

1301:7-9-15 **Delegation of authority to inspect UST systems.**

(A) Purpose and scope

For the purpose of prescribing rules pursuant to section 3737.88 of the Revised Code, the fire marshal hereby adopts this rule to establish procedures for delegating to certified fire safety inspectors, as defined in division (D) of section 3737.01 of the Revised Code, the authority to issue delegated UST permits and inspect UST systems for compliance with chapter 1301:7-9 of the Administrative Code. This rule is adopted by the fire marshal in accordance with Chapter 119. of the Revised Code and shall not be considered a part of the "Ohio Fire Code."

(1) Any individual who has been delegated by the fire marshal to conduct UST inspections for compliance with chapter 1301:7-9 of the Administrative Code in accordance with paragraph (F) of this rule are restricted to inspect those activities requiring a permit as listed in paragraph (C) of rule 1301:7-9-10 of the Administrative Code.

(B) Delegation of authority to local fire agencies to issue permits and perform UST inspections

(1) Any local fire agency wishing to have the fire marshal delegate to its certified fire safety inspectors the authority to conduct inspections and issue permits for underground storage tank systems shall submit a written application to the fire marshal. All applications shall be on a form prescribed and furnished by the fire marshal and shall include, without limitation, all of the following:

(a) A list of certified fire safety inspectors within the agency who have been issued a certificate to inspect UST systems under paragraph (F) of this rule that will be assigned to conduct UST system inspections;

(b) A copy of the local ordinance or resolution which authorizes the agency to perform inspections and issue written permits for those situations identified in paragraph (C)(3) of this rule within the agency's jurisdictional area;

(c) A map or description of all political subdivisions depicting the agency's jurisdictional area; and

(d) The name, address, and telephone number of the agency's UST inspection coordinator as designated by the chief of the agency.

(2) The fire marshal shall review all applications. If the fire marshal determines that the local fire agency has the necessary authority, the fire marshal may delegate to the agency's certified fire safety inspectors the authority to inspect and issue delegated UST permits for UST systems as limited by this rule.

- (a) Local fire agencies which have been delegated authority pursuant to this rule shall retain copies of all permits issued pursuant to paragraph (B)(4) of this rule and all inspection reports prepared within its jurisdictional area pursuant to paragraph (I) of this rule. The local fire agency shall deliver a copy of all delegated UST permits and all inspection reports to the fire marshal within 30 days of the final inspection.
 - (b) If a local fire agency which has been delegated authority pursuant to this rule determines that any violation of this chapter exists, that a condition of a delegated UST permit has been violated, or that there has been any false statement or misrepresentation of a material fact on the delegated UST permit application or supporting documentation, the local fire agency shall initiate UST permit revocation proceedings. To initiate revocation proceedings, the local fire agency shall inform the fire marshal in writing of the proposed UST permit revocation and the reason for the proposed revocation. Upon such notification, the fire marshal may revoke the delegated UST permit in compliance with chapter 119. of the revised code.
 - (c) The fire marshal shall retain any and all authority to bring an action against the responsible person for any violation of this chapter or section 3737.882 of the revised code.
 - (d) The fire marshal shall retain the authority to revoke any authority delegated pursuant to this rule upon a determination by the fire marshal that a local fire agency's certified fire safety inspector authorized to perform UST inspections pursuant to paragraph (F) of this rule failed to adequately inspect UST systems within the local fire agency's jurisdiction, failed to keep adequate records, failed to properly apply this chapter, or failed to comply with any requirements of this rule.
- (3) Local fire agencies which have been delegated authority pursuant to this rule to conduct UST inspections for compliance with chapter 1301:7-9 of the Administrative Code are subject to all of the following:
- (a) The authority of a certified fire safety inspector authorized to perform UST inspections pursuant to paragraph (F) of this rule shall be limited to the duties identified in paragraph (C) of this rule and to the following:
 - (i) Such inspectors may approve or deny an extension of the twelve month out of service period temporary within their jurisdictional area in accordance with paragraphs (E)(4) and (E)(5) of rule 1301:7-9-12 of the Ohio Administrative Code. All approvals and denials shall be in writing and a copy shall be delivered to the fire marshal within 30 days of issuance.

