducted using practices developed by the industry and testing companies. It has been our experience that manufactures do not approve testing requirements for in-service tanks or piping or their interstitial spaces. Further, we are not aware of a process or performance criteria that the SFM has in place to evaluate the proficiency of a third party for testing of an interstitial space. As a result, we are proposing changes to allow the use of manufacturer requirements, industry standards and codes, or other methods approved by the SFM and providing specific criteria for evidence of successful tightness test.

Workgroup Action: Reject

Workgroup Statement: The workgroup accepts the premise that a large majority of the in-service interstitial testing is currently based on industry and testing companies’ practices. However, until a comprehensive study has been conducted by BUSTR to verify the accuracy and effectiveness of the specific criteria proposed, no criteria should be encapsulated into rule at this time. Additionally, there may be additional standards deemed acceptable that are not included in the proposed list of testing criteria. The suggested testing criteria may be appropriate to publish in future BUSTR guidance after it has been reviewed by the bureau. Further, USEPA is currently working on specific federal rules and/or technical criteria on interstitial tightness testing. Since the BUSTR program dictates that the state UST regulations must be as stringent as the federal UST regulations, the workgroup feels it is prudent to wait on USEPA to publish their determinations before constraining state testing standards. The proposed language of 7(F)(1)(b) will still allow the state fire marshal to approve the specific testing criteria proposed by the commenter. To obtain approval of a specific testing method, testing companies and industry may submit documentation to BUSTR detailing the testing protocol along with sufficient data demonstrating the effectiveness of such methods.

Comment Numbers - 2465 & 2488

Workgroup Action: Reject

1301:7-9-07(F)(2)(c)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2465 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2488 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1417

Comment: (c) Tightness testing of the interstice of secondarily contained piping shall be conducted in accordance with manufacturer’s guidelines or standards, an applicable test method specified in an industry code or engineering standard, or a test method approved by follow the manufacturer’s testing requirements or other requirements approved by the manufacturer, the state fire marshal, or a third party who has demonstrated proficiency in tightness testing to the state fire marshal. The tightness test of the interstice of secondarily contained piping shall comply with the following

(i) Isolate the section of the line being tested by sealing both ends.

(ii) Pressure that section of the piping with an inert gas to a level of 5 psi, and

(iii) Verify that the pressure holds its level for 1 hour

Substantiation: In the SFM’s response to petitioner’s (See response to petition 1408 and related petitions), the SFM notes that the term “generally accepted industry practice” is too broad. While we agree that this may be the case, we are not aware of manufacturer’s testing requirements that apply to the interstice of secondarily contained UST or

pipng that have been in service or specific performance standards for the testing of in-service interstitial spaces. Manufacturer's testing requirements for interstitial spaces typically refer to testing during the installation of the UST and include a visual inspection of the tank or piping. Use of a broad term allows consideration of a larger range of potential tests. Testing of in-service interstitial spaces has generally been conduct using practices developed by the industry and testing companies. It has been our experience that manufactures do not approve testing requirements for in-service tanks or piping or their interstitial spaces. Further, we are not aware of a process or performance criteria that the SFM has in place to evaluate the proficiency of a third party for testing of an interstitial space. As a result, we are proposing changes to allow the use of manufacturer requirements, industry standards and codes, or other methods approved by the SFM and providing specific criteria for evidence of successful tightness test.

Workgroup Action: Reject

Workgroup Statement: The workgroup agrees that a large majority of the in-service interstitial testing for piping is currently based on industry and testing companies' practices. However, until a comprehensive study has been conducted by BUSTR to verify the accuracy and effectiveness of the specific criteria proposed, no criteria should be incorporated into rule at this time. Additionally, there may be additional standards deemed acceptable that are not included in the proposed list of testing criteria. The suggested testing criteria may be appropriate to publish in future BUSTR guidance after it has been reviewed by the bureau. Further, USEPA is currently working on specific federal rules and/or technical criteria on interstitial tightness testing. Since the BUSTR program dictates that the state UST regulations must be as stringent as the federal UST regulations, the workgroup feels it is prudent to wait on USEPA to publish their determinations before constraining state testing standards. The proposed language of 7(F)(1)(b) will still allow the state fire marshal to approve the specific testing criteria proposed by the commenter. To obtain approval of a specific testing method, testing companies and industry may simply submit documentation to BUSTR detailing the testing protocol along with sufficient data demonstrating the effectiveness of such methods.

Comment Numbers - 2466 & 2489

Workgroup Action: Reject

1301:7-9-07(F)(5)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2466 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2489 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1431

Comment: (5) Testing shall be performed in accordance with the manufacturer's instructions, petroleum equipment institute publication RP100-2005; "Recommended Practices for Installation of Underground Liquid Storage Systems", American petroleum institute publication 1615-01; "Installation of Underground Petroleum Storage Systems", ~~National Fire Protection Association Publication NFPA 30-08 "Flammable and Combustible Liquids Code"~~, ~~National Fire Protection Association Publication NFPA 30A-08 "Motor Fuel Dispensing Facilities and Repair Garages"~~. Where there is a conflict between requirements the more protective requirement shall prevail.

Substantiation: The SFM rejected the petitioner's proposal (See response to petition 1431 and related petitions). In 2005 the SFM elected to adopt the International Fire Code (IFC) as the model code for the Ohio Fire Code. Prior to the adoption of the IFC as the model code, the Ohio Fire Code utilized NFPA standards as the model code. The references to the NFPA codes in the underground storage tank regulations were appropriate at that time. The IFC and the Ohio Fire code address the same issues as the NFPA codes and were specifically adopted as adequate for the state of Ohio and refer to NFPA codes were appropriate and necessary. Tank owners/operators are required to comply with the Ohio Fire Code along with the underground storage tank regulations under OAC 1301:7-9. The SFM notes in its response to petitioners that "for BUSTR's purposes, a reference to the Ohio Fire Code may refer to the unintended version of the NFPA and cites the fire code's reference to the NFPA 30A-1990 with respect to filling stations offering self-service. This reference is very specific to requirements of ORC 3741-14 which requires that a filling station offering self-service be operated in accordance with NFPA 30A-1990. This reference does not address the testing of underground storage tank systems. Further this paragraph indicates that where there is a conflict, the more protective requirement shall prevail. Is the SFM suggesting that the Ohio Fire Code is not adequate for addressing underground storage tanks? If the Ohio Fire Code is inadequate, why has there not been petitions submitted by the SFM to address these inadequacies? What specific issues addressed in NFPA 30 and NFPA 30A are the SFM referring to? If there are requirements in the NFPA codes that the owner/operator should be using that are not addressed or inadequately addressed by the Ohio Fire Code and the UST regulations, what are they? In light of the fact that the Ohio Fire code is based on the International Fire Code and references NFPA codes where appropriate, references to the NFPA publications are inappropriate and should not be included in this rule.

Workgroup Action: Reject

Workgroup Statement: As stated in the Report on Petitions, direct references to the NFPA are being made because, in some instances, the Ohio Fire Code may refer to an NFPA standard that does not completely encompass the BUSTR standard. Moreover, direct references to the NFPA are included to provide stakeholders, or those persons offering interpretation of our rules, a more direct reference to the governing standards. Otherwise, stakeholders would be required to first consult the Ohio Fire Code to find the potentially applicable section of the NFPA and then second consult the NFPA. The workgroup's revision addresses such inefficiency by deleting an unnecessary step in order to provide stakeholders assistance in finding the applicable standards.

RULE 18

Comment Number - 2512**Workgroup Action: Accept****1301:7-9-18(A)****Submitter:** Division of State Fire Marshal**Regarding Petition:** 2432**Comment:** 1301:7-9-18 Delivery prohibition for ~~underground storage tanks~~ USTs.

Substantiation: Petition #2432. The SFM intends to be consistent with the Federal Guidelines and apply delivery prohibition to individual tanks at a site. Rescission of the word “system” after “underground storage tank” throughout O.A.C. 1301:7-9-18 (paragraphs (B) through (F)) clarifies that the SFM applies delivery prohibition to individual tanks, not the entire system. In order to further improve consistency, the acronym ‘UST’ should be used in place of ‘underground storage tank’ throughout OAC rule 1301:7-9-18.

Workgroup Action: Accept**Comment Number - 2506****Workgroup Action: Accept****1301:7-9-18(B)****Submitter:** Division of State Fire Marshal**Regarding Petition:** 543

Comment: (B) After the effective date of this rule, it shall be unlawful for any person to deliver ~~to~~, deposit ~~into~~, or accept a regulated substance into an underground storage tank that is classified as ineligible by the state fire marshal for such delivery, deposit, or acceptance in accordance with paragraph (D)(1) through (D)(5) of this rule, which has been identified by the state fire marshal to be ineligible for such delivery, deposit, or acceptance pursuant to the issuance of an order by the state fire marshal in accordance with paragraph (D)(1) of this rule.

Substantiation: Petition # 543. To clarify the point in time when it is unlawful to deliver, deposit, or accept product into an ineligible tank, paragraph (B) of Rule 18 should be changed to clarify that a tank is ineligible at the moment the red tag has been affixed to the fill pipe of the UST. By referencing paragraphs (D)(1) through (D)(5), the sequence of steps leading to the red tag is more clearly defined. There was confusion as to the exact moment when it becomes unlawful to deliver, deposit or accept product into an UST (e.g., at the time of classification by the fire marshal, when the order is served, or when the red tag is affixed to the fill pipe). The confusion is resolved by referencing paragraphs (D)(1) through (D)(5) in Paragraph (B). The steps defined in paragraph (D)(1) through (D)(5) make it clear that the red tag must be affixed to the fill pipe before it is unlawful to deliver, deposit or accept product into an UST. Further, paragraph (D)(5) establishes that the removal of the red tag from the fill pipe is the condition that signifies that it is lawful to resume delivery, deposit or acceptance of product into an UST. Also, the prepositions “to” and “into” should be deleted in order to maintain consistency and agreement with similar wording found in other parts of the rule such as paragraphs (C)(1), (C)(2), (D)(1), (D)(2)(b), (D)(3) and (E).

Workgroup Action: Accept**Comment Numbers - 2467 & 2490****Workgroup Action: Reject****1301:7-9-18(B)****Submitters:**

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2467 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2490 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 543

Comment: B) Delivery prohibition. After the effective date of this rule, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated substance into an underground storage tank upon actual notice to the owner and operator and the product deliverers that the underground storage tank the which has been identified by the state fire marshal to be ineligible for such delivery, deposit, or acceptance pursuant to the issuance of an order by the state fire marshal in accordance with paragraph (D) of this rule.

Substantiation: In response to the petitioner’s (See response to petition 543 and related petitions), the SFM states that the attachment of the red tag to a fill pipe is not the action by which the fire marshal determines a tank is ineligible, but serves as notice that the tank is ineligible. This may be true; however, the issue raised by the petitioners is related to providing owners and operator and product deliverers with an affirmative defense when making or accepting a delivery into an underground storage tank. The SFM has noted in responses to other petitions that the number of prohibited deliveries is expected to be very small. There are hundreds of deliveries a day made 24 hours a day through-out the state. Unfortunately from a product deliverers perspective every delivery must be treated as if the UST is potentially red tagged in order to assure that a delivery is not inadvertently made into a UST

which was determined to be ineligible by the SFM. As a result these rules need to clearly define the notice that is to be made and the process to be used to verify that a tank is eligible for delivery. The USEPA Grant Guidelines to States for Implementing the Delivery Prohibition Provision of the Energy Policy Act of 2005 states that (1) the “state must make a reasonable effort to notify tank owners and/or operators in writing (e.g., field notification, mail, e-mail, or fax) prior to prohibiting the delivery, deposit, or acceptance of product” and (2) the “state must develop processes and procedures for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product.” In addition, the term actual has been added establish that notice should be given directly to the owner and operator. The proposed changes are intended to make it clear that an underground storage tank is not ineligible for delivery until proper notice has been made.

