

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Petroleum Underground Storage Tank Release Compensation Board

Regulation/Package Title: OAC Chapter 3737 – Rule Amendments

Rule Number(s): 3737-1-03, 3737-1-04, 3737-01-04.1, 3737-1-07, 3737-1-12, 3737-1-12.1, 3737-1-15, and 3737-1-19.

Date: July 13, 2018

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 Rescinded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.

Each year the Petroleum Underground Storage Tank Release Compensation Board's (Board) Rules Committee meets with industry representatives, agency stakeholders, agency staff, and the Assistant Attorney General assigned to the Board to review the Board's rules and determine whether any changes are necessary. On September 1, 2017, amendments to rules administered by the Bureau of Underground Storage Tank Regulations (BUSTR), an agency under the Ohio State Fire Marshal's authority, became effective, and as a result, the Committee reviewed the Board's rules with an emphasis on identifying rule revisions that may be needed as a result of changes to the fire marshal's rules. It was noted that the term "confirmed release" is defined in the fire marshal's rule 1301:7-9-13 and the release reporting

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requirements, which includes reporting a release, suspected release, or confirmed release, were changed effective September 1, 2017. As a result, the definition of a “confirmed release” is being added to the Board’s rule 3737-1-03. In addition, the Committee felt that it would be better to create a new term “release incident” rather than to use all three related terms – “release,” “suspected release,” and “confirmed release” – throughout the Board’s rules. The amendments are primarily being proposed to incorporate the new term “release incident” throughout the Board’s rules.

The following amendments are being proposed:

Rule 3737-1-03 Definitions

This rule provides definitions for the purposes of clarifying the meaning of terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to 3737-1-23 of the Administrative Code.

The Board proposes to amend the rule to add the term “confirmed release” as it is defined in the fire marshal’s rule 1301:7-9-13. The term “release incident” is also being added and means a “release,” “suspected release,” or “confirmed release,” whichever is first discovered. In general, this new term will replace the existing phrase “suspected release or release, whichever is first” throughout the Board’s rules.

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

This rule prescribes the annual requirements of petroleum underground storage tank (“UST”) owners and operators (“responsible persons”) for establishing coverage with the Financial Assurance Fund (“Fund”), including the payment of the annual per-tank financial assurance fee, certification of compliance with applicable rules for USTs 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 further requires the responsible person to provide notice to the director when installation of a UST has occurred, and when ownership of a UST has transferred and establishes the process for transferring the certificate of coverage to the new responsible person as well as the criteria for the issuance of the certificate of coverage when no certificate was in effect at the time of transfer. 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 also provides the responsible person with the right to file an objection to an order to pay fees or a determination denying or revoking a certificate of coverage.

The proposed amendment to paragraph (G)(2) will replace “petroleum release” with “release incident.”

Rule 3737-1-04.1 Coverage reinstatement.

The rule provides the requirements for reinstating coverage with the Fund when a responsible person has not received a certificate of coverage for a UST for the prior two or more consecutive fiscal years.

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The proposed amendments to paragraphs (A)(2) and (C) are text edits to provide additional clarification and make the rule easier to read.

Rule 3737-1-07 Establishing fund eligibility for corrective action costs.

This rule provides the requirements for obtaining eligibility to file claims under the Fund. In addition, after a responsible person is determined to be eligible, the rule requires the responsible person to maintain eligibility by maintaining compliance with UST regulations. If the responsible person fails to maintain compliance with the UST regulations, eligibility to file claims under the Fund may be revoked.

The proposed amendments to paragraphs (A)(1), (A)(2), (A)(5)(a), and (A)(10) will replace the language “suspected release or release, whichever is first” with the new term “release incident.” Paragraph (A)(9) is being updated to include the new “confirmed release” reporting requirement of the fire marshal’s rule 1301:7-9-13.

Rule 3737-1-12 Application for reimbursement.

This rule provides the requirements for filing a Claim Reimbursement Application and sets the deadlines for the responsible person to submit the application.

The Board proposes to update paragraph (D) to indicate that the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 that was in effect between March 1, 2005, and August 31, 2017. The missing word “program” is being added to paragraph (D)(10). The proposed new paragraph (E) is identical to paragraph (D) except that it indicates the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 in effect on or after September 1, 2017, and the new term “release incident” is being used in paragraph (E)(1). Paragraphs (F)(2) and (K)(1) are being amended to properly cite the applicable paragraphs of the rule as proposed. The amendment to paragraph (K)(2) is editorial in nature with the intent of clarifying the meaning of the paragraph and making it easier to read and understand.

Rule 3737-1-12.1 Mandatory and voluntary pre-approval of corrective action costs.

The rule sets forth the requirements for requesting pre-approval of pending corrective action costs. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.