- (ii) Such inspectors may approve or deny the closure-in-place of an UST system within their jurisdictional area in accordance with paragraph (F) of rule 1301:7-9-12 of the Ohio Administrative Code. All approvals and denials shall be in writing and a copy shall be delivered to the fire marshal within 30 days of issuance.
 - (b) Certified fire safety inspectors authorized to conduct UST system inspections pursuant to paragraph (F) this rule shall comply with the operational and reporting requirements set forth in paragraphs (I)(1) through (I)(5) of this rule.
 - (c) UST inspections shall be performed by certified fire safety inspectors within the agency as listed in paragraph (B)(1)(a) of this rule. The local fire agency may allow other UST inspectors certified pursuant to paragraph (F) of this rule to conduct inspections within its jurisdictional area at its discretion and if not prohibited by local ordinance.
 - (d) The fire marshal retains the authority to conduct inspections within the jurisdiction of any local fire agency that has been delegated the authority to conduct inspections under this rule.
 - (e) Certified fire safety inspectors conducting UST system inspections pursuant to paragraph (F) of this rule shall be limited in the inspections they are allowed to conduct as set forth in paragraphs (H)(1) to (H)(6) of this rule, except that certified fire safety inspectors assigned to conduct UST inspections within the jurisdictional area of the local fire agency may also conduct UST system inspections of USTs owned by the political subdivision where the local fire agency has jurisdiction.
- (4) Local fire agencies which have been delegated authority pursuant to this rule shall issue a delegated UST permit in a form prescribed and provided by the fire marshal to those responsible persons who have submitted a completed delegated UST permit application. Delegated UST permits shall be issued in accordance with paragraph (C) of rule 1301:7-9-10 of the Administrative Code.
- (a) No local fire agency shall issue any delegated UST permit pursuant to this rule unless it has been delegated the authority to do so in writing by the fire marshal.
 - (b) A local fire agency which has been delegated authority pursuant to this rule shall issue permits for UST systems only within its jurisdictional area.
 - (c) A local fire agency may determine a reasonable fee for all delegated UST permits and permit related inspections, if any, within its jurisdiction.

- (d) Any permit issued by a local fire agency shall not be construed as authority to violate any provision of this chapter.
- (e) If a local fire agency which has been delegated authority pursuant to this rule determines that a delegated UST permit application is incomplete, that there has been a false statement or misrepresentation of a material fact on the delegated UST permit application or supporting documentation, or that the proposed activity is in violation of this chapter, the local fire agency shall initiate permit application denial proceedings. To initiate denial proceedings, the local fire agency shall inform the fire marshal in writing of the proposed denial and the reason for the proposed denial. Upon such notification, the fire marshal may deny the delegated UST permit application in compliance with Chapter 119. of the Revised Code.

(C) Duties of certified UST inspectors conducting permit inspections

- (1) Any individual who has been certified by the fire marshal to conduct UST inspections in accordance with paragraph (F) of this rule may inspect the activity for which a UST permit has been issued.
- (2) As part of an UST permit inspection, under no circumstances shall a certified UST inspector enter a confined space as defined in the Code of Federal Regulations 29 CFR 1910. 146.
- (3) A certified UST inspector shall be physically on site for all of the following activities:
 - (a) In the case of an UST installation, the pre-installation pressure test of the UST, the examination of the excavation prior to the physical placing of the UST into the ground, the backfilling of the UST, the in ground test of the piping and ancillary equipment prior to backfilling, the final tightness test of the UST system and the test of the release detection system prior to placing the UST system into service;
 - (b) In the case of an UST modification, immediately before purging operations begin, immediately before the UST is cut open for entry, the final tightness test of the UST and the final test of the UST leak detection system prior to placing the UST system back into service;
 - (c) In the case of a modification for piping, the in-ground test of the piping prior to backfilling the piping, the final tightness test of the modified portion of the piping and the final test of the piping leak detection system, if applicable, prior to placing the UST system back into service;
 - (d) In the case of a modification of other UST components, the in-ground test of the component prior to backfilling the component, the final tightness test of

the UST system and the final test of any leak detection systems, if applicable, prior to placing the UST system back into service;

