

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of State Fire Marshal-BUSTR

Regulation/Package Title: Financial Responsibility – No Change

Rule Number(s): 1301:7-9-05

Date: October 30, 2015

Rule Type:

- ☐ New
☐ Amended

- ☒ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Underground storage tank (“UST”) owners are required to participate in the Petroleum Underground Storage Tank Financial Assurance Fund (“Petro Fund”), an insurance fund that provides coverage to clean up petroleum releases from USTs. In the event of a release, an owner must first meet a deductible before he or she may access the Petro Fund’s monies.

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Pursuant to federal and state law, SFM-BUSTR requires that the UST owner demonstrate an ability to pay the deductible. This regulation describes the various mechanisms that a UST owner may use to show such ability.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 3737.882

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes, this is a federal requirement that Ohio must adopt in order to maintain approval to administer the UST program. The equivalent federal regulations may be found at 40 CFR 280.90, et seq.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Compliance with this regulation allows UST owners to access the Petro Fund, thereby providing the monies necessary to quickly and efficiently remediate releases of petroleum products from USTs. This will mitigate dangers to human health and the environment, while improving the marketability of the property.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

This regulation will be a success if UST owners continue to be able to access the Petro Fund to expedite cleanups.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

SFM-BUSTR contacted the following organizations via e-mail on October 22, 2015, to share its plan to file this rule on a “No Change” basis:

Ohio Township Association

Ohio Petroleum Marketers and Convenience Store Association

Ohio Municipal League

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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

A copy of the rule was included as an attachment to that e-mail.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

SFM-BUSTR received no input from stakeholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable, this rule is adapted directly from its federal equivalent.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternatives were considered because SFM-BUSTR is required to adopt the federal rule as written.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

A performance-based regulation was not considered because SFM-BUSTR is required to adopt the federal rule as written.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

SFM-BUSTR has exclusive jurisdiction over petroleum USTs in Ohio; no other state agency has rules that address such USTs.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

This rule was initially adopted and implemented in this format in the early 1990s and has not been altered since. SFM-BUSTR has received no information from UST owners that it has ever been inconsistently or unpredictably applied.

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Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The primary business community that is affected by this rule are owners of gasoline service stations. Other types of businesses that own USTs are impacted as well; examples of these can include dry cleaners, stand-alone oil change facilities and auto repair shops that perform oil changes, manufacturing facilities, and any business that may fuel vehicles on-site (rental car lots, warehousing facilities, etc.)

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rule requires the UST owner to demonstrate the ability to pay a deductible of either \$11,000 or \$55,000, based on the number of USTs owned. The rule provides for a variety of mechanisms from which an owner may select. Some of these mechanisms will have an intrinsic cost, and any of them will require at least a nominal amount of employee time to complete the paperwork associated with obtaining them.

c. Quantify the expected adverse impact from the regulation.

Based on information provided by financial institutions historically involved with offering them, the costs for the various mechanisms that are used to cover the deductible required by this rule range up to \$8,000 depending on the number of USTs being covered by the deductible. Additionally, some UST owners are required to maintain \$11,000 to \$55,000 in a standby trust.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The ability to access the Petro Fund is vital when a release of petroleum products to the environment occurs. If unaddressed, such a release can contaminate both the soil at a UST site as well as the underlying groundwater (which can, in turn, impact public drinking water supplies). It can also render a parcel of property virtually unmarketable. Additionally, the costs associated with maintaining the necessary deductible are far lower than the costs of paying to clean-up a release without the assistance of the Petro Fund (the average cost of remediating a release, according to the Petro Fund, is over \$125,000).

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

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There are no exemptions provided under the federal rule, with which this rule must comply. To provide exemptions or alternative means of compliance in this rule would endanger Ohio's ability to maintain approval to operate the UST program.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties associated with an initial finding of violation; a UST owner is provided an opportunity to return to compliance before a fine or penalty is considered.

18. What resources are available to assist small businesses with compliance of the regulation?

SFM-BUSTR personnel, specifically including the assistant bureau chief, in-house legal counsel, and the full staff of UST inspectors, are permanently available to answer questions about the rule from the regulated community.