

1301:7-9-05

**Financial responsibility for petroleum underground storage tank systems.****(A) Purpose.**

For the purpose of prescribing rules pursuant to division (B) of section 3737.882 of the Revised Code, the state fire marshal hereby adopts this rule to establish financial responsibility requirements for underground storage tank systems containing petroleum. 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."

**(B) Applicability.**

- (1) Except as otherwise provided in paragraphs (B)(2) and (B)(3) of this rule, owners and operators of all petroleum UST systems within this state shall comply with this rule by the applicable date established in paragraph (D) of this rule.
- (2) Federal government entities whose debts and liabilities are the debts and liabilities of the United States are exempt from the requirements of this rule.
- (3) The requirements of this rule do not apply for any of the following petroleum UST systems:
  - (a) Any UST system holding hazardous wastes listed or identified under Chapter 3745-51 of the Administrative Code, or a mixture of such hazardous waste and petroleum;
  - (b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Federal Water Pollution Control Act (33 U.S.C.A. 1251 and following, as amended at the time of the effective date of this rule);
  - (c) Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (d) Any petroleum UST system whose capacity is one hundred ten gallons or less;
  - (e) Any UST system that contains a de minimis concentration of petroleum;
  - (f) Any emergency spill or overflow petroleum containment UST system that is expeditiously emptied after use;
  - (g) Wastewater treatment tank systems containing petroleum;

- (h) Any petroleum UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. 2011 and following, as amended at the time of the effective date of this rule);
  - (i) Any petroleum UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States nuclear regulatory commission under 10 C.F.R. Part 50, Appendix A, as amended at the time of the effective date of this rule.
- (C) If the owner and operator of a petroleum UST system are separate persons, only one of such persons is required to obtain and demonstrate financial responsibility for that particular petroleum UST system; however, both persons are liable in event of noncompliance. Regardless of which person complies, the date for compliance with this rule regarding a particular petroleum UST system as set forth in paragraph (D) of this rule shall be determined by the characteristics of the owner.
- (D) Compliance date.

Owners and operators of petroleum UST systems shall comply with the requirements of this rule upon the effective date of this rule.

(E) Definitions.

For the purposes of this rule:

- (1) "Accidental release" means any sudden or nonsudden release of petroleum that was neither expected nor intended by the owner or operator of the applicable UST system and that results in the need for corrective action or compensation for bodily injury or property damage.
- (2) "Chief financial officer", in the case of state or a political subdivision owner or operator, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the state or political subdivision.
- (3) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:
  - (a) A 10-K report submitted to the United States securities and exchange commission;
  - (b) An annual report of tangible net worth submitted to Dun and Bradstreet;

(c) Annual reports of tangible net worth submitted to the United States energy information administration, the United States rural utilities service, or the Ohio department of commerce; or

(d) A special report by an independent certified public accountant pursuant to paragraph (L)(4)(c) of this rule.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

(4) "Fund" is the petroleum underground storage tank financial assurance fund created by division (A) of section 3737.91 of the Revised Code.

(5) "Fund deductible" is the deductible amount for the fund established pursuant to division (E) of section 3737.91 of the Revised Code.

(6) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought by the following:

(a) United States environmental protection agency or the state to require corrective action or to recover the costs of corrective action;

(b) A third party for bodily injury or property damage caused by an accidental release or by any person on behalf of such a third party; or

(c) A person to enforce the terms of a financial assurance mechanism.

(7) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a petroleum UST system. As used in this rule, the definition of "occurrence" is intended to clarify the scope of coverage under this rule and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

(8) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(9) "Petroleum marketers" are all persons owning petroleum marketing facilities. Persons owning other types of facilities with petroleum UST systems as well as petroleum marketing facilities are considered to be petroleum marketers.

- (10) "Property damage" includes, without limitation, liability for corrective actions associated with releases from petroleum UST systems.
- (11) "Provider of financial assurance" means a person that provides financial assurance to an owner or operator of a petroleum UST system through one of the mechanisms listed in paragraphs (L) to (R) of this rule including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.
- (12) "Reduced fund deductible" is the reduced deductible amount for the fund established pursuant to division (F) of section 3737.91 of the Revised Code.
- (13) "Substantial governmental relationship" means the extent of a governmental relationship necessary under Ohio law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as conterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.
- (14) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular person as a result of past transactions.

(F) Amount and scope of required financial responsibility.