- (e) In the case of a major repair of an UST, immediately before purging operations begin, immediately before the tank is cut open for entry, the final tightness test of the UST and the final test of the UST leak detection system prior to placing the UST system back into service;
 - (f) In the case of a major repair of piping, the in-ground test of the piping prior to backfilling the piping, the final tightness test of the piping and the final test of the piping leak detection system, if applicable, prior to placing the UST system back into service;
 - (g) In the case of a major repair of other UST components, the in-ground test of the component prior to backfilling the component, the final tightness test of the component and the final test of any leak detection systems, if applicable, prior to placing the UST system back into service;
 - (h) In the case of an UST removal, immediately before purging operations begin, immediately before the tank is cut open for any purpose, the actual removal of the UST system from the ground and the final disposition of the UST before the UST leaves the site;
 - (i) In the case of closure-in-place of an UST system, immediately before purging operations begin, immediately before the opening of the tank top, and at the completion of the actual filling of the tank with inert solid material before covering the UST;
 - (j) In the case of the placing of an UST system out of service for more than ninety days, immediately before the UST, piping and ancillary equipment are secured; and
 - (k) In the case of the performance of a change in service of an UST system, immediately before purging operations begin and during any removal or closure-in-place of piping and ancillary equipment.
- (4) Any inspector certified to inspect UST systems under paragraph (F) of this rule who observes activity that is in conflict with normal work or safety requirements referenced by this chapter shall immediately notify the certified UST installer of the activity. If the certified UST installer fails to correct the activity in a timely manner, the certified UST Inspector shall instruct the certified UST installer to secure the UST system in a safe manner and to cease all UST related work. The certified UST inspector shall immediately notify the fire marshal, and work shall not resume until approval is given by the fire marshal.

(D) Application and examination requirements for an UST inspector

Any individual who wishes to apply to become certified as an UST inspector shall meet all of the following application requirements:

- (1) The applicant shall submit a complete application to the fire marshal, on a form prescribed and furnished by the fire marshal, accompanied by a non-refundable examination fee of twenty-five dollars;
- (2) The applicant shall be an individual and shall be at least eighteen years of age;
- (3) If the applicant is not a resident of Ohio, the applicant shall provide an irrevocable consent to legal service from Ohio on a form prescribed and furnished by the fire marshal;
- (4) The applicant shall demonstrate compliance with one of the following:
 - (a) Has obtained a certificate of completion from an UST installer training program pursuant to paragraphs (M)(3)(a) to (M)(3)(c) or (M)(9) of rule 1301:7-9-11 of the Administrative Code; or
 - (b) Is a certified UST installer;
- (5) The applicant shall be a certified fire safety inspector as that term is defined in division (D) of section 3737.01 of the Revised Code.
- (6) The applicant has not been convicted of a felony;
- (7) The applicant shall not have had any authorization to act as a certified UST inspector pursuant to this rule previously revoked by the fire marshal;
- (8) The applicant shall complete an UST inspector training program in accordance with paragraph (E) of this rule and submit an application to become a certified UST inspector under paragraph (D)(1) of this rule within one year of completing the UST inspector training program; and
- (9) The applicant shall satisfactorily pass the UST inspector examination.
 - (a) The examination shall be a written multiple-choice examination covering all aspects of the inspection of the installation, repair, closure-in-place, removal, modification, placing out of service, and performing a change in service of underground storage tank systems. The exam shall also cover knowledge of sections 3737.88 to 3737.882 of the Revised Code, this chapter of the Administrative Code, current technological and industry recommended practices with respect to the proper installation, repair, closure-in-place, removal, modification, placing out of service, and performing a change in service of UST systems. An applicant may request

permission to take the examination in oral form for good cause shown, as determined by the fire marshal.

