

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Petroleum UST Release Compensation Board

Regulation/Package Title: Annual Financial Assurance Fund Fee Change

Rule Number(s): 3737- 1-04

Date: December 11, 2017

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 Rescinded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.

Please include the key provisions of the regulation as well as any proposed amendments.

This rule prescribes the annual requirements of petroleum underground storage tank (UST) owners and operators for establishing coverage with the Financial Assurance Fund (Fund), including the payment of an annual per-tank fee. The Petroleum Underground Storage Tank Release Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce this annual fee from \$400 per tank to \$350 per tank.

Because this rule is being amended and not subject to a five-year review, the focus will be on the impact of the amendment only.

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Statement concerning division (E) of section 121.82 of the Revised Code.

Does the draft rule package require insurance and/or surety products as a condition of compliance?

As a condition to receiving a certificate of coverage with the Fund, owners and operators of USTs must demonstrate financial responsibility for the Fund deductible or reduced deductible amount in compliance with rule 1301:7-9-05 of the Administrative Code, which is adopted and administered by the State Fire Marshal. In program year 2016, more than 3,000 of Ohio's public and private UST owners and operators indicated on a Board-prescribed form that they maintained one or more of the ten financial responsibility mechanisms required by the State Fire Marshal's rule. A list of known insurance providers published by the U.S. EPA (EPA 510-B-17-002) is an example of the availability of the insurance mechanism.

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

Section 3737.90 of the Revised Code authorizes the Petroleum Underground Storage Tank Release Compensation Board to adopt, amend and rescind rules.

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?

If yes, please briefly explain the source and substance of the federal requirement.

While Ohio Administrative Code 3737-1-04 itself is not a regulation, the Petroleum Underground Storage Tank Release Compensation Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum UST tank owners to demonstrate \$1 million of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum UST systems [40 CFR Part 280, Subpart H].

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)?

The Fund fees assessed for petroleum USTs serve as the primary revenue source underwriting the Fund. The Fund serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal regulation that requires all petroleum UST owners and operators to demonstrate financial responsibility of \$1 million for corrective action costs and compensation to be paid to third parties for bodily injury or property damage resulting from an accidental release of petroleum from their UST systems. Second, it protects Ohio's

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businesses and individuals from financial insolvency by reimbursing responsible persons for the costs incurred to investigate and remediate any releases as well as to compensate affected third-parties. Lastly, it serves to protect the welfare of the general public through the protection of Ohio's land and water resources, thereby reducing health risks associated with petroleum releases.

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

The Board will continue to annually assess the financial soundness of the Fund, and determine whether the projected annual revenues are sufficient to continue to compensate Ohio's petroleum UST owners and operators for taking necessary corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

At the Petroleum Underground Storage Tank Release Compensation Board's September 13, 2017 meeting, the chairman announced that the Board's Finance Committee would be meeting on November 29, 2017, to discuss the annual per-tank fee and deductible amounts for the 2018 program year. Then on October 27, 2017, agency stakeholders were notified by email that the Board's Finance Committee would be meeting to discuss short and long term financial projections for the Fund, and the discussions could cause the committee to draft changes to the rule. The email and stakeholder distribution list are attached as Attachment A. The notice was also published on the Board's website, posted at the Board's office and sent to Gongwer News Service.

On November 29, 2017, the Board's Finance Committee, consisting of the Board Chair, Jim Rocco, representing petroleum refiners; Vice-Chair John Hull, representing engineers with geology experience and not associated with the petroleum industry; Tom Stephenson representing petroleum marketers; and Don Bryant, Jr. representing insurers providing casualty and fire or pollution liability insurance met between 9:00 a.m. and 10:00 a.m. In addition, the following stakeholders were in attendance: Bill Hills, representing the Ohio Department of Commerce, State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR), Starr Richmond, Executive Director, Petroleum UST Release Compensation Board, and Don Leasor, Chief Fiscal Officer, Petroleum UST Release Compensation Board.

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

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In 2012, the agency solicited opinions from Ohio's petroleum UST owners and operators through a questionnaire. Over 1,000 responses were received and more than 75% of the respondents indicated a preference of decreased annual per-tank fees over a decrease in the Fund deductible amounts. Stakeholders were supportive of the proposed rule amendment.