- (1) Owners and operators of petroleum UST systems shall obtain and demonstrate for each of the petroleum UST systems within this state which they own or operate financial responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the petroleum UST systems in the amount of one million dollars per occurrence.
- (2) Owners and operators of petroleum UST systems shall obtain and demonstrate for each of the petroleum UST systems within this state which they own or operate financial responsibility for both taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the petroleum UST systems in at least the following annual aggregate amounts:

- (a) For owners or operators of one to one hundred tanks within this state which comprise petroleum UST systems, one million dollars; and
  - (b) For owners or operators of one hundred one or more tanks within this state which comprise petroleum UST systems, two million dollars.
- (3) The amounts of assurance required under paragraphs (F)(1) and (F)(2) of this rule exclude legal defense costs.
- (4) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.
- (G) The fund.
- (1) Owners and operators of petroleum UST systems shall obtain and demonstrate a valid certificate of coverage in the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each tank within this state comprising a petroleum UST system.
  - (2) Owners and operators of petroleum UST systems within this state shall obtain and demonstrate financial responsibility for each such petroleum UST system so as to comply with the deductible coverage requirements described in paragraph (H) of this rule.
- (H) Deductible coverage requirements.
- (1) Subject to the limitations and requirements of paragraphs (I) and (J) of this rule, and in addition to participation in the fund, owners and operators of petroleum UST systems shall obtain and demonstrate financial responsibility for each petroleum UST system within this state using one of the mechanisms listed in paragraphs (L) to (V) of this rule in an amount equal to the following applicable per-occurrence amount:
    - (a) If the owner or operator has paid for the year the annual petroleum underground storage tank financial assurance fee established pursuant to division (B) of section 3737.91 of the Revised Code for the tanks comprising the petroleum UST system, the fund deductible; and
    - (b) If the owner or operator has paid for the year the additional fee established pursuant to division (F) of section 3737.91 of the Revised Code for the tanks comprising the petroleum UST system, the reduced fund deductible.

- (2) The financial responsibility required by this paragraph shall include responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release from petroleum UST systems.

(I) Combination of allowable mechanisms.

- (1) Each allowable mechanism described in paragraphs (L) to (V) of this rule which is used by an owner or operator to comply with paragraph (H)(1) of this rule shall include responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by any accidental release from petroleum UST systems.
- (2) In complying with paragraph (H)(1) of this rule, owners and operators shall use only one of the mechanisms described in paragraphs (L) to (V) of this rule for any single petroleum UST system. A single allowable mechanism may specify more than one petroleum UST system for which the mechanism provides coverage.
- (3) If an owner or operator uses different allowable mechanisms for different petroleum UST systems within this state to comply with paragraph (H) of this rule, each such different mechanism shall comply with paragraph (H) of this rule.

(J) Aggregate amounts for self-insurance, insurance, and risk retention group coverage.

- (1) If an owner or operator uses the self-insurance mechanism described in paragraph (L) of this rule to comply with paragraph (H) of this rule for any petroleum UST system within this state, the owner or operator shall, in computing the financial test described in paragraph (L) of this rule, use the applicable annual aggregate from the following table:

Number of tanks covered by mechanism:	Per occurrence amount*:	Annual aggregate:
1-6	reduced fund deductible	reduced fund deductible
7-100	fund deductible	fund deductible
101-200	fund deductible	2 x fund deductible
201-300	fund deductible	3 x fund deductible
301 or more	fund deductible	4 x fund deductible

\* the per-occurrence amount for the tanks covered required by paragraph (H) (1) of this rule.

- (2) If an owner or operator uses the insurance or risk retention group coverage described in paragraph (N) of this rule to comply with paragraph (H) of this rule for any petroleum UST system within this state, the owner or operator shall obtain and demonstrate such coverage in at least the applicable annual aggregate amount from the following table:

Number of tanks covered by mechanism	Per occurrence amount*:	Annual aggregate:
1-6	reduced fund deductible	2 x reduced fund deductible
7-100	fund deductible	2 x fund deductible
101-200	fund deductible	3 x fund deductible
201-300	fund deductible	4 x fund deductible
301 or more	fund deductible	5 x fund deductible

\*the per-occurrence amount for the tanks covered required by paragraph (H) (1) of this rule.

- (3) If an owner or operator uses any mechanism described in paragraph (M) or paragraphs (O) to (R) of this rule to comply with paragraph (H) of this rule for any petroleum UST system within this state, the annual aggregate amount of coverage provided by the mechanism shall be at least equal to the per-occurrence amount for the tanks required by paragraph (H)(1) of this rule.

(K) New installations or new acquisitions.

- (1) If additional tanks comprising petroleum UST systems are installed, the owner and operator shall obtain and demonstrate a valid certificate of coverage in the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each additional tank prior to introducing petroleum into the tank. In addition, the owner and operator shall obtain and demonstrate financial responsibility in compliance with paragraph (H) of this rule for each additional tank prior to introducing petroleum into the tank.
- (2) If additional existing tanks comprising petroleum UST systems are acquired, the owner and operator shall obtain and demonstrate a valid certificate of coverage

in the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each additional tank prior to bringing the tank into operation. In addition, the owner and operator shall obtain and demonstrate financial responsibility in compliance with paragraph (H) of this rule for each additional tank prior to bringing the tank into operation.