Workgroup Action: Reject

Workgroup Statement: In order to clarify to all parties the proper point in time when it is unlawful to deliver, deposit, or accept product into an ineligible tank, the workgroup proposes to amend paragraph (B) of Rule 18. The amendment is intended to clarify that a tank is ineligible at the moment the red tag has been affixed. The SFM proposed, by separate comment #2506, the following language: (B) After the effective date of this rule, it shall be unlawful for any person to deliver ~~to~~, deposit ~~into~~, or accept a regulated substance into an underground storage tank that is classified as ineligible by the state fire marshal for such delivery, deposit, or acceptance in accordance with paragraph (D)(1) through (D)(5) of this rule. ~~which has been identified by the state fire marshal to be ineligible for such delivery, deposit, or acceptance pursuant to the issuance of an order by the state fire marshal in accordance with paragraph (D)(1) of this rule.~~ USEPA delivery prohibition guidance provides that: 1) a state must make a reasonable effort to notify tank owners and/or operators in writing (e.g. field notification, mail, email, or fax) prior to prohibiting delivery, deposit, etc.; and 2) the state must develop processes and procedure for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, etc. The guidance, however, does not explicitly require actual notice to all individuals prior to placing the red tag on the ineligible tank. When the state fire marshal issues the order stating a tank is ineligible, the order shall be issued and served in accordance with paragraph (D)(1) to known owners and operators. The written notice may be served personally delivered to the owner or operator at the site and if service is unable to be completed by personal delivery, the notice shall be delivered by mail coupled with a posting of the notice at the site. When certain special tank conditions are noted (e.g. upgrade deficiencies failure to install required spill prevention or corrosion equipment by December 22, 1998), the USEPA requires a state to classify a tank as ineligible as soon as possible. The USEPA delivery prohibition guidance provides that the time allowed for a state to identify a tank as ineligible for delivery, deposit, or acceptance for one of these type of special conditions is intended to accommodate various state delivery prohibition procedures, not to provide additional time for owners or operators and some states have the authority to prohibit delivery at the time of inspection. The workgroup elects not to red tag a tank instantly upon inspection but rather issue an order first, serve the order pursuant to paragraph (D), then attach the red tag. These additional steps will provide additional time to the owner and operators that is not required per USEPA. For other violations outside of the special upgrade violations, owners and operators will have at least sixty (60) days, after they are provided with a Notice of Violation, before the fire marshal even classifies the tank as ineligible. The workgroup believes that sixty days is ample time for owners and operators to be notified of a condition that could trigger a red tag. Even after the Notice of Violation is issued, the state fire marshal will still be required to issue an order reclassifying the tank as ineligible and serve the order in accordance with paragraph (D) before the red tag is affixed. In regard to product deliverers, the USEPA states in the delivery prohibition guidance that the mechanism a state chooses for identifying eligible/ineligible tanks (e.g. green tags, red tags) can provide adequate notice to product deliverers. In addition to the red tag mechanism, the state fire marshal will also be required by rule to maintain a list of all underground storage tanks that are classified as ineligible and make the list available to the public by posting the list on its website. In order to avoid a majority of unnecessary trips, before the product deliverer sets out to make a delivery, he or she may check BUSTR’s public website, call BUSTR’s toll-free telephone number to verify if a facility has an ineligible tank, or contact the operator/owner of the facility. In practicality, it will take a day or more to have an inspector revisit the site to affix the red tag mechanism. Further, BUSTR does not collect any contact information for product deliverers. BUSTR’s authority over product deliverers is limited to that mandated in Rule 18. Therefore, it is excessively burdensome for the bureau to collect information regarding all product deliverers, track which product deliverers deliver to which facilities, and provide actual notice to such product deliverers. It is the owner or operator that has the contractual relationship with the product deliverers, and the parties to those contracts can provide mechanisms and requirements of notice. As such, it is reasonable for the product deliverers and owners/operators to create a system of notification between the parties to address ineligible tanks or an agreement as to what occurs in those rare instances when the product deliverer is not informed of a tank’s ineligibility prior to transport.

Comment Number - 2511**Workgroup Action: Accept****1301:7-9-18(C)(2)****Submitter:** Division of State Fire Marshal**Regarding Petition:** 44

Comment: (2) The state fire marshal may classify an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if the owner or operator of the underground storage tank has been issued a written Notice of UST Violation for any of the following violations, and the owner or operator fails to ~~initiate action~~ ~~to~~ correct the violation within sixty (60) days of the issuance of the Notice of UST Violation:

Substantiation: Petition #44. The term ‘initiate action’ is too vague and open to interpretation in that it could be used by an owner or operator of a noncompliant UST to delay the delivery prohibition process. As currently written, an owner or operator could make one phone call to a contractor and then claim that action has been initiated even though no work has actually taken place to correct the violation. Because of this, the term ‘initiate action’ should be deleted. Paragraph (C)(2) provides for 60 days to correct violations. Moreover, the state fire marshal may choose not to classify an UST as ineligible if the owner or operator is making a good faith effort to correct violations.

Workgroup Action: Accept**Comment Numbers - 2468 & 2491****Workgroup Action: Accept****1301:7-9-18(C)(2)(f)****Submitters:**

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2468 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2491 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 2424**Comment:** Delete paragraph (C)(2)(f)

(d) Failure to properly operate or maintain release leak detection equipment pursuant to rule 1301:7-9-07 of the Ohio Administrative Code; or

(e) Failure to obtain a valid certificate of coverage from the Petroleum Underground Storage Tank Release Compensation Board pursuant to rule 1301:7-9-05(G)(1); ~~or~~

(f) ~~Failure to comply with the deductible coverage requirements described in paragraphs (H) to (H) (2) of O.A.C. 1301:7-9-05.~~

Substantiation: The deductible coverage requirements should not be included as a red tag offense. While demonstrating financial responsibility for the deductible is a requirement under 1301:7-9-05, application of the red tag process for failure to demonstrate through a series of complex mechanisms that an owner has the ability to meet the deductible requirements, when the owner is physically required to meet the deductible before receiving any reimbursement from the state Fund, is not warranted. The more significant issue is the failure to obtain a valid certificate of coverage which is addressed in proposed paragraph (C)(2)(f) of this rule. We are not aware of situations where an owner failed to conduct corrective action due to the lack of financial responsibility for the deductible. It is our experience that owners which have a valid certificate of coverage from the state FUND that are required to conducted corrective action have demonstrated their ability to meet the deductible by making the expenditures for corrective action up to the deductible amount prior to receiving any consideration for reimbursement from the FUND. Meeting the deductible requirements prior to receiving reimbursement from the state FUND meets the intent of the requirements for the financial responsibility for the deductible outlined in 3737.882(B) of the Revised Code.

In a separate petition submitted for the financial responsibility rule it was proposed that the SFM defer any action on Rule 1301:7-9-05 and convene a committee composed of SFM Staff, representatives of PUSTRCB, and representatives of responsible parties to revise the entire rule to simplify the process of demonstrating financial responsibility for the deductible and tailor the mechanisms towards small and medium size tank owners and operators. The mechanism for financial responsibility provided in this rule (over 45 pages) are repeated from the federal rules and are overly complex for the financial responsibility for the deductible; particularly for a small UST owner to comprehend or to obtain. At minimum, we believe any potential requirement for issuing a red tag as a result of failure to comply with the financial responsibility requirements for the deductible should not be considered until the issues associated with the financial responsibility rule can be resolved.

Workgroup Action: Accept

Comment Number - 2507 **Workgroup Action: Accept**

1301:7-9-18 (D)(1)

Submitter: Division of State Fire Marshal

Regarding Petition: 551

Comment: (1) If the state fire marshal classifies an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance pursuant to paragraph (C) of this rule, the state fire marshal shall issue an order to the owner ~~and~~ or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated substance. ~~The order is considered properly served by the state fire marshal in any of the following ways:~~

(a) The order shall be issued to the owner and operator as identified on the registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code and any other persons known by the state fire marshal to be an owner or operator.

(b) The order is ~~considered~~ properly served by the state fire marshal in any of the following ways:

(i) ~~(a)~~ The order is personally delivered to the owner or operator; or

(ii) ~~(b)~~ The order is clearly posted at an entrance to the site where the underground storage tank is located, and a copy of the order is also sent by regular mail to the last known address of the owner or operator.

Substantiation: Petition #551. A reasonable effort should be made to notify both the owner and the operator of the ineligibility of the UST for delivery, deposit or acceptance of product. However, the act of affixing the red tag to the fill pipe of the UST should not be unnecessarily delayed due to the fact that BUSTR cannot locate an owner or operator. The registration database established under OAC 1301:7-9-04 offers a reasonable means to identify both the owner and the operator, which allows the state fire marshal to carry out the requirements of Rule 18 in a timely manner. Paragraph (D)(1) should be changed to indicate that orders relating to delivery prohibition should be issued to the owner and operator as identified on the registration form required by OAC 1301:7-9-04.

Workgroup Action: Accept

Comment Numbers - 2469 & 2492 **Workgroup Action: Accept In Principle**

1301:7-9-18(D)(1)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2469 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2492 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 551

Comment: (D) Notification and red tag procedures. (1) If the state fire marshal classifies an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance pursuant to paragraph (C) of this rule, the state fire marshal shall issue an order to the owner and operator prior to prohibiting the delivery, deposit, or acceptance of a regulated substance. The order is considered properly served by the state fire marshal in any of the following ways:

(a) The order is personally delivered to the owner ~~or~~ and operator; or

(b) The order is ~~clearly posted at an entrance to the site where the underground storage tank is located, and a copy of the order is also~~ sent by certified ~~regular~~ mail to the last known address of the owner ~~or~~ and operator and the receipt acknowledged by both the owner and operator. Should the state fire marshal be unable to serve both the owner and operator by certified mail a copy of the order, the state fire marshal shall publish a copy of the order on the web site. After the order remains on the state fire marshal’s web site for ten days or more, the order shall be deemed served.

Substantiation: Any orders or notices related to classifying an underground storage tank as ineligible for delivery should be delivered to both the owner and operator. The SFM in response to the petitioner’s (See response to petition 551 and related petitions) notes that the “requirements of the BUSTR and the Petroleum board Revised Code Chapters consistently use the terms “owner or operator” with respect to enforcement and notification actions”. This is not the case, in particular for the Petroleum Board, since only owners of underground storage tanks are regulated by the Board. Further, the underground storage tank regulations hold both the owner and operator responsible for compliance with the majority of the requirements of these rules. In addition, the SFM specifically modified the proposed language to change the issuance of an order to both the owner and operator yet the SFM only proposes to notify one of these two parties. How will the SFM select the party to notify when the owner and operator are two different entities? This approach places one party in the precarious position of being party to an order but possible not aware of its existence. An order and notices should either be personally delivered or delivered

by certified mail to the owner and operator. Using certified mail provides a means of proof that a notice was sent and delivered, rejected, or undeliverable. This is good practice when delivering legal notices. Posting the order does not provide proper notice to at least one of the parties of the order and does not ensure that either party receives the notice. Further, if an owner and/or operator cannot be located or served by certified mail, there should be provisions to provide a public notice of the issuance of the order.

Workgroup Action: Accept In Principle

Workgroup Statement: There is merit to the position that any known owners and operators should be served. Nevertheless, since operators may frequently change, and BUSTR may not even know the identity of the operator, the workgroup proposes that the owner, who has a contractual relationship with the operator, shall identify the name and contact information of the operator. Identification of the operator is accomplished through the registration process. This information shall be listed on the registration form required to be submitted by the owner in accordance with OAC 1301:7-9-04. If at any time the operator changes, the owner shall submit a new registration form (without fees) with the updated operator information. The SFM proposed, by separate comment #2507, the following language:

(1) If the state fire marshal classifies an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance pursuant to paragraph (C) of this rule, the state fire marshal shall issue an order to the owner and ~~or~~ operator prior to prohibiting the delivery, deposit, or acceptance of a regulated substance. ~~The order is considered properly served by the state fire marshal in any of the following ways:~~

(a) The order shall be issued to the owner and operator as identified on the registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code and any other persons known by the state fire marshal to be an owner or operator.

(b) The order is ~~considered~~ properly served by the state fire marshal in any of the following ways:

(i) ~~(a)~~ The order is personally delivered to the owner or operator; or

(ii) ~~(b)~~ The order is clearly posted at an entrance to the site where the underground storage tank is located, and a copy of the order is also sent by regular mail to the last known address of the owner or operator.

