State Budget Office
Office of Regulatory Reinvention
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REGULATORY IMPACT STATEMENT (RIS) and COST-BENEFIT ANALYSIS

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than 28 days before the public hearing (MCL 24.245(3)-(4)). Submissions should be made by the department Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon approval by the ORR, the agency shall make copies available to the public at the public hearing (MCL 24.245(4)).

1. ORR-assigned rule set number:

2015-060 LR

2. ORR rule set title:

R 29.2101 through R 29.2192
Underground Storage Tank Rules (USTR)

3. Department:

Licensing and Regulatory Affairs (LARA)

4. Division/agency/bureau:

Bureau of Fire Services, Storage Tank Division (STD)

5. Name, title, and phone number of person completing this form:

Kevin Wieber, Engineer, 517-335-7260

6. Reviewed by department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a "Small business" defined.
Sec. 7a.
"Small business" means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than $6,000,000.00.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).
Sec. 40.
(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

[**Note**: Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.
Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:
(a) The regulatory impact statement required under section 45(3).
(b) Instructions on any existing administrative remedies or appeals available to the public.
(c) Instructions regarding the method of complying with the rules, if available.
(d) Any rules filed with the secretary of state and the effective date of those rules.
(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with "N/A" or "none."

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The revisions are to the USTR, promulgated pursuant to Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451. The change is to incorporate the newly adopted 2015 federal underground storage tank regulations into USTR. These proposed rules offer facility owners more options than federal regulations without being less stringent than the federal requirements.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

A federal or national licensing organization does not exist with reference to the USTR. There are no industry standards. Every state must adopt a form of the 2015 federal underground storage tank regulations without being less stringent than those rules. Most states have adopted the federal rules per verbatim. The proposed USTR changes are not more strict than federal requirements. In fact, USTR offers options that the federal rules do not offer, without being less stringent than the federal rules.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

These rules adopt 2015 federal rules regulating all underground storage tank facilities storing and/or handling flammable and combustible liquids. PA 451 of 1994 states that the regulated authority over these facilities is with the State, and notes that local units of government cannot be more restrictive than State regulations.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

These rules are intended to reduce the frequency of releases from underground storage tank (UST) systems. Facility owners will be required to verify that leak detection equipment is working properly and that containment is liquid tight. These rules offer the option of training followed by testing the Class A and B operators or just testing these operators to verify knowledge and ability to perform needed tasks intended to monitor a facilities ability to prevent leaks to the environment. There are approximately 17,600 regulated UST systems in Michigan. The added option for operator training will help ensure that operators have the knowledge necessary to maintain UST systems. In addition, these rules require increased monitoring, testing, maintenance, and recordkeeping for the UST systems.

5. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) instead of leaving them as currently written?

Failure to promulgate these revisions will result in the increased potential for fire and releases of hazardous substances and petroleum products to the subsurface soils and groundwater. If this occurs, the state will then be obligated to spend monies to provide alternate water supplies to residents when their water supply is threatened and/or impacted by the pollutants.

6. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

These rules aim to increase awareness on the part of owners/operators of UST systems and thus to avoid releases of hazardous substances and petroleum products to the subsurface soils and groundwater. In the event of a release from an UST system the state could be obligated to spend monies to provide alternate water supplies to residents when their water supply is threatened and/or impacted by the pollutants. These rules establish minimum requirements related to the management of UST systems.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

R 29.2108, R 29.2141, R 29.2143, R 29.2145, R 29.2147, R 29.2149, R 29.2165, and R 29.2173 are rescinded. Rule 29.2108 is being incorporated into the adopted language in Subpart J or these rules. The other rules reference clean-up criteria which is covered under part 213, of 1994 PA 451, MCL 324.21301a to 324.21334.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The administration of the new USTR will not result in increased costs to the Department of Licensing and Regulatory Affairs.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

There is no additional appropriation required for the implementation of these rules.

10. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

There would be no undue burden placed on individuals with regard to these rules.

Impact on Other State or Local Governmental Units:

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules may result in lower premiums on pollution prevention insurance required for UST systems, as there is a decreased probability of a release escaping into the environment. There will be an additional cost for a new installation due to more stringent requirements for the construction, operation and maintenance for an UST system. The cost for implementation of these rules to a specific facility can only be determined by what the UST system currently has for equipment and what may or may not be required to be installed. These rules may result in long-term cost savings, as better monitoring of leak detection systems may result in fewer releases from the UST system.

12. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

Any local unit of government, like an individual owner of an UST system, has the responsibility to train and certify personnel responsible for maintaining UST systems; and to perform periodic testing on UST equipment to verify functionality. This includes maintaining records of walk through inspections and equipment testing results.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriation has been made to state or local governmental units as a result of these rules.

Rural Impact:

14. In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The rules will have no more of an additional impact on rural areas than on any other area of the state.