- (3) If an owner or operator is using self-insurance, insurance, or risk retention group coverage to comply with paragraph (H) of this rule, and if the number of additional tanks comprising petroleum UST systems within this state installed or acquired results in such a number of tanks so as to require a greater annual aggregate amount of coverage pursuant to paragraph (J)(1) or (J)(2) of this rule, the amount of such additional annual aggregate coverage necessary to comply with paragraph (J)(1) or (J)(2) of this rule shall be obtained and demonstrated by the owner and operator by the first-occurring effective date anniversary of the self-insurance, insurance, or risk retention group coverage used to provide coverage.

(L) Financial test of self-insurance.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by passing a financial test as specified in this paragraph. To pass the financial test of self-insurance, the owner or operator shall meet the criteria of this paragraph based on year-end financial statement for the latest completed fiscal year.
- (2) The owner or operator shall have a tangible net worth of at least ten times the sum of the following:
  - (a) The applicable annual aggregate required by paragraph (J)(1) of this rule;
  - (b) The total of the applicable aggregate amount required by 40 C. F. R. 280.93 based on the number of USTs located in states other than Ohio for which a financial test is used to demonstrate financial responsibility to the United States environmental protection agency under 40 C.F.R. 280.95 or to another state implementing agency under a state program approved by the United States environmental protection agency under 40 C.F.R. Part 281;
  - (c) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the United States environmental protection agency under 40 C. F. R. 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by the



United States environmental protection agency under 40 C.F.R. Part 271 including, without limitation, the Ohio environmental protection agency under agency 3745 of the Administrative Code; and

- (d) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the United States environmental protection agency under 40 C.F.R. 144.63 or to a state implementing agency under a state program authorized by the United States environmental protection agency under 40 C.F.R. Part 145 including, without limitation, the Ohio environmental protection agency under agency 3745 of the Administrative Code and the Ohio department of natural resources under division 1501:9 of the Administrative Code.

All references in this subparagraph to federal regulations found in Title 40 of the Code of Federal Regulations are as those regulations were amended as of the effective date of this rule.

- (3) The owner or operator shall maintain a letter signed by the chief financial officer worded as specified in appendix A to this rule.
- (4) The owner or operator shall comply with at least one of the following:
  - (a) File financial statements annually with the United States securities and exchange commission, the United States energy information administration, the United States rural utilities service, or the Ohio department of commerce;
  - (b) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A; or
  - (c) Have an independent certified public accountant conduct an audit or a review of the fiscal year-end financial statements of the owner or operator and prepare a special report wherein the independent certified public accountant states both of the following:
    - (i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and
    - (ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted

- (5) The owner's or operator's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (6) To demonstrate that it meets the financial test under this rule, the chief financial officer of the owner or operator, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as written in appendix A to this rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- (7) Within one hundred twenty days of the end of each subsequent financial reporting year, owners and operators using the self-insurance mechanism shall evaluate whether they meet the financial test described in this paragraph. If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain and demonstrate alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (8) The state fire marshal may require reports of financial condition at any time from the owner or operator. If the state fire marshal determines, on the basis of such reports or other information, that the owner or operator no longer meets the financial test requirements of this paragraph, the owner or operator shall obtain and demonstrate alternate coverage in compliance with this rule within thirty days after notification of such a determination by the state fire marshal.
- (9) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of the end of the financial reporting year after finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the state fire marshal that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the state fire marshal of such failure within ten days.

(M) Guarantee.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by obtaining a guarantee that conforms to the requirements of this paragraph.
- (2) The guarantor shall be in compliance with all applicable sections of Title XXXIX of the Revised Code.

- (3) An owner or operator who uses a guarantee to satisfy the requirements of paragraph (H) of this rule shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the state fire marshal. This standby trust fund shall meet the requirements specified in paragraph (R) of this rule.
- (4) The guarantee shall be worded as written in appendix B to this rule, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (5) The owner or operator shall maintain an original of the guarantee worded as specified in paragraph (M)(4) of this rule.

(N) Insurance and risk retention group coverage.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by obtaining liability insurance that conforms to the requirements of paragraphs (N)(2) and (N)(3) of this rule from an insurer or risk retention group in compliance with Title XXXIX of the Revised Code. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
- (2) Each insurance policy shall be amended by an endorsement worded as specified in the portion of appendix C to this rule entitled "Endorsement" or evidenced by a certificate of insurance worded as specified in the portion of appendix C to this rule entitled "Certificate of Insurance", except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- (3) The insurer or risk retention group which issues a policy shall provide to the state fire marshal copies of all payments made under the policy within ten days of making payment.
- (4) If, after a payment under the policy by an insurer or risk retention group, the state fire marshal determines that the annual aggregate remaining under the policy is less than the applicable per-occurrence amount required under paragraph (H) (1) of this rule for any tank comprising a petroleum UST system within this state, the owner or operator shall obtain and demonstrate alternate coverage in compliance with this rule within thirty days after notification of such a determination by the state fire marshal.
- (5) The owner or operator shall maintain a copy of either the endorsement or certificate of insurance worded as specified in paragraph (N)(2) of this rule.

(O) Surety bond.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by obtaining a surety bond that conforms to the requirements of paragraphs (O) (2) and (O)(3) of this rule. The surety company issuing the bond shall be in compliance with all applicable sections of Title XXXIX of the Revised Code.
- (2) The surety bond shall be worded as written in appendix D to this rule, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- (3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
- (4) The owner or operator who uses a surety bond to satisfy the requirements of paragraph (H) of this rule shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with instructions from the state fire marshal under paragraphs (AA) (1) to (AA)(3) of this rule. This standby trust fund shall meet the requirements specified in paragraph (H) of this rule.
- (5) The owner or operator shall maintain an original of the surety bond worded as specified in paragraph (O)(2) of this rule.

(P) Letter of credit.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by obtaining an irrevocable standby letter of credit that conforms to the requirements of paragraph (P)(2) of this rule. The issuing institution shall be an entity that has the authority to issue letters of credit in the state of Ohio and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (2) The letter of credit shall be worded as written in appendix E to this rule, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (3) An owner or operator who uses a letter of credit to satisfy the requirements of paragraph (H) of this rule shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the state fire marshal shall be deposited by the issuing

institution directly into the standby trust fund in accordance with instructions from the state fire marshal under paragraphs (AA)(1) to (AA)(3) of this rule. This standby trust fund shall meet the requirements specified in paragraph (H) of this rule.

- (4) The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.
- (5) The owner or operator shall maintain an original of the letter of credit worded as specified in paragraph (P)(2) of this rule.

(Q) Trust fund.

- (1) An owner or operator may satisfy the requirements of paragraph (H) of this rule by establishing a trust fund that conforms to the requirements of this paragraph. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency, the Ohio department of commerce, or an agency of the state in which the fund is established.
- (2) The wording of the trust agreement shall be identical to the wording specified in appendix F to this rule, and must be accompanied by a formal certification of acknowledgement as specified in appendix G to this rule.
- (3) The trust fund, when established, shall be funded for the applicable full required amount of coverage specified in paragraph (H)(1) of this rule.
- (4) If the value of the trust fund is greater than the applicable required amount of coverage specified in paragraph (H)(1) of this rule, the owner or operator may submit a written request to the state fire marshal for release of the excess if such a release is not provided for under the terms of the trust agreement.
- (5) If other financial assurance as specified in paragraph (W) of this rule is substituted for all of the trust fund, the owner or operator may submit a written request to the state fire marshal for release of the excess.
- (6) Within sixty days after receiving a request from the owner or operator for release of funds as specified in paragraph (Q)(4) or (Q)(5) of this rule, the state fire

marshal shall instruct the trustee to release to the owner or operator such funds as the state fire marshal specifies in writing.

- (7) The owner or operator shall maintain an original of the trust agreement and certification worded as specified in paragraph (Q)(2) of this rule.

(R) Standby trust fund.

- (1) An owner or operator using any one of the mechanisms authorized by paragraph (M), (O), (P), or (U) of this rule shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency, the Ohio department of commerce, or an agency of the state in which the fund is established.
- (2) The standby trust agreement, or trust agreement, shall be worded as written in appendix F to this rule, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (3) The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgement worded as written in appendix G to this rule.
- (4) The state fire marshal may instruct the trustee to refund the balance of the standby trust fund or trust fund to the provider of financial assurance if the state fire marshal determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund or trust fund was established.
- (5) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.
- (6) The owner or operator shall maintain an original of the standby trust agreement and certification worded as specified in paragraphs (R)(2) and (R)(3) of this rule.

(S) State or political subdivision bond rating test.

- (1) Only the state or a political subdivision owner or operator may use the state or political subdivision bond rating test established in this paragraph to satisfy the requirements of paragraph (H) of this rule.
- (2) The state or a general purpose political subdivision owner or operator, or the state or a political subdivision serving as a guarantor may satisfy the requirements

of paragraph (H) of this rule by having a currently outstanding issue or issues of general obligation bonds of one million dollars or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A or Baa, or a "Standard & Poor's" rating of AAA, AA, A, or BBB. Where the state or political subdivision has multiple outstanding issues, or where the state or political subdivision's bonds are rated by both Moody's and "Standard & Poor's," the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding.