- (b) To satisfactorily pass the examination, the applicant shall obtain a minimum score of seventy-five per cent on the exam. Any applicant who fails an examination may request re-examination upon payment of a non-refundable twenty-five dollar fee. An application for re-examination will remain pending for that purpose for a period of one year after the date the application was submitted. If the applicant has not requested re-examination within the one year period, the applicant must file a new application for certification with the fire marshal.
- (c) The examination shall be offered by and at the discretion of the fire marshal at such places as the fire marshal determines. The fire marshal shall announce the time and location of an examination at least twenty days in advance of the exam and shall, at least seven days in advance of the exam, provide notice of the exam to all persons who have completed applications for certification since the date of the previous examination.
- (d) Only persons who have filed applications and submitted fees in accordance with paragraph (D)(1) or (G)(1)(a) of this rule are eligible to take the examination.
- (e) All examinations will be graded and the applicants notified of the results within twenty days of the date of the examination. Examinations will not be returned to the applicant, but may be reviewed by the applicant at the office of the fire marshal or alternate locations as approved by the fire marshal.

(E) UST Inspector training and continuing education programs

- (1) The fire marshal may conduct certified UST inspector training and continuing education programs. Any such program shall include appropriate instructional methods, hands on training, and written pre-test and post-test examinations, as determined by the fire marshal.
- (2) Any individual who wishes to attend a certified UST inspector training or continuing education program shall submit a complete application to the fire marshal, on a form prescribed by the fire marshal, accompanied by a non-refundable fee established by the fire marshal, prior to the first scheduled day of the training program.
- (3) Attendance shall be required at all classroom and hands-on sessions except for valid reasons. The faculty is authorized to determine the validity of absences. Any absentee from any scheduled classroom or hands-on session shall make up such attendance as required by the faculty.

(4) Upon conclusion of any certified UST inspector training or continuing education program, the fire marshal shall issue a certificate of completion to all persons who complied with all of the following requirements:

(a) Attended all of the program's sessions or complied with paragraph (E)(3) of this rule;

(b) Submitted an application and fee to the fire marshal pursuant to paragraph (E)(2) of this rule; and

(c) Successfully completed the program's pre-test and post-test examinations.

(F) Certification to inspect UST systems

(1) The fire marshal shall issue a certification to inspect UST systems to each applicant who meets the requirements of paragraph (D) of this rule. The certification to inspect shall be valid for two years following the date of issuance by the fire marshal.

(2) Individuals possessing valid certifications to inspect UST systems prior to the effective date of this rule may continue to perform UST inspections in accordance with this rule provided that the individual renews the certification to inspect in accordance with paragraph (G) of this rule.

(3) Any certified fire safety inspector that has been assigned on or before December 31, 1996, to conduct UST system inspections by a local fire agency that has been delegated authority pursuant to this rule and is on the list submitted to fire marshal pursuant to paragraph (B)(1)(a) of this rule may continue to conduct UST system inspections within the jurisdictional area of the local fire agency.

(a) The fire marshal shall issue a certification to inspect UST systems to each fire safety inspector who meets the requirements of paragraph (F)(3) of this rule. The certifications to inspect shall be valid for two years following the effective date of this rule and shall limit the fire safety inspector to the jurisdictional area of the local fire agency where assigned.

(b) Each fire safety inspector who meets the requirements of paragraph (F)(3) of this rule shall comply with paragraph (G) of this rule for renewal of certification to inspect UST systems.

(c) The authority of a certified fire safety inspector to inspect UST systems in accordance with paragraph (F)(3) of this rule shall end upon separation of the inspector from the local fire agency.