Environmental Impact:

15. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

These rules intend to increase owner awareness and to lessen the number of releases to the environment from UST systems through periodic walkthrough inspections and equipment testing and monitoring. Compliance with these steps will decrease the number of releases of hazardous and petroleum products to the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

16. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

Such an exemption is not feasible due to the potential loss of a federal underground storage tank grant. In addition, Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451, amended does not allow a reduced burden on small business. By definition, any UST under 110 gallons or used exclusively for heating of premises where the UST is installed is exempt from these rules.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

None, exclusive of those identified above.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

Michigan has approximately 6,700 UST facilities. New UST systems at large and small facilities are installed at a rate of approximately 100 facilities per year.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There can be no difference in compliance or reporting requirements for small businesses under the USTR, as the rules apply to UST systems not facilities.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

There can be no difference in compliance or reporting requirements for small businesses under the USTR, as the rules apply to UST systems not facilities.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The USTR allows owners to follow a nationally recognized standard or manufacturer instruction to maintain their UST system.

18. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

There are no disproportionate impacts on small business due to size or geographic location.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The rules require that records (i.e.: visual inspection checklist, leak detection results, equipment testing results, Class C operator training) be kept by the owner. These records are required to be maintained for a minimum of a 3-year period, in line with facility state-inspection cycles. There is no additional cost associated with the acquisition of these records that is not part of normal facility activity.

20. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There is expected to be a minimal impact on the regulate community as the referenced reporting process is required in the current version of the USTR. New administrative expenses will be from federally mandated periodic testing of leak detection components.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The need for legal, consulting, accounting and other administrative services by individuals complying with the proposed rules will be facility specific and, therefore, exact costs cannot be determined. There may be lower premiums on pollution prevention insurance required for UST systems, as there is a decreased probability of a release escaping into the environment.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Most of the regulated entities are small businesses, and they will be affected in the same manner as larger businesses. This will not adversely affect competition in the marketplace.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

To regulate small businesses differently than other businesses would require indeterminable costs associated with the development of additional rules, administrative procedures and processes, and additional program employees to oversee the added program. Further, at a minimum, these businesses are required to meet federal regulations, which are reflected in these rules.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Maintaining lesser standards for small businesses will result in the loss of the underground storage tank grant. In addition, without the improvements in construction, operations, and maintenance of the underground systems, there is the increased potential for decreased fire safety and increases of releases of hazardous substances and petroleum products to the subsurface soils and groundwater. The state could then be obligated to spend monies to provide alternate water supplies to residents wherein their water supply is threatened and/or impacted by the pollutants.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small businesses were involved in the development of the rule(s), please identify the business(es).

The STD has worked with the Storage Tank Program stakeholders on drafting these proposed rules. The Stakeholders are in agreement with the proposed rules. The stakeholders include the Associated Food and Petroleum Dealers (representing small business), Michigan Petroleum Association (representing small businesses), Michigan Manufacturers Association, and Associated Petroleum Industries of Michigan (representing big businesses), as well as the Petroleum Equipment Institute, Michigan Municipal League, Michigan Chemistry Council, State Fireman's Association, and Michigan Fire Inspector's Society

Cost-Benefit Analysis of Rules (independent of statutory impact):

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The estimated cost for a typical motor fueling facility will be based on the status of the facilities current equipment and what, if anything, will need to be changed to comply with the USTR changes; most of the expense is due to federally required equipment testing, and training of facility personnel. An average expense for a facility that requires compliance work may be around $8,000. There are approximately 17,600 UST facilities in Michigan and all UST system facilities will be faced with the same obligatory costs.

27. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping. How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

There is no added cost to individuals associated with these rules. The estimated cost for a typical motor fueling facility will be based on the status of the facilities current equipment and what, if anything, will need to be changed to comply with the USTR changes.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Compliance with these rules could result in decreased spills from UST systems. This will result in decreased environmental clean-up costs for regulated facilities.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

These rules will benefit fire safety and the environment as releases from underground storage tank systems should be reduced due to early detection of equipment failure and system breeches.

30. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

These rules will have no impact on business growth. However, these rules have the potential to create jobs through the operator training and certification requirement.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There will be no disproportionate affect by the rules on any industrial sector, any individual segment of the public, or any specific business size or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Cost responses were determined with help from the Petroleum Equipment Institute, Michigan Petroleum Association, Associated Food and Petroleum Dealers, and Associated petroleum Industries of Michigan. Benefit responses were determined with help from the Storage Tank Program stakeholders.

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

Due to these rules being federally mandated, there are no alternatives to the proposed rules.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There are no alternatives to these rules. Regulatory control of the program lies with the State. There are no states utilizing private market to enforce these rules; oversite of the UST program is maintained at state level.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Each proposed rule was discussed with stakeholders prior to acceptance as rule.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rule(s), if applicable.

The rules are necessary to create consistency between industry and the State. The rules establish minimum requirements related to the management of UST systems.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

10-30-2014

Date RIS approved:	**11/1/2017**
ORR assigned rule set number:	**2015-060 LR**

Date of disapproval:	Explain:
More information needed:	Explain: