

Rule Summary and Fiscal Analysis (Part A)**Petroleum Underground Storage Tank Release Compensation Board**

Agency Name

Division

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3737-1-04

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

**Annual petroleum underground storage tank financial
assurance fee, certification of compliance, and financial
responsibility.****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: **3737.90**
5. Statute(s) the rule, as filed, amplifies or implements: **3737.91, 3737.92**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The Petroleum Underground Storage Tank Release Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce the annual Financial Assurance Fund fee from \$500 per tank to \$400 per tank.

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:

The proposed rule change will reduce the annual Financial Assurance Fund fee from \$500 per tank to \$400 per tank.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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: **7/31/2019**

(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 decrease revenues.

\$2 million annually.

The Board annually reviews the solvency of the Financial Assurance Fund, which includes a review of projected revenues, administrative expenses and claim payment obligations over a five-year period. Due to the completion of corrective actions for approximately 85% of petroleum releases discovered in the 1990s and a significant decrease in the number of new releases being reported to the Board over the last ten years, annual revenues currently exceed annual expenses, including claim reimbursements. Based on management's annual actuarially determined estimate, the claims liability for all Financial Assurance Fund eligible releases discovered as of June 30, 2014 is \$29 million. The Board anticipates that by using existing unobligated funds as well as the reduced fee revenue projected to be received in the next five years, this amount will decrease to approximately \$4 million. Further, with the reduced fee revenue, the Financial Assurance Fund's unobligated balance in five years is projected at an amount that will meet or exceed the financial soundness objectives mandated by statute.

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:

By decreasing the annual fee from \$500 per tank to \$400 per tank, the cost of compliance will decrease \$2 million annually for Ohio's tank owners and operators. There are currently 20,436 underground storage tanks owned by 3,205 public and private entities. The average savings for each owner is estimated to be \$640. The actual savings to each owner depends solely on the number of tanks owned.

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? **No**

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? **Yes**

All petroleum underground storage tank owners are required to demonstrate Financial Responsibility by obtaining a Certificate of Coverage with the Board. The Board provides \$1 million, less a deductible, for clean up costs and third-party property and bodily injury damages associated with releases from petroleum underground storage tanks.

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**

Rule 3737-1-04 does not impose civil or criminal penalties on underground storage tank owners or operators who fail to comply. However, owners and operators who do not timely remit the annual fee may be subject to the assessment of late payment fees. Financial Assurance Fund (Fund) fees are assessed annually and are required for all petroleum underground storage tanks (USTs) in the ground at any time between July 1 and June 30. 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.

If an UST owner fails to comply with the Order, the director of the Fund notifies the State Fire Marshal. In addition, division (G) of section 3737.91 of the Revised Code authorizes the director of the Fund to request the Ohio Attorney General to

bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction.

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

The proposed annual fee is \$400 per tank for coverage at the standard \$55,000 deductible. Owners of six or fewer tanks may elect to pay an additional \$200 per tank for coverage with a reduced deductible of \$11,000.

Payment of the annual fee is required before a Certificate of Coverage may be issued to a tank owner.

The proposed rule amendment does not require information to be reported.

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.

Approximately 1,685 (8.25%) of Ohio's petroleum underground storage tanks are owned by school districts, counties, townships and municipal corporations. Because the proposed rule decreases the annual per-tank fee by \$100, the cost of compliance is estimated to decrease by an annual aggregate amount of \$168,500 for public entities or an average of \$359 per public entity owning petroleum underground storage tanks.

No other costs of compliance are significant enough to warrant measuring.

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.

Because the proposed rule amendment will decrease the annual fee by \$100 per

tank, the cost of compliance will likewise decrease. Given there are approximately 1,685 petroleum underground storage tanks owned by 469 public entities, it is estimated the cost of compliance will decrease by \$168,500 for these entities, resulting in an average annual savings of \$359 per public entity owning petroleum underground storage tanks.

(a) Personnel Costs

No personnel costs will be impacted by the proposed rule change.

(b) New Equipment or Other Capital Costs

No new equipment or other capital costs will be impacted by the proposed rule change.

(c) Operating Costs

No operating costs will be impacted by the proposed rule change.

(d) Any Indirect Central Service Costs

No indirect costs will be impacted by the proposed rule change.

(e) Other Costs

No other costs will be impacted by the proposed rule change.

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.

There are no new requirements imposed by the proposed rule. By decreasing the annual fee \$100 per tank, the result is an average savings of \$359 per public entity owning petroleum underground storage tanks.

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

Any impact on economic development should be positive since the proposed rule amendment decreases the annual per-tank fees.