(G) Renewal of certification to inspect UST systems

- (1) Certifications to inspect UST systems shall be renewed every two years following the date of issuance by the fire marshal. Any individual certified to inspect UST systems pursuant to this rule who wishes to apply for renewal of a certification to inspect shall meet all of the following renewal requirements:
 - (a) Within thirty days prior to the expiration date of the certification to inspect, submit a certification to inspect renewal form to the fire marshal on a form prescribed by and available from the fire marshal accompanied by a non-refundable fee of twenty-five dollars;
 - (b) Demonstrate in a manner prescribed by the fire marshal attendance at all courses required under paragraph (G)(3) of this rule ; and
 - (c) Demonstrate one of the following:
 - (i) The certified UST inspector conducted a minimum of six UST inspections on separate permits pursuant to the certification to inspect that is sought to be renewed; or
 - (ii) The certified UST inspector is listed in accordance with paragraph (B)(1)(a) of this rule as a certified fire safety inspector assigned to conduct UST system inspections by a local fire agency that has been delegated authority pursuant to this rule.
- (2) Any certified fire safety inspector who previously failed to meet the renewal requirements for certification to inspect UST systems may seek renewal of certification to inspect from the fire marshal provided that the following conditions are met:
 - (a) The applicant submits a certification to inspect renewal form to the fire marshal in accordance with paragraph (G)(1)(a) of this rule on or before December 31, 2005;
 - (b) The applicant demonstrates compliance with the requirements of paragraph (G)(1)(b) and (G)(1)(c)(ii) of this rule; and
 - (c) The applicant satisfactorily passes the UST inspector exam described in paragraph (D)(9) of this rule.
- (3) Upon a determination by the fire marshal that substantial changes have been made to sections 3737.87 to 3737.882 of the Revised Code, this chapter of the Administrative Code or UST technology, the fire marshal may require applicants for renewal of certifications to inspect UST systems to complete a continuing education course as specified by the fire marshal as a condition of renewal of certification. The fire marshal shall develop the continuing education

course pursuant to paragraph (E) of this rule and shall notify all certified UST inspectors, in a timely fashion, of the continuing education requirement, the location, dates and times when the course will be offered.

- (4) The fire marshal shall renew a certification to inspect UST systems for each applicant who meets the applicable requirements of paragraph (G)(1) through (G)(2)(c) of this rule. The renewal of a certification to inspect shall be valid for two years following issuance by the fire marshal.
- (5) The fire marshal may grant a variance from the timely submittal of renewal applications if the applicant demonstrates good cause as determined by the fire marshal.

(H) Limitations on authority to inspect

- (1) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems where that certified inspector performed work on the UST system being inspected, supervised the work on the UST system being inspected, or is employed by or associated with the certified installer whose work is being inspected.
- (2) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems for any owner or operator where that certified inspector is employed by the owner or operator or any of the owner's or operator's companies, partnerships, subsidiaries, related companies, or the like. This prohibition does not prevent a certified inspector from conducting the necessary inspection when the only relationship between the certified inspector and the owner or operator is that associated with the inspection itself.
- (3) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems for any owner or operator where the certified inspector is employed by the certified UST installer being inspected or any of the certified UST installer's companies, partnerships, subsidiaries, related companies, or the like.
- (4) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems where the certified inspector is the owner or operator of the UST systems being inspected, is a partner in the partnership that

is the owner or operator of the UST systems being inspected, or owns a substantial interest in any subsidiary of, related company to, or corporation that is the owner or operator of the UST systems being inspected. For purposes of this rule, "substantial interest" means the ability to directly influence the day-to-day operations of the subsidiary, related company, or corporation, including but not limited to the ability to hire, evaluate and dismiss employees.

- (5) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems where the certified inspector is the certified UST installer being inspected, is a partner in the partnership that is the certified UST installer being inspected, or owns a substantial interest in a subsidiary of, related company to, or corporation that is the certified UST installer being inspected. For purposes of this rule, "substantial interest" means the ability to directly influence the day-to-day operations of the subsidiary, related company, or corporation, including but not limited to the ability to hire, evaluate and dismiss employees.
- (6) Any individual certified to inspect UST systems pursuant to this rule shall not inspect the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems where the certified inspector is employed by or associated with a corporation, association, partnership, individual or any other group or person providing any service related to the environmental assessment or testing for the installation of, making major repairs on site to, closure-in-place of, removal of, modification of, change in service of or placing out of service more than ninety days of UST systems, including, without limitation, the collection of any sample or preparation of any reports or other documents required pursuant to rule 1301:7-9-12 of the Administrative Code.

