

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 1301:7-9-05

**Rule Type:** Amendment

**Rule Title/Tagline:** Financial responsibility for petroleum underground storage tank systems.

**Agency Name:** Department of Commerce

**Division:** Division of State Fire Marshal

**Address:** 8895 East Main Street Reynoldsburg OH 43068

**Contact:** David Sauer **Phone:** 614-752-7096

**Email:** David.Sauer@com.state.oh.us

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 6/7/2022
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3737.882
5. **What statute(s) does the rule implement or amplify?** 3737.882
6. **What are the reasons for proposing the rule?**

Five-year rule review required pursuant to ORC 106.03.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Rule 1301:7-9-05 requires petroleum underground storage tank owners to obtain a certificate of coverage in the State Assurance Fund from the Petroleum Underground Storage Tank Release Compensation Board. Owners must also demonstrate financial responsibility to comply with the deductible coverage requirement.

The only revisions to the rule being proposed at this time are clarifications that where a federal statute or regulation is cited within the rule, language is added or revised to clearly indicate that the version of the federal statute or regulation is that which is in effect at the time this administrative rule is adopted. This language occurs in six places within the body of the rule itself:

- Subparagraph (B)(3)(b)
- Subparagraph (B)(3)(h)
- Subparagraph (B)(3)(i)
- Subparagraph (L)(2)(b)
- Subparagraph (L)(2)(c)
- Subparagraph (L)(2)(d)

Additionally, Appendix A contains a chart with thirteen separate mentions of federal regulations, and Appendix F contains mentions of federal statutes at section 6(I) and section 7(B). Appropriate language is proposed to be added to these appendices as well.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated material consists solely of federal statutes and regulations, which are readily available online.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

Not Applicable

Not Applicable

**12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**

**14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

**15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

### **III. Common Sense Initiative (CSI) Questions**

**16. Was this rule filed with the Common Sense Initiative Office? Yes**

**17. Does this rule have an adverse impact on business? Yes**

**A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

**B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

Pursuant to ORC 3737.882(C)(2), violations of most BUSTR rules, including this one, are subject to a statutory civil penalty of up to \$10,000 per violation per day. As a practical matter, however, violators are provided an opportunity to return to compliance well before a civil penalty is considered.

**C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

A UST owner must notify BUSTR of whichever financial mechanism it selects to prove its ability to meet its deductible.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes**

A UST owner will have to arrange for the establishment of a financial mechanism to meet its deductible.

**IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))**

- 18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?**

Not Applicable

## Rule Summary and Fiscal Analysis

### Part B - Local Governments Questions

**1. Does the rule increase costs for:**

<b>A. Public School Districts</b>	Yes
<b>B. County Government</b>	Yes
<b>C. Township Government</b>	Yes
<b>D. City and Village Governments</b>	Yes

**2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000 depending on the number of underground storage tanks being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**3. Is this rule the result of a federal government requirement? Yes**

- A. If yes, does this rule do more than the federal government requires? No**
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

*Not Applicable*

**4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**

**A. Personnel Costs**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible

required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**B. New Equipment or Other Capital Costs**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**C. Operating Costs**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**D. Any Indirect Central Service Costs**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**E. Other Costs**

Based on information provided by financial institutions historically involved with offering letters of credit and other relevant financial instruments, the costs for the various mechanisms that are used to cover the deductible required by OAC 1301:7-9-05 range from \$0.00 (for qualifying political subdivisions) to \$8,000.00 depending on the number of underground storage tanks (UST) being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust. These cost estimates were developed in connection with previous filings of this rule, and SFM-BUSTR believes that they are still accurate.

**5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.**

School districts, townships, counties, and municipal corporations are required to comply with the requirement to have a mechanism to ensure coverage of the deductible. These costs are the ordinary costs of conducting the business of the local government entity, which will come from the normal operating budgets of the entities.

**6. What will be the impact on economic development, if any, as the result of this rule?**

By maintaining financial responsibility and access to the Ohio Financial Assurance Fund, the number of properties left abandoned and contaminated is reduced, resulting in economic development through the increased availability of marketable real estate.

## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

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**(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes**

**Please list each contact.**

API-Ohio  
County Commissioners' Association of Ohio  
County Engineers Association of Ohio  
Ohio Chamber of Commerce  
Ohio Contractors Association  
Ohio Council of Retail Merchants  
Ohio Department of Development  
Ohio Department of Transportation  
Ohio Environmental Council  
Ohio Fire Chiefs' Association  
Ohio Hospital Association  
Ohio Manufacturers' Association  
Ohio Municipal League  
Ohio Petroleum Contractors Association  
Ohio Petroleum Marketers and Convenience Store Association, nka Ohio Energy and Convenience Association



Ohio Petroleum UST Release Compensation Board  
Ohio School Boards Association  
Ohio Township Association

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

**Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)**

The requirements for maintaining financial responsibility are described in the Code of Federal Regulations (40 CFR Part 280, subpart H). The language in this rule is adapted directly from the federal rule. The federal government requires states to implement financial responsibility regulations in order to maintain funding for underground storage tank regulatory programs.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? Yes**

**Is the proposed rule or rule amendment more stringent than its federal counterpart?**  
*No Not Applicable*

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**