- (3) A political subdivision owner or operator, or political subdivision serving as a guarantor that is not a general purpose political subdivision and does not have the legal authority to issue general obligation bonds may satisfy the requirements of paragraph (H) of this rule by having a currently outstanding issue or issues of revenue bonds of one million dollars or more, excluding refunded issues, and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a "Standard & Poor's" rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the political subdivision. Where bonds are rated by both Moody's and "Standard & Poor's," the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement shall not be considered in determining the amount of applicable bonds outstanding.
- (4) The state or a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor shall maintain a copy of its bond rating published within the last twelve months by Moody's or "Standard & Poor's."
- (5) To demonstrate that it meets the state or political subdivision bond rating test set forth in this paragraph, the chief financial officer of the state or a general purpose political subdivision owner or operator, or the chief financial officer of the state or a political subdivision service as a guarantor shall sign a letter worded exactly as written in appendix H to this rule, except that the instructions in square brackets are to be replaced by the relevant information and the square brackets deleted.
- (6) To demonstrate that it meets the state or political subdivision bond rating test set forth in this paragraph, the chief financial officer of a political subdivision owner or operator, or a political subdivision serving as a guarantor other than a general purpose political subdivision shall sign a letter worded exactly as written in appendix I to this rule, except that the instructions in square brackets are to be replaced by the relevant information and the square brackets deleted.

- (7) The state fire marshal may require reports of financial condition at any time from the state or a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor. If the state fire marshal determines, on the basis of such reports or other information, that the state or a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor, no longer meets the state or political subdivision bond rating test requirements of this paragraph, the state or a political subdivision owner or operator shall obtain alternative coverage within thirty days after notification of such finding.
  - (8) If the state or a political subdivision owner or operator using this bond rating test to provide financial assurance finds that it no longer meets the state or political subdivision bond rating test requirements, the state or a political subdivision owner or operator shall obtain alternative coverage within one hundred fifty days of the change in status.
- (T) State or political subdivision financial test.
- (1) The state or a political subdivision owner or operator may satisfy the requirements of paragraph (H) of this rule by passing the state or political subdivision financial test specified in this paragraph. To be eligible to use the state or political subdivision financial test, the state or a political subdivision owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the state or political subdivision financial test, the state or political subdivision owner or operator shall meet the criteria established in paragraphs (T)(2)(b) and (T)(2)(c) of this rule based on year-end financial statements for the latest completed fiscal year.
  - (2)
    - (a) The state or a political subdivision owner or operator shall have the following information available, as shown in the year-end financial statement for the latest completed fiscal year:
      - (i) Total revenues: consists of the sum of general fund operating and non-operating revenues including net state or local taxes (as applicable), licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprises, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this state or political subdivision financial test, the calculation of total revenues shall



exclude all transfers between funds under the direct control of the state or political subdivision using the state or political subdivision financial test (interfund transfers), liquidation of investments, and issuance of debt.

- (ii) Total expenditures: consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this state or political subdivision financial test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the state or political subdivision using this state or political subdivision financial test (interfund transfers).
- (iii) Local revenues: consists of total revenues (as defined in paragraph (T)(2)(a)(i) of this rule) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (iv) Debt service: consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
- (v) Total funds: consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the state's or political subdivision's financial reporting year. Includes federal securities, federal agency securities, state and political subdivision securities, and other securities such as bonds, notes and mortgages. For the purpose of this state or political subdivision financial test, the calculation of total funds shall exclude agency funds, private funds, private trust

funds, accounts receivable, value of real property, and other non-security assets.

- (vi) Population: consists of the number of people in the area served by the state or political subdivision.
  - (b) The state's or political subdivision's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The state or political subdivision cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.
  - (c) The state or political subdivision owner or operator shall have a letter signed by the chief financial officer worded as specified in paragraph (T)(3) of this rule.
- (3) To demonstrate that it meets the state or political subdivision financial test contained in this paragraph, the chief financial officer of the state or political subdivision owner or operator, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support this state or political subdivision financial test are prepared, a letter worded exactly as written in appendix J to this rule, except that the instructions in the square brackets are to be replaced by the relevant information and the square brackets deleted.
  - (4) If the state or a political subdivision owner or operator using this state or political subdivision financial test to provide financial assurance finds that it no longer meets the requirements of the state or political subdivision financial test based on the year-end financial statements, the state or political subdivision owner or operator shall obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
  - (5) The state fire marshal may require reports of financial condition at any time from the state or political subdivision owner or operator. If the state fire marshal determines, on the basis of such reports or other information, that the state of a political subdivision owner or operator no longer meets the state or political subdivision financial test requirements of this paragraph, the state or political subdivision owner or operator shall obtain alternative coverage within thirty days after notification of such finding.
  - (6) If the state or political subdivision owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the state or political subdivision financial test based on the

year-end financial statements or within thirty days of notification by the state fire marshal that it no longer meets the requirements of this state or political subdivision financial test, the state or political subdivision owner or operator shall notify the state fire marshal of such failure within ten days.

(U) Political subdivision guarantee.