(I) Operational and reporting requirements for certified UST inspectors

- (1) For each visit to a location to conduct a permit inspection, the certified UST inspector shall entirely and accurately complete an inspection report on a form prescribed and provided by the fire marshal, obtain the signature of the certified installer engaged in the activity inspected, and sign the inspection report prior to leaving the location.
- (2) Within thirty days of an inspection, the certified UST inspector shall cause the original of the completed inspection report form required by paragraph (I)(1) of this rule to be delivered to the fire marshal. Those inspection report forms originating in areas where authority has been delegated to the certified fire safety inspectors of the local fire agency in accordance with paragraph (B)(2) of the is rule shall be submitted to the fire marshal in accordance with paragraph (B)(2)(a) of this rule.

- (3) Prior to leaving the permit inspection location, the certified UST inspector shall cause a copy of the completed inspection report form required by paragraph (I)(1) of this rule to be delivered to the owner or the owners' representative of the UST system upon which the inspection was performed.
 - (4) A certified UST inspector shall inform the fire marshal of any change in the certified inspector's mailing address within thirty days of the change of address becoming effective. Notice of any change in a mailing address shall be in writing and directed to the fire marshal.
 - (5) A certified UST inspector shall conduct all inspections pursuant to and consistent with the inspection report form prescribed by the fire marshal and in accordance with all applicable requirements of this chapter.
- (J) Grounds for denial to issue, refusal to renew, suspension, or revocation of a certificate to inspect UST systems.
- (1) Any application for a certification to inspect UST systems shall be denied by the fire marshal in accordance with Chapter 119. of the Revised Code when any of the following occur:
 - (a) The applicant failed to demonstrate compliance with any requirement in paragraphs (D)(1) to (D)(9)(e) of this rule; or
 - (b) The applicant made a misrepresentation or submitted false statements with the initial application.
 - (2) An application for renewal of a certification to inspect UST systems shall be denied by the fire marshal pursuant to Chapter 119. of the Revised Code when any of the following occur:
 - (a) The applicant failed to demonstrate compliance with paragraphs (G)(1) to (G)(5) of this rule;
 - (b) The applicant made a misrepresentation or submitted false statements with the renewal application;
 - (c) The applicant obtained initial certification to inspect or any renewal of a certification to inspect through fraud or misrepresentation; or
 - (d) The applicant has been convicted of a felony.
 - (3) Any certification to inspect and any renewal of a certification to inspect issued pursuant to this rule may be suspended or revoked by the fire marshal pursuant to Chapter 119. of the Revised Code for any of the following reasons:

- (a) The certified inspector obtained initial certification to inspect or any renewal thereof through fraud or misrepresentation;
- (b) The certified inspector was not present at the location during the performance of any activities described in paragraphs (C)(3) to (C)(3)(k) of this rule;
- (c) The certified inspector failed to demonstrate compliance with any of the operation and reporting requirements in paragraphs (I) to (I)(5) of this rule;
- (d) The certified inspector fails to attend any continuing education training required by the fire marshal pursuant to paragraph (G)(3) of this rule within the time period prescribed by the fire marshal;
- (e) The certified inspector filed any false document with the fire marshal related to any inspection conducted pursuant to certification to inspect granted pursuant to this rule;
- (f) The certified inspector violated a provision of this chapter;
- (g) The certified inspector has been convicted of a felony;
- (h) The certified inspector has conducted any inspection prohibited by paragraphs (H) to (H)(6) of this rule; or
- (i) The certified inspector has conducted any inspection pursuant to this rule in a manner that is less than reasonable and prudent using guidelines and procedures established in training required by paragraphs (E)(1) of this rule.

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