The proposed new paragraph (A)(6) requires the annual submission of an estimated cost and completion schedule for the corrective action costs associated with free product monitoring activities required by BUSTR’s 2017 Technical Guidance Manual. Paragraph (B) is being amended to cite the applicable paragraphs of the rule as proposed.

Rule 3737-1-15 Modifying the deductible or the reduced deductible.

The rule provides for the modification of the deductible and reduced deductible if necessary to ensure the solvency of the Fund and to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

The proposed amendment to paragraph (C) will replace the language “suspected release or release, whichever is first” with the new term “release incident.”

Rule 3737-1-19 Establishing fund eligibility for third party claims.

The rule sets forth the requirements for the filing for and determination of eligibility to file claims under the Fund for compensation paid or anticipated to be paid to a third party for the costs of bodily injury or property damage resulting from an accidental release of petroleum from an assured UST.

The Board proposes to amend paragraphs (A)(2), (A)(3), and (A)(8) to replace the language “suspected release or release, whichever is first” with the new term “release incident.” Paragraph (A)(7) is being updated to include the new “confirmed release” reporting requirement of the fire marshal’s rule 1301:7-9-13.

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 2017, 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 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 chapter 3737 of the Ohio Administrative Code is not a regulation, the Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum UST 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 C.F.R. 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 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 a third party for bodily injury or property damage resulting from an accidental release of petroleum from their UST systems. Second, it protects Ohio's 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.

Since the Fund was established by the Ohio General Assembly in 1989, the Fund has proven to be a viable financial assurance mechanism for Ohio's petroleum tank owners. To date, more than \$253 million has been reimbursed to Ohio's tank owners and operators to clean up more than 3,131 petroleum contaminated sites.

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

Success of these rules will be measured by the overall effectiveness and efficiency of the agency's mission of providing financial assistance to remediate contamination caused by releases from assured petroleum USTs.

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.

The Board's Rules Committee holds open meetings throughout the year. The Committee consists of Board Chair, James Rocco, representing petroleum refiners; Vice-Chair John Hull, representing engineers with geology experience and not associated with the petroleum industry; Mayor Ronald Falconi, representing local government; Scott Fleming, representing businesses that own petroleum USTs; and Chris Geyer, representing the Ohio EPA. The committee met on January 10, 2018; February 14, 2018; and March 21, 2018.

Agency stakeholders were notified of the Rules Committee meetings by email on December 12, 2017; January 12, 2018; and February 21, 2018. A list of the Board's stakeholders that were contacted is attached as Exhibit A. Meeting notices were also published on the Board's website, posted at the Board's office, and sent to Gongwer News Service.

The following stakeholders were in attendance at one or more of the Rules Committee meetings: Jeralynne Offenberger, representing Par Mar Oil Co.; Mark Addington, representing Kroger Company; Samantha Kramer, representing Speedway, LLC; and Dan Adams and Doug Darrah,

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representing ATC Group Services LLC. The following Board staff were also in attendance at one or more of the meetings: Starr Richmond, Executive Director; Madeline Esquivel, Assistant Director; Cindy Duann; Jonathan Maneval; and Hannah Brame. The Board's Assistant Attorney General, Jennifer Croskey, attended the January 10, 2018, and February 14, 2018 meetings; and Assistant Attorney General Leigh Bayer attended the March 21, 2018 meeting.

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

The Board's Rules Committee, agency stakeholders, agency staff, and Assistant Attorney Generals assigned to the Board met to review each of the Board's rules with an emphasis on identifying rule revisions that may be needed as a result of the State Fire Marshal's rule changes that became effective on September 1, 2017. After discussing the Board's rules, it was apparent that since the fire marshal changed its release reporting requirements, which includes the reporting of a release, suspected release, or confirmed release, the term "confirmed release" needed to be included in the Board's definition rule, and the consensus was that defining the new term "release incident" would benefit Ohio's tank owners and operators by making the rules easier to read and understand.

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.

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?

Not applicable.

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.

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

The Board is the only State of Ohio agency that exists to provide Ohio's petroleum UST owners with \$1 million of financial responsibility to pay for 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 notifies Ohio's petroleum UST owners and operators, and agency stakeholders of its rule filings through a newsletter and its website. In addition, agency correspondence is written to clearly explain the requirements of the Board's rules to the reader. Constituents are encouraged to contact

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the Board's office to discuss any questions or concerns regarding the Board's rules with trained agency personnel.

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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 rules adopted by the Board apply to all of Ohio's past and present petroleum tank owners and operators. Currently, there are approximately 2,700 private owners of 18,700 USTs; an additional 1,500 tanks are owned and operated by public entities.

Because these rules are being amended and not subject to a five-year review, the focus will be on the impact of the amendments only.