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?

The Board's Finance Committee reviewed Pro-Forma Operating Statements prepared using current year budgets, estimates of future revenues and expenses based on historical prior revenues and expenses of the Fund, and an estimate of the unpaid reimbursement liability of the Fund prepared annually using actuarial methodology.

Based upon this review, the Finance Committee's recommendation to the Board was to amend rule 3737-1-04 to reduce the annual fees in the amount of \$50 per tank.

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?

The Board's Finance Committee considered making no change to the annual per-tank fee.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not Applicable. The rule does not affect regulation of UST systems.

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

The Petroleum Underground Storage Tank Release Compensation Board is the only State agency that exists to provide Ohio's petroleum UST owners with \$1 million, less a deductible, of financial responsibility to pay for potential damages caused by releases from their UST systems.

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.

The Board's staff will be advised of the change to the annual Fund fee resulting from the amended rule and the Board's Statistical Tank and Reimbursement Records System database software will be updated to ensure the fee change is uniformly applied to all owners of petroleum USTs.

Adverse Impact to Business

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

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a. Identify the scope of the impacted business community;

Ohio's petroleum UST owners and operators will be impacted by the proposed amended rule.

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

For the purposes of this analysis, the nature of the adverse impact is the annual fee, however, in this case, the annual per-tank fee is being reduced from \$400 to \$350.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The amendment will save Ohio's underground storage tank community approximately \$1 million each year.

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

The annual Fund fees are necessary in order to maintain the financial soundness of the Fund and assist Ohio's petroleum UST owners and operators with taking necessary corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum.

The amount of the annual fee is recommended by the Board's Finance Committee based on a careful analysis of current year budgets, estimates of future revenues and expenses of the Fund, and the estimate of the Fund's unpaid reimbursement liability.

Regulatory Flexibility

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

Because the U.S. EPA financial responsibility requirements apply to all owners and operators of petroleum UST systems, participation in the Fund is mandatory, and there is no provision in section 3737.91 of the Ohio Revised Code that provides an exemption for payment of the annual Fund fee.

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?

The proposed change to the rule does not assess administrative fines or civil penalties for the failure to timely file paperwork.

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Fees are assessed annually and are required for all petroleum storage tanks underground at any time between July 1 and June 30. Fee statement notices are mailed to owners and operators by May 1 of each year and payment is due by July 1. If the annual fee is not remitted by July 1, a notification is issued advising the owner or operator of the non-compliance and that a late payment fee will be assessed if the annual fee is not paid within 30 days. If the annual fee remains unpaid at the end of the 30 days, an Order Pursuant to Law is issued requiring payment of the annual fee and assessing a late payment fee of \$100/tank per month up to a maximum of \$1,000/tank.

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

The Board's staff is available during customer service hours to answer questions tank owners and operators may have concerning the Board's rules. In addition, information is published on the Board's website and presented in its newsletters.

Contact Information:

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Jonathan Maneval

From: Petro Information Email Account
Sent: Friday, October 27, 2017 3:43 PM
To: Petro Information Email Account
Subject: MEETING NOTICE •• New Office Location!

MEETING NOTICE

Finance Committee Meeting

There will be a Finance Committee meeting on Wednesday, November 29, 2017, at 9:00 a.m. The committee will discuss the Fund's five-year financial projections and the annual per-tank fee and deductible amounts for the 2018 program year. The result of these discussions may cause the committee to draft changes to the following rules:

3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance and financial responsibility.

3737-1-06 The deductible and the reduced deductible.

