

(No changes made as a results of comments)

1301:7-9-18 **Delivery prohibition for USTs.**

(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 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 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) Delivery prohibition.

After the effective date of this rule, it shall be unlawful for any person to deliver, deposit, or accept a regulated substance into an UST that has a red tag attached to the fill pipe of the UST that the state fire marshal has classified as ineligible for delivery, deposit, or acceptance of a regulated substance in accordance with paragraphs (D)(1) through (D)(4) of this rule.

(C) Identifying an ineligible UST.

- (1) The state fire marshal shall classify an UST 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 an UST as ineligible for delivery, deposit, or acceptance of a regulated substance if the owner and operator of the UST has been issued a written Notice of UST Violation for any of the following violations, and the owner or operator fails 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).

(D) Notification and red tag procedures.

(1) If the state fire marshal classifies an UST 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.

- (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 deemed properly served by the state fire marshal in any of the following ways:
 - (i) The order is personally delivered;
 - (ii) The order is sent via certified mail to the address set forth on the UST registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code and the signed return receipt card is received by the state fire marshal; or
 - (iii) In those instances when the order, sent via certified mail, is returned due to failure of delivery, the order is sent via regular mail to the address set forth on the UST registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code.

- (c) The state fire marshal will provide a written notice to any additional persons listed on the registration form submitted to the state fire marshal in accordance with rule 1301:7-9-04 of the Administrative Code.
- (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 it is unlawful for any person to deliver, deposit, or accept a regulated substance into the UST once a red tag has been attached to the fill pipe of the UST that the state fire marshal determined to be ineligible for delivery, deposit, or acceptance of a regulated substance in accordance with paragraphs (D)(1) through (D)(4) of this rule;
 - (c) 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
 - (d) 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 publish on the state fire marshal's website those USTs that are classified as ineligible for delivery, deposit, or acceptance of a regulated substance. The ineligible USTs shall be posted on the state fire marshal's website a minimum of seven days prior to the red tag being affixed to the UST.
- (4) Once publication is complete pursuant to paragraph (D)(3) of this rule, the state fire marshal shall attach a red tag to the fill pipe of the UST that the state fire marshal determined to be ineligible for delivery, deposit, or acceptance of a regulated substance in accordance with the following:
- (a) A separate red tag shall be attached to each fill pipe of each UST 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 at the time that red tag is attached;
 - (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 state fire marshal's website in a timely manner;
 - (e) If an eligible UST is connected or manifolded to an ineligible UST, the state fire marshal will determine that both USTs are ineligible to receive delivery, deposit, or acceptance of a regulated substance for purposes of this rule, unless the eligible UST tank meets both of the following requirements:

- (i) The eligible UST is designed to receive a regulated substance through a means not connected, manifolded, or otherwise dependent on the ineligible UST; and
 - (ii) The eligible UST is prevented from delivering or receiving regulated substances to or from the ineligible UST;
- (f) For a multiple compartment UST; 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.
- (5) Owners or operators may continue to operate an UST that is classified as ineligible pursuant to this rule until the ineligible UST is empty. The UST shall not receive delivery, deposit, or acceptance of a regulated substance during this time.
- (6) The classification of an UST 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 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 fill pipe no later than five business days after the state fire marshal determines that the UST is compliant;
 - (b) Remove the UST 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 has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated substance.

(E) Product delivery.

Any person delivering or depositing regulated substances into an UST that has been classified as ineligible by the state fire marshal and has a red tag affixed to the fill pipe shall be in violation of paragraph (B) of this rule.

(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 an UST as ineligible for delivery, deposit or acceptance of regulated substances if the state fire marshal determines that prohibiting delivery to the UST 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 an UST 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 an UST under other existing regulations.

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