It is reasonable to serve notice of the order either by personally delivering the order to the owner or operator at the facility, or by sending a copy of the order by regular mail and posting the order at the site. USEPA mandates that a state classify a tank as ineligible as soon as possible when certain special tank conditions are noted (e.g. upgrade deficiencies failure to install required spill prevention or corrosion equipment by December 22, 1998). Some states have allowed delivery prohibition at the time of inspection. Therefore, the workgroup finds any delays such as a required public notice period contrary to USEPA's mandate. Per the Federal Guidelines, USEPA only requires a state to "make a reasonable effort to notify tank owners and/or operators in writing (e.g. field notification, mail, email, or fax) prior to prohibiting the delivery, deposit... ."

Comment Number - 2450

Workgroup Action: Reject

1301:7-9-18(D)(1)(b)

Submitter: Karen Reese, FirstEnergy Corp.

Regarding Petition: 551

Comment: Delete the following - (D)(1)(b) ~~The order is clearly posted at an entrance to the site where the underground storage tank system is located,~~

Substantiation: The order should either be personally delivered or delivered by mail. The posting of the order at the UST site should not be considered a valid method of notice as it does not guarantee that the owner or the operator will see the notice of violation. The workgroup did not provide a statement for rejecting this item during the petition period.

Workgroup Action: Reject

Workgroup Statement: The workgroup believes that the commenter misread a disjunctive "or" into the language under proposed OAC 1301:7-9-18(D)(1)(b), instead of the conjunctive "and" that the workgroup proposed. Under (D)(1)(b), notice is provided when BUSTR has performed both of the following: 1) delivering the order by mail; and 2) posting the order at the entrance to the site. Therefore, the workgroup agrees that posting the order at the site – alone – does not provide adequate notice, which is why (D)(1)(b) was drafted to require two actions in conjunction with each other to effect proper notice. The workgroup believes that BUSTR needs to provide notice as soon as practicable. BUSTR cannot rely solely on notification by mail because delivery may be delayed or refused. On the other hand, posting the order in conjunction with notification by mail allows BUSTR to provide notice as soon as practicable.

Comment Numbers - 2470 & 2493

Workgroup Action: Reject

1301:7-9-18(D)(3)(d)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2470 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2493 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 1915

Comment: (d) The state fire marshal shall maintain a list of all underground storage tanks that are classified as ineligible for delivery, deposit, or acceptance of a regulated substance. The state fire marshal shall make updates to the list available to the public by posting the list on the fire marshal’s website in a timely manner and time-stamped with the date and time the list was updated.

Substantiation: In response to the petitioner’s (See response to petition 1615 and related petitions), the SFM states that the only notice required by federal guidelines is the notice of the red tag itself. The federal guidelines require that a “state must develop processes and procedures for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. The mechanism a state chooses for identifying eligible/ineligible underground storage tanks (e.g., green tags, red tags) may provide adequate notice to product deliverers.” In accordance with paragraph (E)(1) of this rule the product deliverer is subject to two forms of notice both of which must be verified before a delivery can be made. Is it the SFM’s position that the product deliverer can rely on the presence or absence of a red tag on the fill pipe of an underground storage tank as its sole requirement for determining if an underground storage tank is eligible for delivery? The issue raised by the petitioners is related to providing product deliverers with an affirmative defense when making a delivery into an underground storage tank if a red tag is not present. Is there a situation where a red tag will not be present on the ineligible underground storage tank but the ineligible tank is present on the SFM’s list? How will a product deliverer reconcile these possibilities? A significant issue and reason for scheduled or dated updates of the list of ineligible underground storage tanks is that delivery scheduling can occur 24 hours in advance of the actual delivery. The SFM has noted in the response to the petitioners that the number of prohibited deliveries is expected to be very small. There are hundreds of deliveries a day made 24 hours a day through-out the state. Unfortunately from a product deliverer’s perspective every delivery must be treated as if the underground storage tank is potentially ineligible. There needs to be a specific time in which a delivery company can be assured that the list is accurate through the previous day and rely on that list for scheduling a delivery. This does not eliminate the possibility that the delivery will arrive at the UST site and a red tag may be present on the tank fill pipe, but would minimize such an occurrence. This is consistent with the concept in the federal guidelines that the product deliver must have reasonable notice when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. The proposed changes are intended to make it clear that an underground storage tank is not ineligible for delivery until proper notice has been made. We believe at minimum, time stamping the list will provide a basis for due diligence on the part of the product deliverer. One option that the SFM should consider is providing a login for users of the list and time and date stamp the access to the list.

Workgroup Action: Reject

Workgroup Statement: The workgroup does not accept petitioner’s proposal that an online list of red-tagged tanks be updated once daily and time stamped. The only notice required by Federal Guidelines for product deliverers is the notice of the red tag itself. The anticipated infrequency of red tag scenarios does not necessitate a mandatory rule requiring daily update and timestamp. Any individual may contact BUSTR by phone or email during business hours to check if a tank has been red tagged. The workgroup acknowledges that occasionally a delivery driver may be in transit at the time the fire marshal posts notice online that the tank is ineligible for delivery. The presence of the red tag will suffice as notice to the delivery driver that the tank is ineligible, and the Federal Guidelines do not make exceptions for deliveries in transit. Because of the contractual relationship between owner/operator and the product deliverers, the workgroup believes that owners/operators and product deliverers can communicate with one another as to the presence of a red tag on an ineligible tank.

Comment Number - 2508**Workgroup Action: Accept****1301:7-9-18(D)(4)****Submitter:** Division of State Fire Marshal**Regarding Petition:** 543

Comment: (4) Owners or operators may continue to operate an underground storage tank ~~that is classified as is determined to be~~ ineligible pursuant to ~~paragraph (D)(1) of~~ to this rule until the ineligible underground storage tank is empty. The underground storage tank shall not receive delivery, deposit, or acceptance of a regulated substance during this time.

Substantiation: Petition #543. As noted in Comment #2450, it is the intent of the state fire marshal to define the sequence of steps leading to a red tag being affixed to a fill pipe and the conditions that signifies that it is acceptable to resume delivery, deposit or acceptance of product into an UST. Paragraph (D)(4) should be amended to use to use the term ‘classified’ in order to maintain consistency with paragraphs (B), (D) and (E) of the rule.

Workgroup Action: Accept**Comment Number - 2509****Workgroup Action: Accept****1301:7-9-18(D)(5)****Submitter:** Division of State Fire Marshal**Regarding Petition:** 2428

Comment: (5) The classification of an underground storage tank as ineligible shall remain in effect until the conditions cited in the order no longer exist as determined by the state fire marshal and the red tag is removed by the state fire marshal or an authorized designee. If the state fire marshal determines that an ineligible underground storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance, the state fire marshal or an authorized designee shall do all of the following:

- (a) Remove the red tag from the underground storage tank fill pipe no later than five business days after the state fire marshal determines that the underground storage tank is compliant;
- (b) Remove the underground storage tank from the ineligible list posted on the state fire marshal’s website; and
- (c) Provide a written notice to the owner and operator that the ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance.

Substantiation: Petition #2428. As noted in Comment #2450, it is the intent of the state fire marshal to define the sequence of steps involved with affixing a red tag to a fill pipe and conditions that signify when it is acceptable to resume delivery, deposit or acceptance of product into an UST. Paragraph (D)(5) should be amended to clarify that an UST is ineligible to receive delivery, deposit or acceptance of product into an UST until the red tag is removed. Further, the method of notifying parties should be made to both the owner and the operator.

Workgroup Action: Accept**Comment Numbers - 2471 & 2494****Workgroup Action: Reject****1301:7-9-18(D)(5)****Submitters:**

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2471 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2494 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 2428

Comment: (5) The classification of an underground storage tank as ineligible shall remain in effect until the conditions cited in the order no longer exist as determined by the state fire marshal. Upon notice to SFM from either the owner or operator that the conditions cited in the order have been corrected, the SFM or authorized designee of the SFM shall inspect the ineligible tank no later than five business days after the notice. If the state fire marshal determines that conditions cited in the order have not been corrected, the SFM shall notify the owner and operator of the deficient conditions in accordance with the procedures described in paragraph (D)(5)(c) of this rule. If the state fire marshal determines that an ineligible underground storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance, the fire marshal or an authorized designee shall do all of the following:

- (a) Remove the red tag from the underground storage tank no later than five business days after the fire marshal

determines the underground storage tank is compliant;

(b) Remove the underground storage tank system from the ineligible list ~~and posted~~ the updated list in accordance with paragraph (D)(3)(d) of this rule on the fire marshal’s website within 24 hours of removal of the red tag ; and
 (c) send a written notice by certified mail to the owner ~~or~~ and operator and the receipt acknowledged by both the owner and operator that the ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance. Should the state fire marshal be unable to serve both the owner and operator by certified mail a copy of the order, the state fire marshal shall publish a copy of the order on the web site. After the order remains on the state fire marshal’s web site for ten days or more, the order shall be deemed served.

Substantiation: There needs to be a commitment on the part of the fire marshal to update the list of ineligible underground storage tanks and post the updated list on the SFM’s website (including date and time stamping the list – See comments on paragraph (D)(3)(d) of this rule) within a short period after the red tag has been removed. We are proposing 24 hours as a reasonable time to accomplish this. Any orders or notices related to reclassifying an underground storage tank as eligible for delivery should be delivered to both the owner and operator. In paragraph (D)(3) of this rule, the SFM specifically modified the proposed language to change the issuance of an order to both the owner and operator yet the SFM only proposes to notify one of these two parties when the underground storage tank is determined to be eligible. Both parties to an order should be notified of the resolution of the order. In addition, the written notice should be delivered by certified mail to the owner and operator. Using certified mail provides a means of proof that a notice was sent and delivered, rejected, or undeliverable. This is good practice when delivering legal notices. Further, if an owner and/or operator cannot be located or served by certified mail, there should be provisions to provide a public notice of the issuance of the order.

Workgroup Action: Reject

Workgroup Statement: The workgroup believes the currently proposed reclassification procedures are more than adequate and provide notice to the parties of the tank’s reclassification. An owner or operator will be conducting the actions specifically required to address a tank’s violations and will be aware of when a reclassification is likely to occur. There are a variety of methods an owner, operator or product deliverer may use to verify with BUSTR a specific tank’s reclassification status (phone, email, fax, etc.). In most situations, the state fire marshal, or his designee, will need to verify, by inspection, that the tank has returned to compliance and will be able to instantly alert the owner or operator or its agent both verbally and in the form of a written compliance report as to the reclassification of the tank. The rule requires the agency to remove the red tag within five days of a tank being deemed to have returned to compliance. The website will actually be updated once the state fire marshal reclassifies the tank, most likely to occur sooner than five days. Again if there is any doubt as to a tank’s status at any given time, any individual is free to contact BUSTR to verify.

Comment Numbers - 2472 & 2495

Workgroup Action: Reject

1301:7-9-18(E)(1)(a)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2472 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2495 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 2010

Comment: (a) The delivery or deposit was made within 24 hours of checking the list ~~prior to notice of the ineligible underground storage tanks being posted~~ on the fire marshal’s web site as described in paragraph (D)(3)(d) of this rule and determining that the underground storage tank was not included on the list; and

Substantiation: The SFM’s rejection and response to the petitioners (See response to petition 2010 and related petitions) presents an unreasonable burden to product deliverers. It is unclear exactly what notice the product deliverer is to rely on. In response to petition 543 and related petitions, the SFM states that the attachment of the red tag to a fill pipe is not the action by which the fire marshal determines a tank is ineligible, but serves as notice that the tank is ineligible. Further, in the SFM response to petition 1317, the workgroup notes that the “only notice required by Federal Guidelines that a tank is ineligible is the notice of the red tag itself. The workgroup does not accept the proposal that a BUSTR rule mandate that the delivery driver check the state fire marshal website. The owner or operator may require the delivery driver to confirm the UST status with BUSTR.” Yet this paragraph indicates that the product deliverer must check the list prior to delivery to verify that the UST was not determined to be ineligible. Is the lack of a red tag alone sufficient or must the lack of a red tag and the absence of a UST from the list to be used to verify the eligibility? As this paragraph is written it suggests both are required.

The SFM response states that the federal guidelines do not make exceptions for deliveries in transit. That may be

true, but the federal guidelines require reasonable notice to product deliverers that an underground storage tank is ineligible. The SFM response also states that sufficient means exist for the delivery driver to ascertain the status of the tank even at the time the delivery is in transit. What means exist for the delivery driver to make this determination? Does this mean that the list must be verified prior to each delivery by the delivery driver by accessing the web site or possibly calling BUSTR to determine if a UST is ineligible.