- (1) The political subdivision owner or operator may satisfy the requirements of paragraph (H) of this rule by obtaining a guarantee that conforms to the requirements of this paragraph. The guarantor must be either the state in which the political subdivision owner or operator is located or a political subdivision having a substantial governmental relationship with the political subdivision owner or operator and issuing the guarantee as an act incident to that relationship. A political subdivision acting as the guarantor must:
  - (a) Demonstrate that it meets the state or political subdivision bond rating tests requirements of paragraph (S) of this rule and deliver a copy of the applicable chief financial officer's letter as contained in paragraph (S)(5) or (S)(6) of this rule to the political subdivision owner or operator;
  - (b) Demonstrate that it meets the state or political subdivision financial test requirements of paragraph (T) of this rule and deliver a copy of the chief financial officer's letter as contained in paragraph (T)(3) of this rule to the political subdivision owner or operator; or
  - (c) Demonstrate that it meets the state or political subdivision fund requirements of paragraph (V) of this rule and deliver a copy of the chief financial officer's letter as contained in paragraph (V)(2) of this rule to the political subdivision owner or operator.
- (2) If the political subdivision guarantor is unable to demonstrate financial assurance under paragraph (S), (T), or (V) of this rule, at the end of the financial reporting year, the political subdivision guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the political subdivision owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the political subdivision owner or operator receives the notification, as evidenced by the return receipt. The political subdivision owner or operator shall obtain alternative coverage as specified in paragraph (CC)(3) of this rule.
- (3) The guarantee agreement shall be worded as specified in paragraphs (U)(4)(a) and (U)(4)(b) or (U)(5)(a) and (U)(5)(b) of this rule, depending on which of the following alternative guarantee agreements is selected:

- (a) If, in the default or incapacity of the political subdivision owner or operator, the guarantor guarantees to fund a standby trust as directed by the state fire marshal, the guarantee shall be worded as specified in paragraph (U)(4)(a) or (U)(4)(b) of this rule; or
- (b) If, in the default or incapacity of the political subdivision owner or operator, the guarantor guarantees to make payments as directed by the state fire marshal for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (U)(5)(a) or (U)(5)(b) of this rule.

(4)

- (a) If the guarantor is the state, the political subdivision guarantee with standby trust shall be worded exactly as written in appendix K to this rule, except that the instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted.
- (b) If the guarantor is a political subdivision, the political subdivision guarantee with standby trust must be worded exactly as written in appendix L to this rule, except that instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted

(5)

- (a) If the guarantor is the state, the political subdivision guarantee without standby trust must be worded exactly as written in appendix M to this rule, except that the instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted.
- (b) If the guarantor is a political subdivision, the political subdivision guarantee without standby trust must be worded exactly as written in appendix N to this rule, except that instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted.

(V) State or political subdivision fund

- (1) The state or political subdivision owner or operator may satisfy the requirements of paragraph (H) of this rule by establishing a dedicated fund account that conforms to the requirements of this paragraph. Except as specified in paragraph (V)(1)(b) of this rule, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

- (a) The fund is dedicated by state constitutional provision, or state or political subdivision statute, chapter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs and is funded for the amount of coverage required by paragraph (H)(1) of this rule;
- (b) The fund is dedicated by state constitutional provision, or state or political subdivision statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum USTs, and is funded for five times the amount of coverage required by paragraph (H)(1) of this rule; or
- (c) The fund is dedicated by state constitutional provision, or state or political subdivision statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. A payment is made to the fund once every year for seven years until this fund is fully funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment shall be determined by this formula:

$$[TF - CF]/Y$$

Where TF is the total required financial assurance for the state or political subdivision owner or operation, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

- (i) The state or political subdivision owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; or
- (ii) The state or political subdivision owner or operation has a letter signed by the Ohio attorney general stating that the use of the bonding authority will not increase the state's or political subdivision's debt

beyond the legal debt ceilings established by the applicable state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

- (2) To demonstrate that it meets the requirements of the state or political subdivision fund, the chief financial officer of the state or political subdivision owner or operator, or the state or political subdivision serving as a guarantor shall sign a letter worded exactly as written in appendix O to this rule, except that the instructions in the square brackets are to be replaced by the relevant information and the square brackets deleted.

(W) Substitution of financial assurance mechanisms by owner or operator.

- (1) An owner or operator may substitute any alternate financial assurance mechanism described in paragraphs (L) to (V) of this rule as specified in this paragraph, provided that at all times he or she maintains an effective financial assurance mechanism that satisfies the requirements of paragraphs (H) and (J) of this rule.
- (2) After obtaining alternate financial assurance as specified in paragraph (W)(1) of this rule, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

(X) Cancellation or nonrenewal by a provider of financial assurance.

- (1) Except as otherwise provided in this paragraph, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.
  - (a) Termination of a political subdivision guarantee, guarantee, a surety bond, or a letter of credit shall not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
  - (b) Termination of insurance, risk retention group coverage, or the fund coverage except for non-payment or misrepresentation by the insured, shall not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or fee or misrepresentation by the insured shall not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (2) If a provider of financial responsibility cancels or fails to renew for reasons other than non-payment of premium or fee or misrepresentation by the insured, or

the incapacity of the provider as specified in paragraph (Y)(1)(b) of this rule, the owner and operator shall obtain alternate coverage as specified in this rule within sixty days after receipt of the notice of termination. If the owner and operator fail to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner and operator shall immediately notify the state fire marshal of such failure and submit:

- (a) The name and address of the provider of financial assurance;
- (b) The effective date of termination; and
- (c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with paragraph (Z)(2) of this rule.

