

Rule Summary and Fiscal Analysis (Part A)**Department of Commerce**

Agency Name

Division

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1301:7-9-05

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Financial responsibility for petroleum underground storage tank systems.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **3737.882**
5. Statute(s) the rule, as filed, amplifies or implements: **3737.882**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule completed its five-year rule revision pursuant to ORC 106.031 in November 2015. BUSTR is now putting the remainder of its rules through the five-year review, and wishes to have all of its rules on the same review schedule. Additionally, revisions to the federal rule on which this regulation is based became effective in October 2015, and BUSTR did not have time to incorporate those revisions at the time; it does so now.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

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.

BUSTR intends to rescind and replace this rule with a new version that keeps the same requirements, but moves much of the content to several appendices. The rule, as it has existed since 1992, consists largely of the precise wording that must be used in various financial mechanisms that may be used by UST owners to demonstrate their ability to pay the deductible. These financial instruments, while currently contained within individual paragraphs of the rule, have their own outline system that does not match the remainder of the rule text. This makes the regulation difficult to follow and hard to find specific provisions. BUSTR believes that by moving the language of each financial instrument to its own appendix, the rule will be much easier to read and understand.

The new rule also makes minor changes based on recent revisions to the equivalent federal rule, including the deletion of a compliance schedule that expired over twenty years ago. Formatting and style changes were also made.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by

reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

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The rule has no impact on revenues or expenditures.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

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 the previous filing of this rule, and SFM-BUSTR believes that they are still accurate.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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, violators are provided opportunities 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 obtain and notify BUSTR of whichever financial mechanism it selects to prove its ability to meet its deductible.

Rule Summary and Fiscal Analysis (Part B)

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	Yes	Yes	Yes

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

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 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 the previous filing of this rule, and SFM-BUSTR believes that they are still accurate. There are no costs associated with any of the newly-proposed material.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**

4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

Not Applicable.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see response to Question #2, above.

(a) Personnel Costs

Please see response to Question #2, above.

(b) New Equipment or Other Capital Costs

Please see response to Question #2, above.

(c) Operating Costs

Please see response to Question #2, above.

(d) Any Indirect Central Service Costs

Please see response to Question #2, above.

(e) Other Costs

Please see response to Question #2, above.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed 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.

7. Please provide a statement on the proposed rule's impact on economic development.

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.

Environmental Rule Adoption/Amendment Form

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.

Ohio Township Association

Ohio Petroleum Marketers and Convenience Store Association

Ohio Municipal League

Ohio Fire Chiefs' Association

Ohio Environmental Council

Mid-Ohio Regional Planning Commission

County Engineers Association of Ohio

County Commissioners' Association of Ohio

Ohio Department of Development

Ohio EPA

- (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**