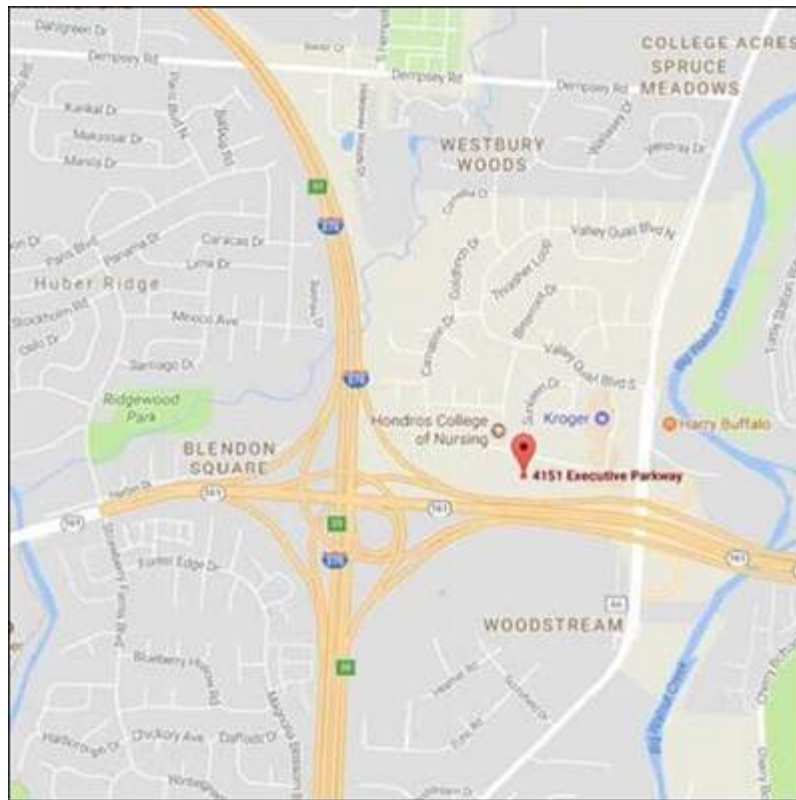
In accordance with the requirements of Executive Order 2011-01K and Chapter 107. of the Ohio Revised Code, all interested parties are invited to attend, and all parties in attendance at that time will have the opportunity to provide comment.

Board Meeting

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, November 29, 2017, at 10:00 a.m.

Both meetings will be held in the conference room of the Board's new office:

**4151 Executive Parkway, Suite 350
Westerville, Ohio 43081**



Petroleum Underground Storage Tank Release Compensation Board

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This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

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Petroleum Underground Storage Tank Release Compensation Board

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MEETING NOTICE

Finance Committee Meeting

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**All meetings will be held in the conference
room of the Board's new office:**

**4151 Executive Parkway, Suite 350
Westerville, Ohio 43081**

3737-1-04

Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility.

- (A) Effective April 1, 1991, and each year thereafter in which the unobligated balance of the financial assurance fund does not exceed forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board shall assess a fee for each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility.

In the event that the unobligated balance of the financial assurance fund exceeds forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds.

- (B) The basis for the calculation of the annual fee includes, but is not limited to, the amount needed to meet financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.
- (C) The director of the fund shall notify each responsible person by May first of each year of the annual fee. In the year in which an annual fee is not assessed, the director of the fund will provide reasonable notification to responsible persons of the non-assessment of fees.
- (D) The annual fee is due no later than July first of each year in which an annual fee is imposed. In the event the director determines that a responsible person fails to pay the annual fee by July first of the year in which the fee is imposed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days of the date the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fee and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. No retroactive coverage shall be extended in situations where responsible persons have initially failed to pay fees but later did so, regardless of whether they received notification by the director of such failure.
- (E) Except as limited by rule 3737-1-04.1 of the Administrative Code, upon receipt of full payment of the annual fee and any past fees, as determined by the director,

upon demonstration of financial responsibility as required by rule 1301:7-9-05 of the Administrative Code, and upon certification that the responsible person is in compliance with applicable rules for petroleum underground storage tanks adopted by the fire marshal under section 3737.88 of the Revised Code, the director shall issue a certificate of coverage. Payment of the annual fee and any past fees owed, as determined by the director, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the succeeding fiscal year on or before July first will entitle the responsible person to a certificate of coverage in effect for the fiscal year. Payment of the annual fee and any past fees owed, as determined by the director, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the current fiscal year after July first will result in a certificate of coverage for that fiscal year effective on and after the date the board received full payment due, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility.