(Y) Reporting by owner and operator.

- (1) Owners and operators shall submit the appropriate forms listed in paragraph (Z)(2) of this rule documenting current evidence of financial responsibility to the state fire marshal:
  - (a) Within thirty days after the owner or operator identifies a release from a UST required to be reported under section 3737.88 or 3737.882 of the Revised Code or this chapter of the Administrative Code.
  - (b) If the owner and operator fail to obtain alternate coverage as required by this rule, within thirty days after the owner or operator receives notice of:
    - (i) Commencement of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U. S. Code, naming a provider of financial assurance as a debtor;
    - (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
    - (iii) Failure of a guarantor to meet the requirements of the financial test; or
    - (iv) Other incapacity of a provider of financial assurance.
  - (c) As required by paragraphs (L)(8), (X)(2), and (CC)(5) of this rule.
- (2) Owners and operators shall certify compliance with the financial responsibility requirements of this rule when notifying the state fire marshal of the installation of a new UST under paragraph (C) of rule 1301:7-9-04 of the Administrative Code.

- (3) Owners and operators shall certify compliance with the financial responsibility requirements of this rule when notifying the state fire marshal of the operation of a previously deferred UST under paragraph (D) of rule 1301:7-9-04 of the Administrative Code.
- (4) The state fire marshal may require an owner or operator to submit evidence of financial assurance as described in paragraph (Z)(2) of this rule or other information relevant to compliance with this rule at any time.

(Z) Recordkeeping.

- (1) Owners and operators shall maintain copies of all financial assurance mechanisms and related documents used to demonstrate financial responsibility under this rule for a UST until released from the requirements of this rule under paragraph (BB) of this rule. Owners and operators shall maintain such evidence at the UST site or the owner's or operator's place of business. Records maintained off-site shall be made available within twenty-four hours upon request of the state fire marshal.
- (2) Owners and operators shall maintain the following types of evidence of financial responsibility:
  - (a) Owners and operators using an assurance mechanism specified in paragraphs (L) to (V) of this rule shall maintain a copy of the instrument worded as specified.
  - (b) Owners and operators using a financial test, or a state or political subdivision financial test or a political subdivision guarantee supported by the state or political subdivision financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year and, if applicable, a copy of the special report prepared by an independent certified public accountant. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
  - (c) Owners and operators using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement
  - (d) A political subdivision owner or operator using a political subdivision guarantee under paragraph (U)(4)(a) or (U)(4)(b) of this rule shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.



- (e) A state or political subdivision owner or operator using the state or political subdivision bond rating test under paragraph (S) of this rule shall maintain a copy of its bond rating published within the last twelve months by Moody's or "Standard & Poor's."
- (f) A political subdivision owner or operator using the political subdivision guarantee under paragraph (U) of this rule, where the guarantor's demonstration of financial responsibility relies on the state or political subdivision bond rating test under paragraph (S) of this rule shall maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or "Standard & Poor's."
- (g) Owners and operators using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (h) Owners and operators shall maintain on file a copy of the current certificate of coverage under the fund.
- (i) A state or political subdivision owner or operator using a state or political subdivision fund under paragraph (V) of this rule shall maintain the following documents:
  - (i) A copy of the state constitutional provision or state or political subdivision statute, charter, ordinance, or order dedicating the fund, and
  - (ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under paragraph (V)(1)(c) of this rule using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.
  - (iii) If the fund is established under paragraph (V)(1)(c) of this rule using incremental funding backed by bonding authority, the state or political subdivision owner or operator shall also maintain documentation of the required bonding authority, including either the results of the voter referendum (under paragraph (V)(1)(c)(i) of this rule), or attestation by the Ohio attorney general as specified under paragraph (V)(1)(c)(ii) of this rule.

- (j) A political subdivision owner or operator using the political subdivision guarantee supported by the state or political subdivision fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.
- (k) An owner or operator using an assurance mechanism specified in paragraphs (L) to (V) of this rule shall maintain an updated copy of a certification of financial responsibility worded as written in appendix P to this rule, except that instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted. Owners and operators shall update this certification whenever the financial assurance mechanism used to demonstrate financial responsibility changes.

(AA) Drawing on financial assurance mechanisms.

- (1) Except as specified in paragraph (AA)(4) of this rule, upon direction from the state fire marshal, the guarantor, surety, or institution issuing a letter of credit shall place the amount of funds stipulated by the state fire marshal, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (a)

- (i) The owner and operator fail to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
- (ii) The state fire marshal determines or suspects that a release from a UST covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the state fire marshal pursuant to section 3737.88 or 3737.882 of the Revised Code or this chapter of the Administrative Code of a confirmed or suspected release from a UST covered by the mechanism; or

- (b) Any of the conditions contained in paragraph (AA)(2) of this rule are satisfied.