The SFM's position fails to recognize the logistic of scheduling and delivering motor fuel. There are hundreds of deliveries made each day, 24 hours per day. Such requirements are absolutely unreasonable. The SFM has noted in the response to the petitioners that the number of prohibited deliveries is expected to be very small. Unfortunately from a product deliverer's perspective every delivery must be treated as if the underground storage tank is potentially ineligible. This means every delivery would have to be checked even if a red tag is not present. Either, the requirement to check the list prior to a delivery be removed and the red tag be the sole form of notice to be relied on by the product deliverer or there needs to be a specific time in which a delivery company can be assured that the list is accurate through the previous day and rely on that list for scheduling a delivery. This does not eliminate the possibility that the delivery will arrive at the UST site and a red tag may be present on the tank fill pipe, but would minimize such an occurrence. One option that the SFM should consider is providing a login for users of the list and time and date stamp the access to the list.

Workgroup Action: Reject

Workgroup Statement: The issue identified in the comment is resolved by the proposed amendment to paragraph (B) of this rule (see response to Comment No. 2467), proposed change to paragraph (D)(5) (see below), and proposed change to paragraph (E) of this rule (see below). The SFM proposed, by separate comment #2510, the following language:

(+) Any person delivering or depositing regulated substances into an ineligible underground storage tank shall be in violation of paragraph (B) of this rule unless both of the following conditions ~~can be demonstrated~~ apply:

~~(a) The delivery or deposit was made prior to notice of the ineligible underground storage tank being posted on the state fire marshal's web site as described in paragraph (D)(3)(d) of this rule; and~~

(1) The red tag was not affixed to the fill pipe at the time of delivery or deposit; and

(2) The person had no knowledge of the UST being classified ineligible for delivery, deposit, or acceptance of a regulated substance.

There may be the rare occasion when a delivery driver may be in transit at the time the Fire Marshal posts notice that the tank is ineligible for delivery and may not receive notice until he or she reaches the facility and views the red tag. However, permitting the delivery after the tank has been determined to be ineligible and affixed with a red tag even within 24 hours of such determination and online notice, would be contrary to Federal Guidelines. The Federal Guidelines stress the immediacy of red tagging those tanks that are in violation of certain equipment violations. Some states have promulgated rules allowing red tagging during the initial inspection. In order to prevent the occasional unnecessary fuel delivery, the workgroup encourages product deliverers and owners/operators to communicate with one another to avert such events. Additionally, the proposed changes to paragraphs (B), (D)(5), and (E) of rule 18 clarify that it is unlawful to deposit product into tanks from the moment a red tag is affixed until such time the red tag is removed. The exception will be just those instances where the red tag was improperly removed and the product deliverer had no knowledge of the tank's being ineligible. Thus, the product deliverer is not mandated to check web postings each time they set out to make a delivery in order to ensure they will not be conducting any unlawful actions.

Comment Number - 2510

Workgroup Action: Accept

1301:7-9-18(E)

Submitter: Division of State Fire Marshal

Regarding Petition: 2010

Comment: (+) Any person delivering, ~~or~~ depositing or accepting regulated substances into an ineligible underground storage tank shall be in violation of paragraph (B) of this rule unless both of the following conditions ~~can be demonstrated~~ apply:

~~(a) The delivery or deposit was made prior to notice of the ineligible underground storage tank being posted on the state fire marshal's web site as described in paragraph (D)(3)(d) of this rule; and~~

(1) The red tag was not affixed to the fill pipe at the time of delivery or deposit; and

(2) The person had no knowledge of the UST being classified ineligible for delivery, deposit, or acceptance of a regulated substance.

Substantiation: Petition #2010. As noted in Comment #2450, it is the intent of the state fire marshal to define the sequence of steps involved with affixing a red tag to a fill pipe and the conditions that signify when it is acceptable to resume delivery, deposit or acceptance of product into an UST. Paragraphs (D)(1) through (D)(5) define these steps and paragraph (E) establishes additional conditions for persons delivering or depositing regulated substances into an ineligible underground storage tank. In order to reduce the chance of confusion, paragraph (E) should be simplified so that the presence or absence of the red tag on the fill pipe is the primary means by which a person determines if an UST is eligible for delivery or deposit. This approach no longer requires the delivery person to check the state fire marshal web site to confirm if a UST is ineligible. Checking the web site for status updates on ineligible USTs will be voluntary. Also, the words “or accepting” should be added in order to maintain consistency and agreement with similar wording found in other parts of the rule such as paragraphs (B), (C)(1), (C)(2), (D)(1), (D)(2)(b), and (D)(3).

Workgroup Action: Accept

Comment Numbers - 2473 & 2496

Workgroup Action: Reject

1301:7-9-18(F)(3)

Submitters:

| Comment | LName | FName | Company Name | City | State |
|---------|------------|-----------|---|--------|-------|
| 2473 | Polesovsky | Christina | Ohio Petroleum Marketers and Convenience Store Assoc. | Dublin | Ohio |
| 2496 | Polesovsky | Christina | Ohio Petroleum Contractors Assoc. | Dublin | Ohio |

Regarding Petition: 2012

Comment: The state fire marshal by written notice to the owner and operator and the product deliverer may allow the delivery, deposit or acceptance of a regulated substance into an underground storage tank determined to be ineligible for purposes of testing and other activities required to comply with an order pursuant to paragraph (D)(1) of this rule.

Substantiation: The SFM accepted the petitioner’s proposal (See response to petition 2012 and related petitions) to provide language that would allow delivery into an ineligible UST; however, the language as proposed by the petitioner did not include a specific reference to the notice to be given to the product deliverer that a red tagged UST could accept a delivery. The proposed language would require the SFM to provide written notice to the both the owner and operator and the product deliverer that a delivery could be made into an ineligible tank for purposes of testing or other activities to bring a UST into compliance. Given the potential liability to both the owner and operator and the product deliverer, documentation of such a delivery is essential.

Workgroup Action: Reject

Workgroup Statement: Written instructions will be provided on the order prohibiting delivery for those tanks that will require a delivery in order to demonstrate the applicable compliance test (e.g. tightness testing). The owner or operator may provide a copy of the order to any product deliverer with whom it is contracting. If any individual or company wishes to obtain a written statement beyond what will be described in the order, they may request such documentation from BUSTR. Additionally, a product deliverer, prior to a fuel delivery, may contact BUSTR via email or phone if they have any question as to whether it is lawful to deposit fuel in a specific tank for testing purposes, etc. Lastly, BUSTR neither collects nor sees a need to routinely collect contact information of product deliverers. It is excessively burdensome and unnecessary to require the bureau to collect contact information for all product deliverers, ascertain which product deliverers deliver to which facilities, and to provide actual notice to such product deliverers.

Appendix A

1301:7-9-06 Design, construction, installation, operation and maintenance for UST systems

(A) Purpose and scope.

For the purpose of prescribing rules pursuant to section 3737.88 of the Revised Code, the state fire marshal hereby adopts this rule to establish design, construction, installation, operation and maintenance requirements for USTs ~~underground storage tanks (UST)~~ containing petroleum or other regulated substances. This rule is adopted by the state fire marshal in accordance with Chapter 119. of the Revised Code and shall not be considered a part of the "Ohio Fire Code." The following UST systems are exempted from this rule:

- (1) Wastewater treatment tank systems;
- (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. 2014 and following);
- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States nuclear regulatory commission;
- (4) Airport hydrant fuel distribution systems; and
- (5) UST systems with field constructed tanks.

(B) Performance standards for new UST systems.

(1) New UST systems shall be provided with secondary containment for the UST and underground piping that routinely contains regulated substances to completely contain a release of a regulated substance and prevent a release of a regulated substance to the environment at any time during the operational life of the UST system pursuant to the following requirements:

(a) New USTs shall be double-wall and shall be equipped, operated and maintained pursuant to paragraphs (D)(1) and (D)(2) of this rule;

(b) Underground piping that routinely contains regulated substances that is part of a new UST system shall be double-wall and shall be equipped, operated and maintained pursuant to paragraphs (D)(3) and (D)(4) of this rule except that:

(i) Underground piping that conveys petroleum under suction is not required to be equipped to meet the secondary containment requirements of paragraph (B)(1)(b) of this rule; and

(ii) A manifold that conveys petroleum under suction between tanks is not required to be equipped to meet the secondary containment requirements of paragraph (B)(1)(b) of this rule.

(c) New UST systems shall be equipped and operated and maintained pursuant to paragraphs (D)(5) and (D)(6) of this rule and shall be present at the following locations:

(i) In those areas where piping that routinely contains regulated substances exits the UST;

(ii) In those areas where piping that routinely contains regulated substances transitions from underground to above ground;

(iii) In those areas where a transition sump is required to maintain the proper slope of piping that routinely contains regulated substances; and

(iv) In those areas under each motor fuel dispenser.

(d) Other methods of secondary containment, such as vaults, external liners and jackets, may be used if owners and/or operators:

(i) Demonstrate to the state fire marshal that the alternative method of secondary containment is at least as protective of human health and the environment as those methods described in paragraphs (B)(1) through (B)(3)(d) of this rule; and

(ii) Obtain written approval from the state fire marshal to use the alternative method of secondary containment before installation and operation of the new UST system. The state fire marshal may approve, deny or rescind the method at the state fire marshal's discretion. If the alternative method of secondary containment is approved by the state fire marshal, the owner and operator shall comply with any conditions imposed by the state fire marshal on its use. The alternative method request shall be evaluated on a site by site basis.

(e) New UST systems shall be equipped with spill prevention equipment and overfill prevention equipment pursuant to paragraph (D)(7) of this rule.

(f) If an owner and/or operator elects to equip ~~a~~ a UST system in a manner that exceeds the requirements of this rule, the owner and/or operator is only required to maintain the UST system to the extent required by this rule.

(C) Performance standards for existing UST systems.

(1) Existing USTs shall be equipped, operated and maintained pursuant to paragraphs (D)(1) and (D)(2) of this rule except that:

(a) Existing USTs installed prior to the effective date of this rule are not required to be equipped to meet the new UST secondary containment requirements of paragraph (B)(1) of this rule unless the USTs undergo work pursuant to paragraph (C)(7)(a) of this rule; and

(b) The addition of internal lining in the field to an existing metal UST system to meet cathodic protection requirements is prohibited unless owners and/or operators obtain written approval from the state fire marshal prior to the application of the internal lining. The state fire marshal shall no longer grant approval pursuant to this paragraph as of twelve months after the effective date of this rule. The addition of internal lining in the field to UST systems for purposes other than for cathodic protection is allowed provided that owners and/or operators comply with the Ohio Fire Code and give written notice to the state fire marshal prior to the application of the internal lining. Owners and operators shall comply with any conditions imposed by the state fire marshal on the use of internal lining.

(2) Existing underground piping that routinely contains regulated substances shall be equipped, operated and maintained pursuant to the new piping requirements defined in paragraph (B)(1)(b) through (B)(1)(b)(ii) and paragraphs (D)(3) and (D)(4) of this rule except that:

(a) Existing underground piping associated with UST systems installed prior to March 1, 2005, is not required to be equipped to meet secondary containment requirements of paragraph (B)(2) of this rule except those piping components undergoing work pursuant to paragraph (C)(7)(b) of this rule;

(b) Existing underground piping that conveys petroleum under suction is not required to be equipped to meet secondary containment requirements of paragraph (B)(2) this rule;

(c) Existing suction manifolds between tanks are not required to be equipped to meet the secondary containment requirements of paragraph (B)(2) of this rule; and

(d) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with isolation valves between the piping and the tank as described in paragraph (D)(3)(b) of this rule.

(3) Existing UST systems shall be equipped, operated and maintained with containments as specified in paragraphs (D)(5) and (D)(6) of this rule except that:

(a) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with containments except for those UST systems undergoing work pursuant to paragraph (C)(7)(c) of this rule.

(4) Existing UST systems shall be equipped with spill prevention equipment and overfill prevention equipment meeting the requirements of paragraph (D)(7) of this rule except that:

(a) Existing UST systems installed prior to March 1, 2005, that were filled with transfers of no more than twenty-five gallons at one time are not required to be equipped to meet the spill and overfill requirements of this rule except USTs undergoing work pursuant to paragraph (C)(7)(a) of this rule; and

(b) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with extractor float vent valves as part of overfill prevention as described in paragraph (D)(7)(b) of this rule except USTs undergoing work pursuant to paragraph (C)(7)(a) of this rule.