(F)

(1) In the event that a newly installed underground storage tank is placed in service, the responsible person shall immediately notify the director. In the event that an underground storage tank exists for which a certificate of coverage was not issued in the previous fiscal year, due to an omission, intentional or unintentional, by the responsible person, the responsible person shall immediately notify the director. Upon receipt of notice of a newly installed, or existing underground storage tank, as required by this paragraph of this rule, the director shall notify the responsible person of the assessment of any applicable fees. No certificate of coverage will be issued until the responsible person notifies the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, pays the required annual fees for the new or existing tank, pays all outstanding fees, as determined by the director, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

(2) In the event of a transfer of an underground storage tank, the new responsible person shall notify the director within thirty days of the date of the transfer. Upon receipt of notice of a transfer of an underground storage tank as required by this paragraph of this rule, the director shall notify the new responsible person of the assessment of any applicable fees, including, but not limited to, any fees outstanding at the time of the transfer of the underground storage tank, as determined by the director, and a transfer fee of five hundred dollars per facility.

(a) If a certificate of coverage is in effect at the time of the transfer and the

new responsible person notifies the director, pays the transfer fee, demonstrates financial responsibility, and certifies compliance with the fire marshal's rules within thirty days of the date of the transfer, the certificate of coverage shall be effective as of the date of the transfer of the underground storage tank. Where outstanding fees exist at the time of the transfer, the certificate of coverage is null and void for purposes of coverage.

- (b) If a certificate of coverage is not in effect at the time of the transfer or the new responsible person fails to notify the director of the transfer within thirty days, no certificate of coverage will be issued until the new responsible person notifies the director of the transfer; pays the transfer fee; pays any annual fees outstanding for the fiscal year in which the transfer occurred and all subsequent fiscal years of ownership; demonstrates financial responsibility; certifies compliance with the fire marshal's rules; pays any fees outstanding at the time of the transfer, as determined by the director, or conducts a baseline environmental site assessment in accordance with rule 3737-1-04.2 of the Administrative Code; and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.
- (3) The responsible person shall tender the fees assessed no later than thirty days from the date of notification. If the responsible person fails to submit the annual fees within thirty days after the notification was mailed, the director of the fund shall notify the responsible person of the nonpayment. If the responsible person fails to submit the annual fee within thirty days after the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fees and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. Where a responsible person has failed to inform the director, as is required by this rule, the director is not required to notify the responsible person of fees owed.

(G)

- (1) The failure to do any of the following will result in the non-issuance or revocation of a certificate of coverage:
 - (a) Pay any annual fee authorized by division (B) of section 3737.91 of the Revised Code or supplemental fee authorized by division (C) of section 3737.91 of the Revised Code;

- (b) Demonstrate and maintain financial responsibility as required by rule 1301:7-9-05 of the Administrative Code for the deductible or, when appropriate, the reduced deductible established under rule 3737-1-06 of the Administrative Code;
 - (c) Certify and maintain compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for each tank for which a certificate of coverage is sought;
 - (d) Pay any fee assessed pursuant to this chapter; or
 - (e) Pay any outstanding fees determined by the director to be due.
- (2) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of denial.

Once a certificate of coverage has been issued, it may be revoked at any time upon a finding by the director that the criteria of this rule for issuance are not satisfied. Where a certificate of coverage is to be revoked, the director shall issue a notice of pending revocation to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency.

If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of revocation. The director shall provide the fire marshal with a copy of any determination issued pursuant to this rule.

Where the requirements of this rule are not satisfied at the time of a petroleum release, the certificate is null and void for purposes of coverage and the responsible person is not eligible for reimbursement from the fund, regardless of whether the certificate has been revoked.

- (H) A responsible person may file with the board written objections to any order or determination of the director issued pursuant to this rule. If the written objection is received by the board within thirty days of the date of mailing of the order or determination, the board shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

- (I) The amount of the annual fee is ~~four hundred~~ three hundred fifty dollars per tank.

- (J) A responsible person shall maintain with the director a current mailing address at which determinations, notices, and orders may be sent. Any determination or order shall be mailed by certified mail to the responsible person's address on file with the board. If the certified mail is returned unclaimed, the order or determination shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.