- (2) The state fire marshal may draw on a standby trust fund or trust fund when:

- (a) The state fire marshal makes a final determination that a release is suspected or has occurred and corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under sections 3737.88

and 3737.882 of the Revised Code and this chapter of the Administrative Code; or

(b) The state fire marshal has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as written in appendix Q to this rule, except that instructions in square brackets are to be replaced with the relevant information and the square brackets deleted; or

(ii) a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this rule and the state fire marshal determines that the owner or operator has not satisfied the judgment.

(3) If the state fire marshal determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (AA)(2) of this rule may exceed the balance of the trust fund or the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The state fire marshal shall pay third-party liability claims in the order in which the state fire marshal receives certification under paragraph (AA)(2)(b)(i) of this rule, and valid court orders under paragraph (AA)(2)(b)(ii) of this rule.

(4) A state or political subdivision acting as a guarantor under paragraphs (U)(5)(a) to (U)(5)(b) of this rule, shall make payments as directed by the state fire marshal under the circumstances set forth in paragraphs (AA)(1) to (AA)(3) of this rule.

(BB) Release from the requirements.

Owners and operators are no longer required to maintain financial responsibility under this rule for a petroleum UST system after the UST system has been properly closed as required by this chapter of the Administrative Code or, if corrective action is required, after corrective action has been completed in compliance with sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code and the petroleum UST system has been properly closed as required by this chapter of the Administrative Code.

(CC) Bankruptcy or other incapacity of owner or operator or provider of financial assurance and non-payment of premium or fee or misrepresentation by the insured.

- (1) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the state fire marshal by certified mail of such commencement and submit the appropriate forms listed in paragraph (Z)(2) of this rule documenting current financial responsibility.
- (2) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U. S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner and operator by certified mail of such commencement as required under the terms of the guarantee specified in paragraph (M)(4) of this rule.
- (3) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming a state or political subdivision owner or operator as debtor, the state or political subdivision owner or operator shall notify the state fire marshal by certified mail of such commencement and submit the appropriate forms listed in paragraph (Z)(2) of this rule documenting current financial responsibility.
- (4) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming a guarantor providing a state or political subdivision financial assurance as debtor, such guarantor shall notify the state or political subdivision owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in paragraphs (U)(4)(a) to (U)(5)(b) of this rule.
- (5) Owners and operators who obtain financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or a certificate of coverage under the fund established in section 3737.91 of the Revised Code. The owner and operator shall obtain alternate financial assurance as specified in this rule within thirty days after receiving notice of such an event. If the owner and operator do not obtain alternate coverage within thirty days after such notification, they shall notify the state fire marshal of such failure.

- (6) Within thirty days after receipt of notification that the fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner and operator shall obtain alternate financial assurance.
- (7) Within ten days after receipt of notification of termination of insurance, risk retention group coverage, or the fund coverage because of non-payment of premium or fee or misrepresentation by the insured, the owner and operator shall obtain alternate financial assurance.

(DD) Replenishment of financial assurance mechanisms.

- (1) If at any time a standby trust is funded upon the instruction of the state fire marshal with funds drawn from a guarantee, political subdivision guarantee with standby trust, letter of credit, or surety bond, the owner and operator shall within thirty days of being so notified by the state fire marshal:
  - (a) Replenish the value of financial assurance to equal the full amount of coverage required, or
  - (b) Acquire another financial assurance mechanism described in paragraphs (L) to (V) of this rule for an amount equal to the full amount of coverage required.
- (2) For purposes of this paragraph, the full amount of coverage required is the amount of coverage to be provided by paragraphs (H) and (J) of this rule.
- (3) If at any time during the policy period the amount of aggregate remaining under an insurance or risk retention group policy is reduced below either the reduced fund deductible or fund deductible, whichever is applicable, the owner and operator shall within thirty days of being so notified by the state fire marshal:
  - (a) Replenish the value of financial assurance to equal the applicable policy period aggregate under paragraph (J)(2) of this rule, or
  - (b) Acquire another financial assurance mechanism described in paragraphs (L) to (V) of this rule for an amount equal to the full amount of coverage required.
- (4) If at any time a trust agreement balance established pursuant to paragraph (Q) of this rule is reduced below the full amount of coverage required, the owner and operator shall within thirty days of being so notified by the state fire marshal:
  - (a) Replenish the value of the trust agreement to equal the full amount of coverage required, or

- (b) Acquire another financial assurance mechanism described in paragraphs (L) to (P) of this rule for an amount equal to the full amount of coverage required.

Effective:

Five Year Review (FYR) Dates: 6/7/2022

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Certification

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Date

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