(5) Existing UST systems containing hazardous substances as defined in rule 1301:7-9-03 of the Administrative Code shall be equipped, operated and maintained pursuant to the new UST system requirements defined in paragraph (B) of this rule except that:

(a) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with containments in all of the locations described in paragraph (B)(3)(c) of this rule. UST systems shall have sufficient containments to demonstrate that the UST system is fully secondarily contained;

(b) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with isolation valves between the piping and the tank pursuant to paragraph (D)(3)(b) of this rule;

(c) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with extractor valves as part of overfill prevention pursuant to paragraph (D)(7)(b) of this rule;

(d) Existing UST systems installed prior to March 1, 2005, that are filled with transfers of no more than twenty-five gallons at one time are not required to be equipped to meet the spill and overfill requirements of paragraph (D)(7) of this rule; and

(e) Existing underground piping and manifolds that convey hazardous substance under suction shall be equipped with full secondary containment pursuant to paragraph (B)(2) of this rule.

(6) Existing UST systems located in sensitive areas as defined in rule 1301:7-9-09 of the Administrative Code shall be equipped, operated and maintained pursuant to the new UST system requirements defined in paragraph (B) of this rule except that:

(a) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with containments in all of the locations described in paragraph (B)(1)(c) of this rule. UST systems shall have sufficient containments to demonstrate that the UST system is fully secondarily contained;

(b) Existing UST systems that were internally lined but were not equipped with supplemental cathodic protection systems shall be taken out of service no later than twelve months after the effective date of this rule, unless the UST system is modified to meet the cathodic protection requirements of paragraphs (D)(1) through (D)(2)(d)(iv)(b) of this rule,

(c) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with isolation valves between the piping and the tank pursuant to paragraph (D)(3)(b) of this rule;

(d) Existing UST systems installed prior to March 1, 2005, are not required to be equipped with extractor float vent valves as part of overfill prevention pursuant to paragraph (D)(7)(b) of this rule;

(e) Existing UST systems installed prior to March 1, 2005, that were filled with transfers of no more than twenty-five gallons at one time are not required to be equipped to meet the spill and overfill requirements of paragraph (D)(7) of this rule.

(f) Existing UST systems that were installed in sensitive areas before the effective dates listed in paragraphs (C) to (E) of rule 1301:7-9-09 of the Administrative Code shall be equipped, operated and maintained pursuant to the existing UST requirements of paragraph (C)(1) through (C)(4)(b) of this rule.

(7) Any work performed on an existing UST system that requires a permit pursuant to rule 1301:7-9-10 of the Administrative Code or as otherwise provided in this paragraph, shall meet the following requirements:

(a) If work causes an existing UST to be replaced, the UST and all piping and containments associated with the UST shall be equipped, operated and maintained pursuant to the new UST system secondary containment requirements defined in paragraph (B) of this rule;

(b) If piping is installed, replaced, modified, or undergoes major repair that affects more than fifty percent (50%) of an existing piping run measured as the length of the pipe between the connection at the UST and the furthest dispenser or ~~location located~~ associated with the UST connection that routinely contains regulated substances, then the piping and associated containments shall be equipped, operated and maintained pursuant to the new piping and containment requirements defined in paragraphs (B)(1)(b) and (B)(1)(c) of this rule; and

(c) If a new motor fuel dispenser is installed where there previously was no motor fuel dispenser at an existing UST site then a new containment shall be installed pursuant to paragraphs ~~(D)(5) and (D)(6) (B)(1)(e)~~ of this rule.

(d) If an existing motor fuel dispenser is replaced with another motor fuel dispenser and the piping prior to the flex connector and shear valve, ~~flex connector or shear valve is also replaced is also modified or replaced or if an island is to be replaced~~, then a new containment shall be installed pursuant to paragraph ~~(D)(5) and (D)(6) (B)(1)(e)~~ of this rule, ~~except when the piping, flex connector, or shear valve is being replaced but the existing motor fuel dispenser is not being replaced.~~

(8) If an owner and/or operator elects to equip ~~a an~~ UST system in a manner that exceeds the requirements of this rule, the owner and/or operator is only required to maintain the UST system to the extent required by this rule.

(D) Design, construction, operation and maintenance of UST systems.

(1) USTs shall be designed and constructed pursuant to one of the following:

(a) The tank is constructed of fiberglass-reinforced plastic in compliance with "Underwriters Laboratories Standard 1316-94; Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products";

(b) The tank is constructed of metal in compliance with "Underwriters Laboratories Standard 58-96; Standard for Steel Underground Tanks for Flammable and Combustible Liquids," coated with a suitable dielectric material and cathodically protected using:

(i) Field-installed cathodic protection systems that are designed by a corrosion expert; or

(ii) The tank and cathodic protection system comply with the requirements of one of the following:

(a) "Underwriters Laboratories Standard 1746-2007; External Corrosion Protection Systems for Steel Underground Storage Tanks";

(b) "National Association of Corrosion Engineers Standard RP-0285-02; Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"; or

(c) "Steel Tank Institute Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" and related Steel Tank Institute specifications.

(c) The tank is constructed of a steel-fiberglass-reinforced-plastic composite in compliance with "Underwriters Laboratories Standard 1746-2007; Corrosion Protection Systems for Underground Storage Tanks" or "Steel Tank Institute STI-F894; Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" and related Steel Tank Institute specifications.

(2) USTs shall be operated and maintained pursuant to all of the following:

(a) Owners and/or operators shall use UST system components that are compatible with the regulated substance stored in the UST system.

(b) If the UST system is used to store alcohol blends, the owner and/or operator shall ensure compatibility by complying with the following applicable standards:

(i) American Petroleum Institute Publication 1626-2000; Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Service Stations"; and

(ii) Petroleum Institute Publication 1627-2000; Storage and Handling of Gasoline-methanol/cosolvent Blends at Distribution Terminals and Service Stations."

(c) Owners and operators shall inspect all accessible UST and piping components at least once a year for evidence of degradation and shall correct any deficiencies that could cause a release or prevent release detection equipment from working properly. At a minimum, USTs and piping shall be monitored for any visible corrosion, peeling, cracking or excessive distortion of the UST and piping components.

(d) Operation and maintenance of corrosion protection;

(i) All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection.

(ii) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in compliance with the following requirements:

(a) All cathodic protection systems shall be tested within six months of installation and at least every three years thereafter; and

(b) The criteria to determine that cathodic protection is adequate shall be pursuant to "National Association of Corrosion Engineers Standard RP-0285-02; Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(iii) UST systems with impressed current cathodic protection systems shall be inspected every sixty days by the owner and/or operator to ensure that the equipment is operating properly.

(iv) For UST systems using cathodic protection, records of the inspections of the cathodic protection system shall be maintained in compliance with this chapter to demonstrate compliance with the standards in paragraphs (D)(1) and (D)(2) of this rule. These records shall provide the following:

(a) The results of testing from the last two inspections required in paragraph (D)(2)(d)(ii)(a) of this rule; and

(b) The results of the last six inspections required by paragraph (D)(2)(d)(iii) of this rule.

(e) UST systems internally lined to meet cathodic protection requirements shall comply with the following:

(i) Within ten years after lining, and every five years thereafter, the lined tank shall be internally inspected to determine if it is structurally sound with the lining still performing in accordance with "American Petroleum Institute Publication 1631-01; Interior Lining and Period Inspection of Underground Storage Tanks"; and

(a) Internal inspections shall be performed by a person listed by the state fire marshal to provide UST lining services;

(b) A modification permit shall be obtained prior to performing work in accordance with paragraph (D)(2)(e)(i) of this rule; and

(c) Video camera inspections shall not be used to meet the requirements of paragraph (D)(2)(e)(i) of this rule.

(ii) Any UST system internally lined that fails to meet the criteria described in paragraph (D)(2)(e) of this rule shall be removed in accordance with rule 1301:7-9-12 of the Administrative Code unless owner and/or operators obtain written approval from the state fire marshal to modify or repair the internally lined UST system. Owners and/or operators shall comply with any conditions imposed by the state fire marshal on the use of internal lining.

(iii) UST systems internally lined that also have cathodic protection that meets the requirements of paragraphs (D)(1) through (D)(2)(d)(iv)(b) of this rule do not have to comply with paragraph (D)(1)(e) of this rule.

(f) All corrosion protection systems on UST systems shall be installed, operated and maintained in a manner that minimizes any adverse effects on adjacent underground metallic structures, including but not limited to, natural gas pipe lines, telecommunication cables and water and sewage pipelines. If at any time a corrosion protection system on a ~~an~~ UST system is believed to have adversely affected an adjacent underground metallic structure, owners and operators shall immediately participate in the testing and remediation of any such adverse effects.

(3) Piping that routinely contains regulated substances shall be designed and constructed pursuant to the following:

(a) Piping in contact with the ground or submerged in water shall be protected from corrosion in one of the following manners:

(i) The piping is constructed of fiberglass-reinforced plastic or flexible plastic technology piping in compliance with "Underwriters Laboratories Standard 971-95; Nonmetallic Underground Piping for Flammable Liquids" and "Underwriters Laboratories Standard 567-03; Pipe Connectors for Petroleum Products and LP Gas"; or

(ii) The piping is constructed of metal in compliance with "National Fire Protection Association Standard 30-2008; Flammable and Combustible Liquids Code" and "American National Standards Institute B31.3-02; American National Standard Code for Pressure Piping", coated with a suitable dielectric material and cathodically protected using:

(a) Field-installed cathodic protection systems that are designed by a corrosion expert; or

(b) The piping and cathodic protection systems meet the requirements of "American Petroleum Institute Publication 1632-02; Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", "National Association of Corrosion Engineers Standard RP-0169-02; Control of External Corrosion on Underground or Submerged Metallic Piping Systems", or "Steel Tank Institute R892; Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems" and related Steel Tank Institute specifications; and

(b) Piping that routinely contains regulated substances shall be installed with an isolation valve to allow for the separation of the piping from the UST. The isolation valve shall be easily accessible.

(4) Piping that routinely contains regulated substances shall be operated and maintained pursuant to all of the following:

(a) Owners and/or operators shall use piping system components that are compatible with the regulated substance stored in the UST system pursuant to paragraphs (D)(2)(a) through (D)(2)(b)(ii) of this rule.

(b) Owners and/or operators shall inspect all accessible piping components at least once a year for evidence of degradation and shall correct any deficiencies that could cause a release or prevent release detection equipment from working properly pursuant to paragraphs (D)(2)(c) through (D)(2)(c)(ii) of this rule.

(c) All corrosion protection systems for piping shall be operated and maintained pursuant to paragraphs (D)(2)(d) through (D)(2)(d)(iv) of this rule.

(5) Containment systems shall be properly designed and constructed pursuant to all of the following:

(a) Each containment system shall be large enough to allow for the visible inspection and access of all components within the containment system;

(b) Each penetration through a containment system shall be water tight while allowing for any forces that may act on the penetration;

(c) Each containment system shall be designed to minimize the infiltration of surface water into the containment area; and

(d) Covers for containments system shall be designed or managed to allow access to the containment system within four hours of a request by the state fire marshal or local fire official.

(6) Containment equipment shall be properly operated and maintained pursuant to the following:

(a) All containments shall be inspected at least once a year for proper operation and for the presence of water, regulated substances and debris in accordance with the following:

(i) Containments shall be inspected for evidence of excessive distortion, cracking or gross failure of the containments and any penetration fittings;

(ii) All water and debris shall be removed and properly disposed; and

(iii) All regulated substances shall be removed and properly disposed.

(b) Containment systems shall be tightness tested pursuant to paragraphs (D)(3)(c) and (F)(3)(a) of rule 1301:7-9-07 of the Administrative Code.

(7) Spill prevention equipment and overfill prevention equipment shall be designed and constructed pursuant to all of the following:

(a) To prevent spilling and overfilling associated with regulated substance transfer to the UST system, owners and/or operators shall install the following spill prevention equipment and overfill prevention equipment:

(i) Spill prevention equipment with a capacity of at least five gallons that will prevent the release of product into the environment when the transfer hose is detached from the fill pipe; and

(ii) Overfill prevention equipment that will achieve one of the following:

- (a) Automatically shut off flow into the tank when the tank is no more than ninety-five per cent full; or
 - (b) Alert the transfer operator when the tank is no more than ninety per cent full by restricting the flow into the tank or triggering a high-level alarm; or
 - (c) Restrict flow thirty minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.
- (b) Float vent valves for overfill prevention, when used, shall be installed with an extractor fitting to allow for the testing and maintenance of the UST system; and
- (c) Float vent valves for overfill prevention shall not be allowed on any type of suction system.
- (8) Spill prevention equipment and overfill prevention equipment shall be properly operated and maintained pursuant to all of the following:
- (a) Owners and/or operators of all UST systems shall ensure that releases due to spilling or overfilling do not occur. The owner and/or operator shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling;
 - (b) The owner and/or operator of all UST systems shall report, investigate and clean up any spills and overfills in compliance with rule 1301:7-9-13 of the Administrative Code;
 - (c) Owners and/or operators shall visually inspect all spill prevention equipment after each delivery and shall promptly remove and properly dispose of any water, regulated substances and/or debris from the spill prevention equipment; and
 - (d) Owners and operators shall inspect all spill prevention equipment and overfill prevention equipment annually for proper operation and evidence of deterioration.

(E) General performance standards, permits, certified UST installers and inspectors.

- (1) All UST systems shall be properly installed, modified and repaired in accordance with the manufacturer's instructions, Petroleum Equipment Institute Publication RP100-2005; "Recommended Practices for Installation of Underground Liquid Storage Systems", American Petroleum Institute Publication 1615-01; "Installation of Underground Petroleum Storage Systems", National Fire Protection Association Publication NFPA 30-2008 "Flammable and Combustible Liquids Code", National Fire Protection Association Publication NFPA 30A-2008 "Motor Fuel Dispensing Facilities and Repair Garages", National Fire Protection Association Publication NFPA 407-01 "Standard for Aircraft Servicing", and applicable Steel Tank Institute installation instructions. Where there is a conflict between requirements the more protective requirement shall prevail.
- (2) Owners and/or operators shall maintain records of each installation, modification or major repair to the UST system that demonstrate compliance with the requirements of this chapter for the remaining operating life of the UST system and for two years after the closure of the UST system.
- (3) Performing work pursuant to this rule does not relieve a person engaged in underground storage tank activity from the obligation of complying with any other applicable federal, state, or local laws and regulations, including but not limited to, the Ohio Fire Code or the Ohio Building Code, etc.
- (4) Any person performing work in accordance with this rule shall obtain a permit as required in paragraph (C) of rule 1301:7-9-10 of the Administrative Code prior to performing the work. All work performed in accordance with this rule shall be overseen by a certified UST installer and a certified UST inspector as required in paragraph (D) of rule 1301:7-9-10 of the Administrative Code.

(5) A tightness test shall be performed on any new or existing UST system component that undergoes work requiring an installation, modification or major repair permit under paragraph (E)(4) of this rule prior to placing the UST system into operation. No UST system shall be placed into operation until a passing tightness test result is obtained for the UST system component undergoing work.

(6) Other design, construction, installation, operation and maintenance methods may be used in place of any requirements or methods described in this rule if an owner and operator demonstrates that the alternative method is no less protective of human health and the environment than the method or requirement specified in this rule, and the state fire marshal approves the alternative method in writing prior to the use of the method. If the alternative method is approved, the owner and operator shall comply with any terms and conditions imposed on its use by the state fire marshal.

HISTORY: Eff 6-6-85; 5-9-88; 11-5-90; 1-1-97; 3-31-99; Replaces: 1301:7-9-06, eff. 3-1-05

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Rule amplifies: RC 3737.88

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Appendix B

1301:7-9-07 Release detection methods and requirements for UST systems.

(A) Purpose and scope.

For the purpose of prescribing rules pursuant to section 3737.88 of the Revised Code, the state fire marshal hereby adopts this rule to establish release detection requirements and methods for ~~USTs underground storage tanks (UST)~~ containing petroleum or other regulated substances. This rule is adopted by the state fire marshal in compliance with Chapter 119. of the Revised Code and shall not be considered a part of the "Ohio Fire Code." The following UST systems are exempt from this rule:

- (1) Wastewater treatment tank systems;
- (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. 2014 and following);
- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States nuclear regulatory commission;
- (4) Airport hydrant fuel distribution systems; and
- (5) UST systems with field-constructed tanks.

(B) Release detection requirements for new UST systems.

(1) New USTs shall be equipped and monitored for releases at least every thirty days using interstitial monitoring pursuant to paragraph (D)(1)(d) of this rule.

(2) Underground piping that routinely contains regulated substances that is part of a new UST system shall be equipped and monitored for releases pursuant to paragraph (D)(2)(b) through (D)(2)(c)(iii)(c) of this rule except that:

- (a) Underground piping that conveys petroleum under suction shall be equipped and monitored for releases pursuant to paragraph (D)(2)(d) of this rule; and
- (b) A manifold that conveys petroleum under suction between tanks does not have to meet the interstitial monitoring requirements as described in paragraph (D)(2)(b) of this rule.

(3) Containments that are part of a new UST system shall be equipped and monitored for releases pursuant to paragraph (D)(3) of this rule.

(4) New UST systems containing motor or aviation petroleum fuels are not required to be monitored using product inventory control as described in paragraph (D)(1)(a) of this rule.

(5) New UST systems that store fuel for use by emergency power generators shall comply with release detection requirements pursuant to paragraphs (B)(1) through (B)(3) of this rule.

(6) If a method of UST release detection authorized in paragraph (B)(1) of this rule is found to be defective, owners and operators shall immediately ~~repair or replace~~ cause the method of release detection to undergo routine maintenance, modification or major repair.

- (a) While the method of release detection ~~is being repaired or replaced~~ undergoes routine maintenance, modification or major repair, owners and operators may use product inventory control or automatic tank

gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule in order to meet the requirements of paragraphs (B)(1) of this rule.

(b) Owners and operators may use product inventory control or automatic tank gauging in accordance with paragraph (D)(1)(a) or (D)(1)(c) of this rule for a period of up to sixty days after the last passing result obtained in accordance with paragraphs (B)(1) of this rule. Afterwards, owners and operators shall take the UST system out of service in accordance with rule 1301:7-9-12 of the Administrative Code until such time as the routine maintenance, modification or major repair of ~~that~~ the release detection method is complete. ~~repaired or replaced~~.

(7) If an owner and/or operator elects to equip ~~a an~~ UST system in a manner that exceeds the requirements of this rule, the owner and/or operator is only required to maintain the UST system to the extent required by this rule.

(8) Other methods of release detection may be used for tanks, piping and containments pursuant to paragraph (D)(4) of this rule.

(C) Release detection requirements for existing UST systems.

(1) Existing UST systems shall be equipped and monitored for release in accordance with the following:

(a) Existing USTs shall be equipped and monitored for releases at least every thirty days pursuant to paragraphs (D)(1)(c) or (D)(1)(d) of this rule except that:

(i) Existing tanks with a capacity of five hundred fifty gallons or less may use manual tank gauging in compliance with paragraphs (D)(1)(b) of this rule as the sole method of release detection; and

(ii) Existing tanks with a capacity of five hundred fifty-one to two thousand gallons that contain new or used oil may use manual tank gauging in compliance with paragraphs (D)(1)(b) of this rule as a method of release detection provided that a tank tightness test is performed in accordance with paragraph (F)(1)(a) of this rule once every five years.

(b) Existing underground piping that routinely contains regulated substances shall be equipped and monitored for releases pursuant to paragraph (D)(2)(a) through (D)(2)(d)(ii)(b) of this rule except that:

(i) Existing piping associated with UST systems installed prior to March 1, 2005, does not have to meet the interstitial monitoring requirements as described in paragraph (D)(2)(b) of this rule.

(ii) Existing underground piping that conveys regulated substances under suction shall be equipped and monitored for releases pursuant to paragraph (D)(2)(d) of this rule; and

(iii) An existing suction manifold between tanks does not have to meet the interstitial monitoring requirements as described in paragraph (D)(2)(b) of this rule.

(c) Existing containment systems shall be equipped and monitored for releases pursuant to paragraph (D)(3) of this rule except existing containments associated with UST systems installed prior to March 1, 2005, are not required to meet the release detection requirements of paragraph (D)(3) of this rule and shall instead be equipped and monitored pursuant to paragraph (D)(6) of rule 1301:7-9-06 of the Administrative Code.

(2) Existing UST systems containing hazardous substances as defined in rule 1301:7-9-03 of the Administrative Code shall be equipped and monitored for a releases of a hazardous substance as defined in 1301:7-9-03(B)(1) and (B)(2) pursuant to the new UST system requirements defined in paragraph (B) of this rule except that:

(a) Existing containments originally configured with one release detection sensor located at the lowest point of the secondary containment system are not required to have sensors in every containment; and

(b) Existing underground piping and manifolds that convey hazardous substance under suction shall be

equipped and monitored for releases pursuant to paragraph (B)(2) of this rule.

(3) Existing UST systems located in sensitive areas as defined in rule 1301:7-9-09 of the Administrative Code shall be equipped and monitored for releases pursuant to the new UST system requirements defined in paragraph (B) of this rule except that:

(a) Automatic line leak detectors are no longer required to be designed with a limited restart capability that automatically prevents the operator from restarting the flow of regulated substances more than once.

(b) Existing containments originally configured with one release detection sensor located at the lowest point of the secondary containment system are not required to have sensors in every containment.

(c) Existing UST systems that were installed in sensitive areas before the effective dates listed in paragraphs (C) to (E) of rule 1301:7-9-09 of the Administrative Code shall be equipped to be monitored for releases pursuant to the existing UST requirements of paragraph (C)(1) of this rule.

(4) Owners and operators using soil gas monitoring or ground water monitoring as the sole method of release detection for USTs and piping were required to comply with one of the release detection methods as provided in paragraphs (D)(1)(c) or (D)(1)(d) of this rule by December 31, 2005. Owners and operators may request to continue using said methods of release detection or request to use an alternative method provided that the owner and operator receives written approval from the state fire marshal pursuant to paragraph (D)(4) of this rule.

(5) Existing UST systems containing motor or aviation petroleum fuels are no longer required to be monitored daily using product inventory control as described in paragraph (D)(1)(a) of this rule.

(6) Existing UST systems that store fuel for use by emergency power generators are not required to be equipped with release detection pursuant to paragraphs (B)(1) through (B)(3) of this rule unless the UST systems undergoes work pursuant to paragraph (C)(7) of rule 1301:7-9-06 of the Administrative Code.

(7) If a method of UST release detection authorized in paragraph (C)(1)(a) of this rule is found to be defective, owners and operator shall comply with paragraph (B)(6)(a) through (B)(6)(b) of this rule and may use product inventory control as a method of UST release detection.

(8) If work is performed on an existing UST system in order to meet the requirements of paragraph (C)(7) of rule 1301:7-9-06 of the Administrative Code, then the UST, piping or containments equipment affected by the work shall meet the release detection requirements for new UST systems as described in paragraphs (B)(1) through (B)(3) of this rule.

(9) If an owner and/or operator elects to equip a ~~an~~ UST system in a manner that exceeds the requirements of this rule, the owner and/or operator is only required to maintain the UST system to the extent required by this rule.

(10) Other methods of release detection may be used for tanks, piping and containments pursuant to paragraph (D)(4) of this rule.

(D) Methods, operation and maintenance of release detection systems on UST systems.

(1) UST release detection.

Owners and/or operators should carefully review the release detection requirements described in paragraphs (B) and (C) of this rule in order to determine which of the following methods apply to their UST system.

(a) Daily product inventory control shall be conducted as described in "American Petroleum Institute 1621-01; Recommended Practice for Bulk Liquid Stock Control of Retail Outlets."

(i) Inventory from UST systems shall be reconciled monthly. If the reconciliation for any month indicates

an overage or shortage equal to or greater than one per cent of flow-through plus one hundred thirty gallons, owners and operators shall investigate the inventory discrepancy as described in “American Petroleum Institute 1621-01 Recommended Practice for Bulk Liquid Stock Control of Retail Outlets.”

