

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

NEW

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 consistent with the requirements of the RC 119.032 review? **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:

This rule is being filed in accordance with the five-year rule review requirement of section 119.032 of the Revised Code.

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:

This rule prescribes the annual requirements of petroleum underground storage tank owners and operators (responsible persons) for establishing coverage with the Financial Assurance Fund (Fund), including the payment of the annual per-tank fee, certification of compliance with applicable rules for underground storage tanks adopted by the fire marshal, demonstration of financial responsibility for the deductible amount of coverage with the Fund, and, if applicable, compliance with the coverage reinstatement requirements of rule 3737-1-04.1. The rule sets forth the notification requirements to the responsible person and to the fire marshal when a responsible person fails to timely remit payment of the annual per-tank fees or fails to meet the criteria for the issuance of the certificate of coverage. A late payment fee is imposed when the annual per-tank fee is not timely remitted. The rule further requires the responsible person to provide notice to the director when installation of an underground storage tank has occurred, and when ownership of an underground storage tank has transferred. The rule establishes the process for transferring the certificate of coverage to the new responsible person and establishes the criteria for the issuance of the certificate of coverage when no certificate was in effect at the time of transfer. Lastly, the rule provides the responsible person with the right to file an objection to an order to pay fees or to a determination denying or revoking a certificate of coverage.

The Board proposes to amend the rule so that when ownership of an underground storage tank has transferred and outstanding fees exist at the time of transfer, the new responsible person seeking a certificate of coverage with the Fund may elect to either pay all fees outstanding at the time of the transfer or conduct a baseline environmental site assessment (see rule 3737-1-04.2) to establish the concentrations of chemicals of concern existing in the soil and groundwater at the underground storage tank site at the time of the transfer. This election is set forth in paragraph (F)(2)(b) of the rule.

No other significant changes to the rule were proposed. However, the text of the existing rule was reorganized with the intent of making the rule easier to read and understand. This reorganization of the text resulted in a substantial amount of the text being stricken and re-entered as new text. Therefore, the Board proposes to rescind the existing rule and replace it with a new rule in accordance with the guidelines established by the Legislative Service Commission.

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. 119.032 Rule Review 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.

\$0

Not Applicable.

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:

There are no new costs of compliance as a result of the existing rule being rescinded and replaced with the proposed new rule.

Similar to the existing rule, the cost of compliance associated with the proposed rule includes the cost to prepare and submit the yearly Application for Certificate of Coverage/Fee Assessment Statement along with the annual per-tank fee of \$500. A late fee of up to \$1,000 per tank is assessed for untimely payment. Delinquent accounts may be referred to the Attorney General's Office for collection, and as a result, collection costs and interest charges may also be assessed. Upon the transfer of an underground storage tank system, the new responsible person is subject to a transfer fee of \$500 per facility.

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 and operators are required to demonstrate Financial Responsibility by obtaining a Certificate of Coverage from the Board. The Fund provides up to \$1 million, less a deductible, for the reimbursement of clean-up costs and compensation to third parties for property damage and bodily injury resulting from accidental releases of petroleum from 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, the director of the Fund may request the Ohio Attorney General to bring an action for appropriate relief.

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

There are no new expenditures or reporting requirements as a result of the existing rule being rescinded and replaced with the proposed new rule.

As required in the existing rule, all tank owners must remit an annual per-tank fee. An owner that does not timely remit the annual fee may also be subject to late payment fees, collection costs and interest charges. The new responsible person of an underground storage tank system is also subject to a transfer fee. Each year all tank owners must submit a completed application for a certificate of coverage. In addition, owners must provide information concerning the installation and acquisition of petroleum underground storage tank systems.

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.

There are no new costs of compliance as a result of the existing rule being rescinded and replaced with the proposed new rule.

If a school district, county, township or municipal corporation owns or operates a petroleum underground storage tank system, the cost of compliance is the annual per-tank fee of \$500. In addition, if a school district, county, township or municipal corporation acquires ownership of an underground storage tank system, the cost of compliance is the \$500 per facility transfer fee plus any fees that are outstanding for the underground storage tank at the time of the transfer.

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.

Given there are approximately 1,750 petroleum underground storage tanks owned by 480 public entities, it is estimated the annual cost of compliance will average \$1,825 per public entity owning petroleum underground storage tanks.

(a) Personnel Costs

The annual application for a certificate of coverage required by this rule, including the certification of compliance with the fire marshal's rules and the statement of financial responsibility for the deductible amount of coverage with the Fund, is typically three pages and requires minimal time to complete. The administrative time necessary to complete the application could arguably affect personnel costs. However, this is an insignificant amount in estimating the costs of compliance with the proposed rule.

(b) New Equipment or Other Capital Costs

No new equipment or other capital costs will be impacted as a result of the existing rule being rescinded and replaced with the proposed new rule.

(c) Operating Costs

No operating costs will be impacted as a result of the existing rule being rescinded and replaced with the proposed new rule.

(d) Any Indirect Central Service Costs

No indirect costs will be impacted as a result of the existing rule being rescinded and replaced with the proposed new rule.

(e) Other Costs

No other costs will be impacted as a result of the existing rule being rescinded and replaced with the proposed new rule.

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 as a result of the existing rule being rescinded and replaced with the proposed new rule.

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

Any impact on economic development should be positive. When Fund fees are outstanding for an underground storage tank system, the proposed rule provides the purchaser of the tank system with the option to submit a baseline environmental site assessment report as an alternative to remitting the fees that were outstanding at the time of the transfer.