Rule 3737-1-03

This rule provides definitions for the purposes of clarifying the meaning of terms and has no adverse impact on businesses.

Rule 3737-1-04

- a. Rule 3737-1-04 impacts all of Ohio's petroleum tank owners and operators.
- b. Rule 3737-1-04 requires both an expenditure and the reporting of information as a condition of compliance. 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. Where ownership of a UST system is transferred, the new responsible person is 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 UST systems.
- c. The annual per-tank fee is currently \$350. 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 be assessed. Upon the transfer of a UST system, the new responsible person is subject to a transfer fee of \$500 per facility. 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

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requires minimal time to complete. It is not necessary to hire an accountant, consultant, or other professional to complete the application. A tank owner that wishes to appeal a determination or an order issued by the director may file an objection via email, fax, or mail. An attorney is not necessary for the filing of an objection. The additional notifications required by the rule, including the notification of tank installation or transfer, may similarly be provided via email, fax, or mail. As a convenience, single-page notification forms are available on the Board's website.

The proposed amendments to rule 3737-1-04 will not change the adverse impact to the tank owners and operators.

Rule 3737-1-04.1

- a. Rule 3737-1-04.1 only impacts tank owners and operators who have not obtained a certificate of coverage for a given UST for two or more consecutive fiscal years.
- b. In order to comply with rule 3737-1-04.1, any responsible person subject to the rule is required to submit an affidavit certifying that no release has been suspected or confirmed from the petroleum UST system for which coverage is being sought, or that any known release is in compliance with the corrective action requirements of rule 1301:7-9-13. The tank owner must also provide documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of petroleum USTs. Such documentation may include, but is not limited to, copies of release detection records, results of tank and line tightness tests, and if applicable, results of corrosion protection tests, and out-of-service permits.
- c. If a responsible person is subject to the requirements of rule 3737-1-04.1, a single-page affidavit is required to be signed and notarized in order to comply with the certification requirement of the rule. If the responsible person is operating the tank system in compliance with the fire marshal's rules, the records required to comply with the rule should be readily available to the responsible person and can be faxed, emailed, or mailed to the Board. Owners who are not in compliance with the fire marshal's rules may need to work with the fire marshal's office to bring the tank system into compliance before the documentation necessary to comply with the rule can be provided.

The proposed amendments to rule 3737-1-04.1 will not change the adverse impact to the tank owners and operators.

Rule 3737-1-07

- a. Rule 3737-1-07 impacts only responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires information to be provided to the Board in order to comply with the rule.
- c. The Application for Financial Assurance Fund Eligibility required by the rule is a four-page application that can be completed by the responsible person or at the responsible person's option, an environmental consultant. In addition, a report describing the petroleum release (closure report, site assessment report, immediate corrective actions report, etc.) must be

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submitted with the application. Because these reports are required by the fire marshal's closure assessment or corrective action rules, the only additional expenditures to the applicant are duplicating and mailing costs.

The proposed amendments to rule 3737-1-07 will not change the adverse impact to the tank owners and operators.

Rules 3737-1-12 and 3737-1-12.1

- a. Rules 3737-1-12 and 3737-1-12.1 only impact responsible persons seeking monies from the Fund for the reimbursement of cleanup costs or compensation paid for third party bodily injury and property damage.
- b. Rule 3737-1-12 requires administrative time and costs for copying and printing in order to provide the information required in the Claim Reimbursement Application. A responsible person that chooses to hire a consultant to complete and submit the application on its behalf will incur an expenditure for the consultant's services. In almost all instances, rule 3737-1-12.1 will require the responsible person to pay a consultant to estimate and prepare an explanation of the costs for pending corrective action activities. These costs, however, are reimbursable when claimed under the Fund. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.
- c. The Claim Reimbursement Application required by rule 3737-1-12 contains seven sections and is 14 pages in length, including six pages of instructions and completion checklists. Along with the application, the applicant must submit invoices; proof of payment documentation; reports and other documentation supporting the costs claimed; and copies of relevant correspondence with the fire marshal. The time necessary to complete the application and compile the information necessary for submission is variable dependent on the number of invoices and the scope of the work for which costs are being claimed. A responsible person submitting a claim for one invoice with charges for basic corrective action activities, such as groundwater sampling, will likely spend far less time preparing and submitting the application than a responsible person submitting a claim for remedial action activities that occur over a period of time. Often the preparation and submittal of the Claim Reimbursement Application is performed by the responsible person's consultant as a courtesy to the responsible person. In the event this is not the case, the cost for this service will depend largely upon the number of hours required to compile the supporting documentation, which can be extensive if the corrective actions for which costs are being claimed are complex. Therefore, it is estimated that the costs to complete the claim application range between \$100 and \$1,500. A request for the pre-approval of costs as required by rule 3737-1-12.1 is made by submitting a one page Cost Pre-Approval Application, itemized listing of the estimated costs, and if appropriate, a copy of the proposed plan required by the fire marshal for the corrective action activities. The preparation and submission of a request for the pre-approval of costs is routinely completed by the responsible person's environmental consultant. These costs are reimbursable when claimed under the Fund and range from \$100 to \$2,500.

Rule 3737-1-15

- a. Rule 3737-1-15 impacts all of Ohio's tank owners and operators.
- b. The rule provides the Board with the ability to modify the standard deductible and reduced deductible amounts set forth in rule 3737-1-06. This rule arguably could adversely affect a business if the Board determines an increase to the deductible amounts is necessary to meet the financial soundness objectives set forth in section 3737.91 of the Revised Code.
- c. An increase in the deductible and reduced deductible amounts could result in an increase in expenditures for the responsible person if a petroleum release is discovered after the deductible amounts are increased and the corrective action costs exceed the deductible. If the deductible amounts are reduced however, the corrective action costs the responsible person must incur before Fund reimbursement is available would decrease.

The proposed amendments to rule 3737-1-15 will not change the adverse impact to the tank owners and operators.

Rule 3737-1-19

- a. Rule 3737-1-19 only impacts a responsible person when a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of a petroleum release from an assured UST.
- b. The rule requires the responsible person to submit a Third-Party Claim Eligibility Application in order to receive a determination of eligibility to file claims under the Fund for costs associated with bodily injury or property damages a third-party experiences as a result of an accidental release of petroleum from the responsible person's USTs. The application must be submitted to the Board within 30 days from the date a responsible person receives any of the following: service of a third-party complaint against the responsible person; receipt of a third-party demand for settlement; or notice of representation of a third party in a lawsuit against the responsible person. It requires administrative time and minimal costs in order to provide the information required in the application.
- c. The Third-Party Claim Eligibility Application required by the rule is five pages in length and can be completed by the responsible person or at the responsible person's option, an environmental consultant or attorney. In addition, a copy of the complaint, demand and / or notice of representation as well as any other available documents supporting the third-party's claim must be provided with the application.

The proposed amendments to rule 3737-1-19 will not change the adverse impact to the tank owners and operators.

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

The Rules Committee members, industry representatives, constituent stakeholders, and agency staff recognize that these rules could potentially adversely impact the business community, specifically Ohio's

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tank owners and operators. However, the rules are necessary to implement sections 3737.90, 3737.91 and 3737.92 of the Revised Code, and they are essential tools that ensure the long-term financial health and continued success of the Fund. Any potential adverse impacts that result from these rules are offset by the benefit to Ohio's tank owner community as a whole.

No significant changes are being proposed to the rules in this rule package, and the Board does not estimate an increased cost to the business community to comply with the rules if they are adopted.

Rule 3737-1-04

The annual per-tank fees assessed by rule 3737-1-04 serve as the primary revenue source underwriting the Fund. Without these fees, there would be no funding source available to Ohio's tank owners and operators to underwrite the costs necessary to remediate the environment or pay for third-party bodily injury or property damage in the event of a petroleum release. Late payment fees are assessed in accordance with section 3737.91 of the Revised Code and are intended to encourage timely payment of the annual fees. In addition, where delinquent fees are referred to the Attorney General's Office for collection, the tank owner is also responsible for the payment of any and all fees associated with collection. Again, this serves to encourage the timely payment of the annual fees and ensures that the cost to collect a responsible person's delinquent fees are borne solely by the responsible person and not the tank owner community as a whole. Lastly, the Board determined that the \$500 transfer fee is justified due to the administrative costs incurred to process a transfer of the certificate of coverage to the new responsible person of the petroleum UST system. The required application for a certificate of coverage, along with the notification requirements of the rule, are necessary to implement the program.

Rule 3737-1-04.1

Where a certificate of coverage has not been issued for a given petroleum UST for two or more consecutive prior fiscal years, rule 3737-1-04.1 requires the responsible person to submit documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of the subject UST before a certificate may be issued. This rule provides a responsible person with notice of non-assurability with the Fund before the responsible person experiences a release and upon application for eligibility pursuant to rule 3737-1-07, is denied eligibility to claim under the Fund. By verifying the responsible persons compliance with the fire marshal's rules prior to the discovery of a release, the responsible person is provided with advance notice and afforded the opportunity to correct any issues of non-compliance. The rule has been very successful in assisting Ohio's owners and operators with becoming compliant with the rules governing the operation of their USTs and in ensuring the responsible person is in compliance with those rules at the time a release is discovered.

Rule 3737-1-07

Rule 3737-1-07 requires a responsible person to file an eligibility application in order to receive a determination of eligibility to file claims under the Fund for corrective action costs resulting from an accidental release of petroleum. This rule serves to ensure that only an eligible responsible person

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may seek reimbursement and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, the subject tank was being operated and maintained in compliance with the fire marshal's rules, and the release was timely reported as required by the fire marshal's rules.

Rule 3737-1-12

To receive reimbursement from the Fund for corrective action costs, rule 3737-1-12 requires a responsible person to file a Claim Reimbursement Application and to document in both technical and financial terms the costs for which reimbursement is being sought. The rule helps to ensure that only those actual costs that are reasonable and necessary for corrective action are reimbursed by the Fund. Importantly, the rule also sets forth deadlines for the responsible person to file claim applications for the reimbursement of corrective action costs. In general, costs must be claimed for reimbursement within one year of the date the work was required to be completed by the fire marshal. These deadlines are necessary to enable the Board to budget and forecast the long-term liability of the Fund as well as to annually determine the amount of the per-tank fee. The claim filing deadlines indirectly benefit Ohio's tank owners by helping to ensure reports and other documentation required to process the request for reimbursement are readily available.

Rule 3737-1-12.1

Rule 3737-1-12.1 requires responsible persons to obtain pre-approval of estimated costs before conducting certain corrective action activities. These activities include interim response actions requiring the fire marshal's approval; remedial action plans; free product monitoring plans; free product recovery activities if recovery continues beyond one year; and if the estimated cost exceeds \$6,000, tier 3 evaluation plans, monitoring plans, and plans to calibrate or disprove the fate and transport model. The Board adopted rule 3737-1-12.1 for two reasons. The first being that the rule provides assurance to responsible persons that the costs of the pending corrective action work will be reimbursed once incurred and claimed and secondly, the rule serves to assist the Board with controlling costs to the Fund and, thereby, helps to keep tank fees affordable.

Rule 3737-1-15

Increasing or decreasing the deductible amount of coverage with the Fund is one mechanism available to the Board to ensure the continued financial solvency of the Fund as well as ensuring that the annual per-tank fee remains affordable to Ohio's petroleum UST owners and operators. The deductibles encourage tank owners and operators to operate and maintain their underground storage tanks and related equipment in a manner that reduces the likelihood of a release. Further, when a release does occur, it is to the responsible person's benefit to stay involved in and oversee the corrective action activities in order to control the costs to both the responsible person and the Fund.

Rule 3737-1-19

Rule 3737-1-19 requires the responsible person to file a Third-Party Claim Eligibility application in order to receive a determination of eligibility to file claims under the Fund for compensation to be paid to a third-party for bodily injury or property damage resulting from an accidental release of petroleum. The rule ensures that only an eligible responsible person is able to file for and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, the subject tank was being operated and maintained in compliance with the fire marshal's rules, and the release was timely reported as required by the fire marshal's rules.

Regulatory Flexibility

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

In Ohio, as in many other states, the only mechanism available to petroleum UST owners and operators to demonstrate \$1 million of financial responsibility for taking corrective actions and compensating third parties as required by both federal and state law is the Fund.

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 administrative fines or civil penalties associated with these rules.

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 newsletter.

Contact Information:

Petroleum UST Release Compensation Board

Phone: (614) 752-8963

Toll Free Phone: (800) 224-4659

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Website: www.petroboard.org

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BOARD EMAIL NOTICE LIST

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3737-1-03

Definitions.

(A) The following definitions are provided for the purposes of clarifying the meaning of certain terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to 3737-1-23 of the Administrative Code.

(1) "Applicant" means the responsible person for an underground storage tank system who submits a board-prepared application for fund payment of, or reimbursement for, corrective action costs for an accidental release of petroleum or compensation paid or to be paid to third parties for bodily injury or property damages.

(2) "Board" means the petroleum underground storage tank release compensation board.

(3) "Bodily injury" means injury to the body or sickness or disease contracted by a person as the result of an accidental release of petroleum and recoverable pursuant to division (C) of section 3737.92 of the Revised Code. Bodily injury does not include the negligent infliction of emotional distress.

(4) "Costs" means actual expenses incurred, paid, and documented.

(5) "Confirmed release" means a "confirmed release" as defined in rule 1301:7-9-13 of the Administrative Code.

~~(5)~~(6) "Debt service account or accounts" means an account or accounts established for the purpose of making bond principal and interest payments on a regular basis and as may be required by bond covenants.

~~(6)~~(7) "Debt service reserve account or accounts" means a reserve account or accounts established for the purpose of making bond principal and interest payments on a non regular, emergency basis and as may be required by bond covenants.

~~(7)~~(8) "Deductible" means the standard, non-reduced amount which is deducted from the responsible person's assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (E) of section 3737.92 of the Revised Code.

~~(8)~~(9) "Director" means the director of the petroleum underground storage tank financial assurance fund.

~~(9)~~(10) "Fee" means:

- (a) The annual petroleum underground storage tank financial assurance fee;
- (b) The supplemental petroleum underground storage tank financial assurance fee;
- (c) Late payment fees;
- (d) Transfer fee;
- (e) Any and all costs for the collection of delinquent accounts; or
- (f) Any other fee as established by the board.

~~(10)~~(11) "Financial audit" means an examination of the books, vouchers, and records of a responsible person by the director to determine compliance with this chapter.

~~(11)~~(12) "Financial responsibility" means proof of financial accountability as a condition to acquiring eligibility to the fund in accordance with rule 1301:7-9-05 of the Administrative Code adopted by the fire marshal pursuant to section 3737.882 of the Revised Code.

~~(12)~~(13) "Fire marshal" means the fire marshal of the state of Ohio.

~~(13)~~(14) "Fiscal year" means the time period July first through June thirtieth.

~~(14)~~(15) "Imminent hazard" means the appearance of threatened and impending risk or peril.

~~(15)~~(16) "Indemnify" means to restore or save harmless the board from a loss by payment or replacement to the board any monies advanced or received from any other party, including, but not limited to, the other parties' insurer or the responsible person's insurer, for the payment of corrective action costs or third party compensation for which the board has reimbursed or will reimburse the responsible person or has compensated or will compensate any third party for bodily injury or property damage.

~~(16)~~(17) "Markup" means an amount charged by contractors or consultants beyond the actual cost of labor, equipment, or materials, for management, supervision, or administration of the corrective action activities performed.

- ~~(17)~~(18) "Obligated account" means monies segregated and maintained, on a year by year basis, for reimbursing necessary corrective action costs.
- ~~(18)~~(19) "Obligations" mean undertakings by the board to reimburse or pay a responsible person or the designee of the responsible person.
- ~~(19)~~(20) "Primary consultant" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.
- ~~(20)~~(21) "Primary contractor" means a person or organization hired, by or through the responsible person, for principal control of corrective action activities at the release site.
- ~~(21)~~(22) "Program task" means one of the tasks defined by rule 3737-1-12 of the Administrative Code.
- ~~(22)~~(23) "Property damage" means actual and reasonable, incurred or pending expenses for damage to property as the result of an accidental release of petroleum that are not covered by insurance and are recoverable pursuant to division (C) of section 3737.92 of the Revised Code. The following items are a non exhaustive list of items specifically excluded from property damage: loss of profits, loss of business, taxes, utility expenses, punitive damages, exemplary damages, telephone, television, internet, or cable and/or satellite fees, attorney fees or all costs of litigation, including but not limited to court costs, depositions, experts and attorney fees.
- ~~(23)~~(24) "Reduced deductible" means the reduced amount which is deducted from the responsible person's assurance coverage pursuant to division (D)(3) of section 3737.91 of the Revised Code and established through division (F) of section 3737.92 of the Revised Code.
- ~~(24)~~(25) "Release" means a "release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (26) "Release incident" means a "release," "suspected release," or "confirmed release," whichever is first discovered.
- ~~(25)~~(27) "Responsible person" means a "responsible person" as defined in division (N) of section 3737.87 of the Revised Code.

~~(26)~~(28) "Subcontractor" means a person or organization, other than the primary contractor or primary consultant or a subsidiary thereof, which, at the request of the primary contractor or primary consultant, has undertaken one or more corrective action activities for corrective action at the release site under direction of the primary contractor or primary consultant. Subcontractors do not include persons or entities whose only involvement related to the corrective action is the supply of material or equipment.

~~(27)~~(29) "Subrogation" means the board's right to recover costs of corrective actions and compensation to third parties for bodily injury or property damage that the board has paid or will pay to a responsible person or a third party from any other party, including, but not limited to, the other party's insurer and the responsible person's insurer.

~~(28)~~(30) "Suspected release" means a "suspected release" as defined in rule 1301:7-9-13 of the Administrative Code.

~~(29)~~(31) "Tank population" means the number of tanks as defined by division (O) of section 3737.87 of the Revised Code in existence in the state of Ohio at any given time.

~~(30)~~(32) "Technical audit" means an examination of the books, vouchers, and records of a responsible person to determine if the work performed was necessary to meet the requirements of the fire marshal or an order of the director.

~~(31)~~(33) "Unclaimed monies trust account" means a trust account established pursuant to section 9.39 of the Revised Code for holding monies unclaimed by the rightful owner.

~~(32)~~(34) "Unobligated balance" means monies which have not been placed in the obligated account, the debt service account or accounts, the debt service reserve account or accounts, the unclaimed monies trust account, or used to purchase certificates of deposit for linked deposits. The unobligated balance includes the balance of monies which may be used to retire bonds, pay third-party bodily injury or property damage claims related to the accidental release of petroleum, to purchase certificates of deposit for linked deposits, to fund the obligated account, to fund the debt service account or accounts, to fund the debt service reserve account or accounts, or for various other expenses the board may incur related to administering sections 3737.90 to 3737.98 of the Revised Code.

~~(33)~~(35) "Year" means twelve consecutive months.

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~~release incident, 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 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.

3737-1-04.1

Coverage reinstatement.

- (A) Where the board has not issued a valid certificate of coverage to a responsible person for a given underground storage tank, for the prior two or more consecutive fiscal years, the responsible person shall:
- (1) Comply with the requirements of rule 3737-1-04 of the Administrative Code; and
 - (2) Certify that, prior to payment, ~~there has been no suspected release or release required to be reported to the fire marshal~~ no release has been suspected or confirmed from the underground storage tank system for which coverage is being sought, or any known release is in compliance with the requirements of rule 1301:7-9-13 of the Administrative Code.
- (B) The director shall verify the responsible person is in 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 valid certificate of coverage has not been issued for the prior two or more consecutive fiscal years. Where the director determines that the responsible person is not in compliance with the fire marshal's rules for the underground storage tank system for which coverage is being sought, the certificate of coverage shall be denied in accordance with paragraph (G)(2) of rule 3737-1-04 of the Administrative Code.
- (C) Nothing in any part of this rule shall be interpreted to allow retroactive coverage for ~~suspected releases or releases required to be reported to the fire marshal~~ releases suspected or confirmed prior to the effective date of a valid certificate of coverage.
- (D) The rights, limitations, responsibilities, and requirements of rule 3737-1-04 of the Administrative Code in acquiring and maintaining a valid certificate of coverage apply to any certificate of coverage sought and obtained under this rule.

3737-1-07

Establishing fund eligibility for corrective action costs.

- (A) As a prerequisite to determining fund payment of or reimbursement for corrective action costs for an accidental release of petroleum, the director of the fund shall issue a determination of eligibility for payment of or reimbursement for such costs where all of the following conditions are established:
- (1) Receipt of an application for eligibility, from a responsible person, within one year from the date the ~~suspected release or release, whichever is first,~~release incident was required to be reported to the fire marshal;
 - (2) At the time of the ~~suspected release or release, whichever is first,~~release incident a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to paragraph (E) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;
 - (3) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;
 - (4) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions;
 - (5) One of the following applies:
 - (a) At the time the ~~suspected release or release, whichever is first,~~ release incident was required to be reported to the fire marshal, the petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

- (6) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
 - (7) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
 - (8) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
 - (9) The responsible person has met the petroleum ~~suspected release and release~~ release, suspected release, and confirmed release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code; and
 - (10) At the time of the ~~suspected release or release, whichever is first,~~ release incident the petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code.
- (B) Where an eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information within sixty days from the date of the request. If the responsible person fails to respond within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in the denial of eligibility. If the responsible person fails to provide the additional information within thirty days from the date the second request is sent, eligibility shall be denied.
- (C) A responsible person determined eligible pursuant to paragraph (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:
- (1) Maintaining all records required to be kept by this chapter;
 - (2) Paying all fees assessed;

- (3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and
 - (4) Maintaining compliance with the applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.
- (D) A responsible person may transfer his rights for reimbursement of eligible costs to another party upon notification and approval of the director. The responsible person is liable for all requirements of this chapter and fund eligibility must be maintained. The transfer of rights does not limit the liabilities of the responsible person. Nothing within this paragraph of this rule shall be deemed to grant standing, to a non responsible person, to bring a claim against the petroleum financial assurance fund.
- (E) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule, has failed to maintain fund eligibility pursuant to paragraph (C) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.
- If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously-determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.
- (F) A responsible person or the fire marshal may file written objections with the board to the director's determination of fund ineligibility no later than thirty days from the mailing of the determination of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.
- (G) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.

3737-1-12

Application for reimbursement.