(ii) If inventory discrepancies occur for two consecutive months, owners and operators shall perform an investigation in accordance with all of the following:

(a) Conduct a tightness test of the UST system in accordance with paragraph (F) of this rule within seven days of discovery of the discrepancy; and

(b) Report any failure of a tightness test to BUSTR as a suspected release. A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if a tightness test leak rate exceeds the amount designated for the testing method. Passing tightness test results do not have to be reported to the state fire marshal.

(iii) Gauging sticks and charts used in the performance of daily product inventory control as described in paragraphs (D)(1)(a) of this rule shall be designed for the UST being measured and shall be maintained in working order.

(b) Manual tank gauging shall be conducted weekly and comply with the following requirements:

(i) Tank liquid level measurements shall be taken at the beginning and end of a time period of at least thirty-six hours during which no liquid is added to or removed from the tank;

(ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(iii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch; and

(iv) A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table:

| Tank Capacity | Weekly Standard (One test) | Monthly Standard (Average of four tests) |
|---------------------|----------------------------|--|
| 550 gallons or less | 10 gallons | 5 gallons |
| 551-1,000 gallons | 13 gallons | 7 gallons |
| 1,001-2,000 gallons | 26 gallons | 13 gallons |

(v) Gauging sticks and charts used in the performance of manual tank gauging as described in paragraphs (D)(1)(b) of this rule shall be designed for the UST being measured and shall be maintained in working order.

(c) Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control shall comply with the following requirements:

(i) Equipment for automatic tank gauging shall perform one of the following:

(a) An in-tank leak test capable of detecting a two tenth of a gallon per hour leak rate from any portion of the tank at least once every thirty days; or

(b) Continuous statistical leak detection capable of detecting a two-tenth of a gallon per hour leak rate from any portion of the tank once every thirty days.

(ii) A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of

the Revised Code and this chapter of the Administrative Code if a two-tenth of a gallon per hour leak rate is detected from any portion of the tank.

(iii) Equipment for automatic tank gauging, including probes, sensors and monitoring units, shall be evaluated annually by a qualified person as described in paragraph (D)(5) of this rule to confirm proper calibration and operation in accordance with the manufacturer's requirements.

(d) Monitoring of the interstice of secondarily contained UST systems shall comply with the following requirements:

(i) Monitoring of the interstitial space shall be performed at least once every thirty days;

(ii) Secondarily contained UST systems shall have an interstitial monitoring method that can detect a release through the inner wall or a failure of the outer wall in any portion of the tank that routinely contains a regulated substance;

(iii) A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if any regulated substance is detected between the inner and outer wall, or if the outer wall fails; and

(iv) Equipment for interstitial monitoring, including probes, sensors and monitoring units, shall be evaluated annually by a qualified person as described in paragraph (D)(5) of this rule to confirm proper calibration and operation in accordance with the manufacturer's requirements.

(2) Piping release detection.

Owners and/or operators should carefully review the release detection requirements described in paragraphs (B) and (C) of this rule in order to determine which of the following methods apply to their UST system.

(a) Single wall piping that routinely contains regulated substances shall be monitored pursuant to paragraph (D)(2)(c) through (D)(2)(d)(ii)(b) of this rule.

(b) Secondarily contained piping that routinely contains regulated substances shall be monitored pursuant to paragraphs (D)(2)(c) through (D)(2)(d)(ii)(b) of this rule, and the interstice of the secondarily contained piping shall be continuously monitored for releases using one of the following methods:

(i) The sampling or testing method can detect a two-tenth of a gallon per hour leak rate from any portion of the inner or outer wall of the piping that routinely contains a regulated substance. A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if a two-tenth of a gallon per hour leak rate is detected from any portion of the piping, or

(ii) The piping is contiguous with the containment system and the sampling or testing method can detect a release from any portion of the inner wall of the piping that routinely contains a regulated substance pursuant to paragraph (D)(3) of this rule.

(c) Requirements for pressure piping:

(i) Underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector attached to the piping that will alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping or triggering an audible or visual alarm if the automatic line leak detector detect a leak of three gallons per hour at ten pounds per square inch line pressure within one hour. The owner and operator is permitted to restart the flow of regulated substances only once to verify the presence of a piping leak or an equipment malfunction. If the flow of regulated substance is restricted or shut off or in the event of an audible or visual alarm within two hours of a restart by an operator, a release is suspected and subject to the reporting requirements of sections

3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code.

(ii) Automatic line leak detectors shall be tested annually by a qualified person pursuant to paragraph (D)(5) of this rule to confirm proper calibration and operation in accordance with the following:

(a) Automatic line leak detectors shall be tested in a manner that introduces a simulated leak into the product line between the tank and the dispenser, and the automatic line leak detector functions within design specifications and the flow of product is restricted, stopped or an alarm is activated; and

(b) Automatic line leak detectors that fail a test method shall undergo routine maintenance, modification or major repair, as appropriate, to restore the automatic line leak detectors to working order.

(iii) Underground piping that conveys regulated substances under pressure shall meet one of the following:

(a) Have an annual tightness test conducted in compliance with paragraph (F)(2)(a) of this rule;

(b) Have a monthly tightness test conducted by the on-site electronic line testing unit as described in paragraph (D)(2)(c) of this rule provided that the unit can detect a two-tenth of a gallon per hour leak rate at operating pressure; or

(c) Be a part of secondarily contained piping system where by the interstice of the piping is continuously monitored pursuant to (D)(2)(b)(i) or (D)(2)(b)(ii) of this rule.

(d) Requirements for suction piping:

(i) Underground piping that conveys regulated substances under suction shall be monitored for loss of vacuum indicated by an inability to dispense regulated substances or erratic operation of the pump. Within twenty-four (24) hours of ~~a~~ an UST owner and operator suspecting a loss of vacuum, discovering vacuum loss, the owner and operator shall initiate an investigation of the cause of the loss of vacuum, ~~and determine whether the component is defective, but not leaking.~~ If an owner and operator is unable to make a determination of the loss of vacuum, then the loss of vacuum shall be considered a suspected release as defined in O.A.C. 1301:7-9-13(C)(34) and the owner and operator shall comply with O.A.C. 1301:7-9-13(F)(2). If the loss of vacuum is determined to be due to a leaking component, component is leaking it shall constitute a release as defined in O.A.C. 1301:7-9-13(C)(25) and the owner and operator shall comply with O.A.C. 1301:7-9-13(F).

(ii) Underground piping that conveys regulated substances under suction shall meet one of the following:

(a) Have a tightness test conducted every thirty-six month period in compliance with paragraph (F)(2)(a) of this rule; or

(b) Demonstrate compliance with the following safe suction requirements:

- (i) The underground piping operates at less than atmospheric pressure;
- (ii) The underground piping is sloped so that the contents of the pipe will drain back into the tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with paragraphs (b)(i) through (iv) of this paragraph to be readily determined.

(e) Above ground piping that routinely contains regulated substances that is fully visible to inspection is not required to be equipped with release detection. If a portion of the above ground piping is located below ground

and the piping can not be easily accessed for visual inspection, then the piping must be equipped and monitored for releases release pursuant to paragraph (D)(2) of this rule.

(3) Release detection methods for containment systems:

Owners and/or operators should carefully review the release detection requirements described in paragraphs (B) and (C) of this rule in order to determine which of the following methods apply to their UST system.

(a) Containment systems shall be continuously monitored with sensors capable of detecting a release of a regulated substance before the release reaches the lowest penetration in the containment system. Sensors shall be located in every containment.

(b) Any alarm from a sensor in any containment system shall be evaluated within twenty four hours to confirm proper operation or to confirm the presence of a release. A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if any regulated substance is detected in the containment sump.

(c) The following containment systems shall be tested for tightness every three years in accordance with paragraph (F)(3)(a) of this rule.

(i) All containment systems installed on new UST systems after March 1, 2005;

(ii) As of December 31, 2005, all containment systems associated with UST systems containing hazardous substances pursuant to rule 1301:7-9-03 of the Administrative Code; and

(iii) As of December 31, 2005, all containment systems associated with UST systems that were installed in areas designated as sensitive areas after the effective dates listed in paragraphs (C) to (E) of rule 1301:7-9-09 of the Administrative Code.

(d) Release detection equipment for containment systems, including probes, sensors and monitoring units, shall be evaluated annually by a qualified person as described in paragraph (D)(5) of this rule to confirm proper calibration and operation in accordance with the manufacturer's requirements.

(4) Any other type of release detection method, or combination of methods, can be used if approved in writing by the state fire marshal pursuant to the following:

(a) The method can detect a two-tenths of a gallon per hour leak rate with a probability of detection of 0.95 and a probability of falsely indicating a release of 0.05; or the owner and operator can demonstrate the method can detect a release as effectively as any of the corresponding methods allowed in paragraphs (D)(1)(c) through (D)(3)(d) of this rule. In comparing methods, the state fire marshal shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. The state fire marshal may approve, deny or rescind the method at his discretion. If the method is approved, the owner and operator shall comply with any terms and conditions imposed by the state fire marshal on its use;

(b) A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if a release exceeds the leak rates established for the method approved by the state fire marshal; and

(c) Any method of release detection allowed by paragraph (D)(4) of this rule detection shall be properly monitored, operated and maintained in accordance with any terms and conditions imposed by the state fire marshal on its use. At a minimum, the method shall produce a result at least every thirty days and the method shall be maintained and operated in accordance with the manufacturer's requirements unless the state fire marshal specifies otherwise.

(5) Release detection methods described in paragraphs (D)(1)(c) through (D)(4)(c) of this rule shall be evaluated for proper operation by a qualified person who is:

(a) Recognized by the manufacturer of the release detection method to be proficient in the evaluation of the release detection method;

(b) Recognized by a third party approved by the state fire marshal to be proficient in the evaluation of the release detection method; or

(c) Recognized by the state fire marshal as proficient in the evaluation of the release detection method.

(6) All methods of release detection shall be properly installed in accordance with the manufacturer's instructions and either "Petroleum Equipment Institute Publication RP100-2005; Recommended Practices for Installation of Underground Liquid Storage Systems" or "American Petroleum Institute Publication 1615-01; Installation of Underground Petroleum Storage Systems." Where there is a conflict between requirements the more protective requirement shall prevail.

(E) Release detection recordkeeping.

(1) UST system owners and operators shall maintain records demonstrating compliance with this chapter, and these records shall be maintained pursuant to the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for the life of the UST system and for two years after the closure of the UST system in compliance with this chapter;

(b) The results of any sampling, testing, or monitoring shall be maintained for at least two years;

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located at the facility, and any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for the life the equipment and for two years thereafter;

(d) Owners and operators shall provide the state fire marshal access to all records with twenty-four hours of a request; and

(e) Within thirty days of transfer of ownership of a ~~an~~ UST system, the transferor shall provide the transferee with all records identified in section (E) of this rule or with equivalent copies of said records.

(F) Testing methods for UST systems.

(1) Tightness testing for USTs ~~underground storage tanks~~.

(a) Tank tightness testing of the primary shell of both single wall and secondarily contained USTs shall be capable of detecting a one tenth of a gallon per hour leak rate from any portion of the primary shell while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(b) Tightness testing of the interstice of secondarily contained USTs shall follow the manufacturers testing requirements or other requirements approved by the manufacturer, the state fire marshal, or a third party who has demonstrated proficiency in tightness testing to the state fire marshal.

(2) Tightness testing for piping.

(a) Piping tightness testing of single wall pipe and the primary or inner pipe of secondarily contained pressure piping may be conducted only if it can detect a one-tenth of a gallon per hour leak rate at one and one-half times the operating pressure.

(b) Tightness testing of suction and other non-pressurized piping shall be conducted as follows:

(i) Piping that can be isolated from the UST shall be tested using a method capable of detecting a one-tenth of a gallon per hour leak rate at a minimum of fifteen pounds per square inch pressure.

(ii) Piping that can not be isolated from the UST shall be tested using a method capable of detecting a one-tenth of a gallon per hour leak rate.

(c) Tightness testing of the interstice of secondarily contained piping shall follow the manufacturers testing requirements or other requirements approved by the manufacturer, the state fire marshal, or a third party who has demonstrated proficiency in tightness testing to the state fire marshal.

(3) Testing of containment systems

(a) Testing of containment systems shall be performed as follows:

(i) For new containments, all penetrations must be completed prior to testing, including electrical;

(ii) The containment system shall be filled with water or other approved liquid to a height that covers the highest penetration; and

(iii) The test duration shall be sixty minutes with no drop in liquid levels or the method shall be capable of detecting a one tenth of a gallon per hour leak rate from the containment.

(4) All testing methods listed in paragraphs (F)(1)(a) and (F)(2)(a) of this rule shall be third party approved to perform in a manner where the method can detect a release at the designated release rate with a probability of detection of 0.95 and a probability of falsely indicating a release of 0.05. A release is suspected and subject to the reporting requirements of sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code if a leak rate exceeds the amount designated for the testing method.

(5) Testing shall be performed in accordance with the manufacturer's instructions, Petroleum Equipment Institute Publication RP100- 2005; "Recommended Practices for Installation of Underground Liquid Storage Systems," American Petroleum Institute Publication 1615-01; "Installation of Underground Petroleum Storage Systems," National Fire Protection Association Publication NFPA 30-2008 "Flammable and Combustible Liquids Code," and National Fire Protection Association Publication NFPA 30A-2008 "Motor Fuel Dispensing Facilities and Repair Garages." Where there is a conflict between requirements the more protective requirement shall prevail.

(6) No pressure testing with air shall be performed on a component of a ~~an~~ UST system that has contained a flammable regulated substance or flammable vapors. The manufacturers instructions for the testing method shall be followed when using gases for the test method.

(7) All testing methods defined in paragraphs (F) to (F)(3)(a)(iii) of this rule shall be performed by a person who is:

(a) Recognized by the manufacturer of the tightness testing method to be proficient in performing the testing method;

(b) Recognized by a third party approved by the state fire marshal to be proficient in performing the tightness testing method; or

(c) Recognized by the state fire marshal to be proficient in performing the tightness testing method.

(G) General performance standards, permits, certified UST installers and inspectors.

(1) Any person performing work in accordance with this rule shall obtain a permit as required in paragraph (C) of

rule 1301:7-9-10 of the Administrative Code prior to performing the work. All work performed pursuant to this rule shall be overseen by a Certified UST Installer and a Certified UST Inspector as required in paragraph (D) of rule 1301:7-9-10 of the Administrative Code.

(2) Prior to going into operation, a functionality test shall be performed on any new or existing UST system component that undergoes work requiring a permit under paragraph (G)(1) of this rule. The UST system shall not be placed into operation until a passing functionality result is obtained for the UST system component undergoing work.

(3) Performing work pursuant to this rule does not relieve a person engaged in ~~UST underground storage tank~~ activity from the obligation to comply with any other applicable federal, state, or local laws and regulations, including but not limited to, the Ohio Fire Code and the Ohio Building Code.

(4) Other release detection requirements and methods may be used in place of any requirements or methods described in this rule if an owner and operator demonstrates that the alternative method is no less protective of human health and the environment than the method or requirement specified in this rule, and the state fire marshal approves the alternative method in writing prior to the use of the method. If the alternative method is approved, the owner and operator shall comply with any terms and conditions imposed on its use by the state fire marshal.

HISTORY: Eff 6-6-85; 5-9-88; 11-5-90; 1-1-97; 3-31-99; 3-1-05; 12-31-05

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Rule amplifies: RC 3737.88

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Appendix C

1301:7-9-18 Delivery prohibition for ~~USTs underground storage tanks~~.

(A) Purpose and scope.

For the purpose of prescribing rules pursuant to section 3737.88 of the Revised Code, the state fire marshal hereby adopts this rule to establish delivery prohibition for ~~USTs underground storage tanks~~ (UST) containing petroleum or other regulated substances. This rule is adopted by the state fire marshal in accordance with Chapter 119 of the Revised Code and shall not be considered a part of the "Ohio Fire Code." The following ~~USTs underground storage tanks~~ are exempt from this rule:

- (1) Wastewater treatment tank systems;
- (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. 2014 and following);
- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States nuclear regulatory commission;
- (4) Airport hydrant fuel distribution systems; and
- (5) ~~USTs~~ systems with field constructed tanks.

(B) Delivery prohibition.

After the effective date of this rule, it shall be unlawful for any person to deliver ~~to~~, deposit ~~into~~, or accept a regulated substance into ~~a an UST underground storage tank~~ that is classified as ineligible by the state fire marshal for such delivery, deposit, or acceptance in accordance with paragraphs (D)(1) through (D)(5) of this rule. ~~which has been identified by the state fire marshal to be ineligible for such delivery, deposit, or acceptance pursuant to the issuance of an order by the state fire marshal in accordance with paragraph (D)(1) of this rule.~~

(C) Identifying an ineligible ~~UST underground storage tank~~.

- (1) The state fire marshal shall classify ~~a an UST underground storage tank~~ as ineligible for delivery, deposit, or acceptance of a regulated substance as soon as practicable after the state fire marshal determines one or more of the following conditions exist:
 - (a) Required spill prevention equipment is not installed pursuant to rule 1301:7-9-06 of the Ohio Administrative Code;
 - (b) Required overfill prevention equipment is not installed pursuant to rule 1301:7-9-06 of the Ohio Administrative Code;
 - (c) Required corrosion protection equipment is not installed pursuant to rule 1301:7-9-06 of the Ohio Administrative Code; or
 - (d) Required release detection equipment is not installed pursuant to rule 1301:7-9-07 of the Ohio Administrative Code.
- (2) The state fire marshal may classify ~~a an UST underground storage tank~~ as ineligible for delivery, deposit, or acceptance of a regulated substance if the owner or operator of the ~~UST underground storage tank~~ has been issued a written Notice of UST Violation for any of the following violations, and the owner or operator fails to ~~initiate action~~ ~~to~~ correct the violation within sixty (60) days of the issuance of the Notice of UST Violation:

- (a) Failure to properly operate or maintain spill prevention equipment pursuant to rule 1301:7-9-06 of the Ohio Administrative Code;
- (b) Failure to properly operate or maintain overfill prevention equipment pursuant to rule 1301:7-9-06 of the Ohio Administrative Code;
- (c) Failure to properly operate or maintain corrosion protection equipment pursuant to rule 1301:7-9-06 of the Ohio Administrative Code;
- (d) Failure to properly operate or maintain release detection equipment pursuant to rule 1301:7-9-07 of the Ohio Administrative Code; or
- (e) Failure to obtain a valid certificate of coverage from the Petroleum Underground Storage Tank Release Compensation Board pursuant to O.A.C. 1301:7-9-05(G)(1); ~~or~~
- (f) ~~Failure to comply with the deductible coverage requirements described in paragraphs (H) to (H)(2) of O.A.C. 1301:7-9-05.~~

(D) Notification and red tag procedures.

(1) If the state fire marshal classifies ~~a an UST underground storage tank~~ as ineligible for delivery, deposit, or acceptance of a regulated substance pursuant to paragraph (C) of this rule, the state fire marshal shall issue an order to the owner and ~~or~~ operator prior to prohibiting the delivery, deposit, or acceptance of a regulated substance. ~~The order is considered properly served by the state fire marshal in any of the following ways:~~

(a) The order shall be issued to the owner and operator as identified on the registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code and any other persons known by the state fire marshal to be an owner or operator.

(b) The order is ~~considered~~ properly served by the state fire marshal in any of the following ways:

(i) ~~(a)~~ The order is personally delivered to the owner or operator; or

(ii) ~~(b)~~ The order is clearly posted at an entrance to the site where the UST underground storage tank is located, and a copy of the order is also sent by regular mail to the last known address of the owner or operator.

(2) The written order described in paragraph (D)(1) of this rule shall include:

(a) The specific reasons or violations that led to the ineligible classification;

(b) A statement notifying the owner and operator that the UST underground storage tank is ineligible for delivery and it is unlawful for any person to deliver ~~to~~, deposit ~~into~~, or accept a regulated substance into the UST underground storage tank;

(c) The effective date the UST underground storage tank is deemed ineligible for delivery;

(d) The name and address of the state fire marshal representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; and

(e) A statement addressing the right to appeal the state fire marshal's order pursuant to paragraph (D) of section 3737.882 of the Revised Code.

(3) Once service of the order is complete pursuant to paragraph (D)(1) of this rule, the state fire marshal shall

perform the following procedures in order to attach a red tag to the fill pipe of the UST underground storage tank that the state fire marshal determined to be ineligible for delivery, deposit, or acceptance of a regulated substance:

- (a) A separate red tag shall be attached to each fill pipe of each UST underground storage tank determined to be ineligible for delivery, deposit, or acceptance of a regulated substance;
 - (b) The red tag shall include the following wording in at least 16 point type: “Delivery Prohibited. Delivering petroleum or other regulated substance to this underground storage tank, or removing, defacing, altering, or otherwise tampering with this tag may result in civil penalties of up to \$10,000 per day”;
 - (c) The state fire marshal shall attempt to document the level and/or volume of regulated substance in the UST underground storage tank at the time that red tag is attached;
 - (d) The state fire marshal shall maintain a list of all USTs underground storage tanks that are classified as ineligible for delivery, deposit, or acceptance of a regulated substance. The state fire marshal shall make updates to the list available to the public by posting the list on the state fire marshal’s website in a timely manner;
 - (e) If an eligible UST underground storage tank is connected or manifolded to an ineligible UST underground storage tank, the state fire marshal will determine that both USTs underground storage tanks are ineligible to receive delivery, deposit, or acceptance of a regulated substance for purposes of this rule, unless the eligible UST underground storage tank meets both of the following requirements:
 - (i) The eligible UST tank is designed to receive a regulated substance through a means not connected, manifolded, or otherwise dependent on the ineligible UST tank; and
 - (ii) The eligible UST tank is prevented from delivering or receiving regulated substances to or from the ineligible UST tank; ~~and~~
 - (f) For a multiple compartment UST underground storage tank, the red tag shall only be attached to the fill pipe of the compartment associated with the condition or violation which resulted in the compartment being determined ineligible for the delivery, deposit, or acceptance of a regulated substance.
- (4) Owners or operators may continue to operate ~~a an UST underground storage tank that is classified as is determined to be ineligible pursuant to paragraph (D)(1) of~~ to this rule until the ineligible UST underground storage tank is empty. The UST underground storage tank shall not receive delivery, deposit, or acceptance of a regulated substance during this time.
- (5) The classification of ~~a an UST underground storage tank~~ as ineligible shall remain in effect until the conditions cited in the order no longer exist as determined by the state fire marshal ~~and the red tag is removed by the state fire marshal or an authorized designee~~. If the state fire marshal determines that an ineligible UST underground storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance, the state fire marshal or an authorized designee shall do all of the following:
- (a) Remove the red tag from the UST underground storage tank fill pipe no later than five business days after the state fire marshal determines that the UST underground storage tank is compliant;
 - (b) Remove the UST underground storage tank from the ineligible list posted on the state fire marshal’s website; and
 - (c) Provide a written notice to the owner ~~and~~ operator that the ineligible UST storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance.

(E) Product delivery.

(4) Any person delivering, ~~or depositing~~ or accepting regulated substances into an ineligible UST ~~underground storage tank~~ shall be in violation of paragraph (B) of this rule unless both of the following conditions ~~can be demonstrated~~ apply:

(a) ~~The delivery or deposit was made prior to notice of the ineligible underground storage tank being posted on the state fire marshal's web site as described in paragraph (D)(3)(d) of this rule; and~~

(1) The red tag was not affixed to the fill pipe at the time of delivery or deposit; and

(2) The person had no knowledge of the UST being classified ineligible for delivery, deposit, or acceptance of a regulated substance.

(F) Additional conditions.

(1) It shall be unlawful for any person to tamper with and/or remove the red tag without the state fire marshal's approval.

(2) The state fire marshal may delay the classification of a an UST ~~underground storage tank~~ as ineligible for delivery, deposit or acceptance of regulated substances if the state fire marshal determines that prohibiting delivery to the UST ~~underground storage tank~~ would jeopardize health and safety or the availability of fuel to the community.

(3) The state fire marshal may allow the delivery, deposit or acceptance of a regulated substance into a an UST ~~underground storage tank~~ determined to be ineligible for purposes of testing and other activities required to comply with an order pursuant to paragraph (D)(1) of this rule.

(4) Nothing in this rule shall affect or preempt the authority of the state fire marshal or any other authority with jurisdiction to prohibit the delivery, deposit, or acceptance of a regulated substance to a an UST ~~underground storage tank~~ under other existing regulations.