- (A) Responsible persons shall file an application for reimbursement for costs actually incurred in conducting corrective action within one year from the completion date of the program task, as described below. If the responsible person fails to make a timely application for reimbursement under this rule, the costs associated with the task shall be denied.
- (B) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect prior to March 31, 1999, the following are completion dates from which the one-year filing periods begin to run for related program tasks:
- (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraphs (F) and (H) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The site assessment program task completion date shall be the date the fire marshal determines site assessment to be complete. The site assessment program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;
 - (4) The remedial action plan program task completion date shall be the date the fire marshal approves the plan. The remedial action plan program task is comprised of those actions set forth in paragraph (J) and paragraph (K) of rule 1301:7-9-13 of the Administrative Code; and
 - (5) The completion date for the remedial action plan implementation program task and the on-going system operation and maintenance program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task and the on-going system operation and maintenance program task are comprised of those actions set forth in paragraph (L) and paragraph (M) of rule 1301:7-9-13 of the Administrative Code.
 - (6) For any costs not associated with an above described program task, the

associated completion date shall be the earliest of:

- (a) A completion date specified by the fire marshal;
- (b) The date the fire marshal issues a no further action determination; or
- (c) The date the work was completed.

(C) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 31, 1999, but before March 1, 2005, the following are completion dates from which the one-year filing periods begin to run for related program tasks:

- (1) The immediate response action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate response action program task is comprised of those actions set forth in paragraphs (G)(1), (G)(3), and (G)(4) of rule 1301:7-9-13 of the Administrative Code;
- (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(2) of rule 1301:7-9-13 of the Administrative Code;
- (3) The tier 1 evaluation program task completion date shall be the date the tier 1 evaluation notification, or the tier evaluation report if appropriate, is required to be submitted to the fire marshal. The tier 1 evaluation program task is comprised of those actions set forth in paragraphs (H), (I), (J) and (K) of rule 1301:7-9-13 of the Administrative Code;
- (4) The tier 2 evaluation program task completion date shall be the date the tier 2 evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraphs (M) and (N) of rule 1301:7-9-13 of the Administrative Code;
- (5) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code;

- (6) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (S) and (T) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (R) of rule 1301:7-9-13 of the Administrative Code; and
- (7) For any costs not associated with an above described program task, the associated completion date shall be the earliest of:
 - (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or
 - (c) The date the work was completed.
- (D) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, [but before September 1, 2017](#), the following are completion dates from which the one-year filing periods begin to run for related program tasks:
 - (1) The immediate corrective action program task completion date shall be the date the release is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraphs (G)(1) and (G)(2) of rule 1301:7-9-13 of the Administrative Code;
 - (2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(3) of rule 1301:7-9-13 of the Administrative Code;
 - (3) The tier 1 source investigation program task completion date shall be the date the tier 1 delineation notification, tier 1 notification, or tier 1 evaluation report, if appropriate, is required to be submitted to the fire marshal. The tier 1 source investigation program task is comprised of those actions set forth in paragraph (H) of rule 1301:7-9-13 of the Administrative Code;
 - (4) The tier 1 delineation program task completion date shall be the date the tier 1

investigation report is required to be submitted to the fire marshal. The tier 1 delineation program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;

- (5) The tier 2 evaluation program task completion date shall be the date the tier [2](#) evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraph (L) of rule 1301:7-9-13 of the Administrative Code;
- (6) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (M) of rule 1301:7-9-13 of the Administrative Code;
- (7) The completion date for the interim response action program task associated with a tier evaluation shall be the date the interim response action report is required to be submitted to the fire marshal. The interim response action program task is comprised of those actions set forth in paragraph (K) of rule 1301:7-9-13 of the Administrative Code.
- (8) The completion date for the remedial action plan preparation program task associated with a tier evaluation shall be the date the remedial action plan is required to be submitted to the fire marshal. The remedial action plan preparation program task is comprised of those actions set forth in paragraphs (N)(1) and (N)(2) of rule 1301:7-9-13 of the Administrative Code;
- (9) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (N)(3) and (N)(4) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code; and
- (10) For any costs not associated with an above described [program](#) task, the associated completion date shall be the earliest of:
 - (a) A completion date specified by the fire marshal;
 - (b) The date the fire marshal issues a no further action determination; or

(c) The date the work was completed.

(E) For purposes of submitting an application for reimbursement for corrective actions performed under rule 1301:7-9-13 of the Administrative Code in effect on or after September 1, 2017, the following are completion dates from which the one-year filing periods begin to run for related program tasks:

(1) The immediate corrective action program task completion date shall be the date the release incident is required to be reported to the fire marshal. The immediate corrective action program task is comprised of those actions set forth in paragraphs (G)(1) and (G)(2) of rule 1301:7-9-13 of the Administrative Code;

(2) The free product removal program task completion date shall be the date the last free product removal report is required to be submitted to the fire marshal or, if no free product removal reports are required, the completion date shall be the date the release incident was required to be reported to the fire marshal. The free product removal program task is comprised of those actions set forth in paragraph (G)(3) of rule 1301:7-9-13 of the Administrative Code;

(3) The tier 1 source investigation program task completion date shall be the date the tier 1 delineation notification, tier 1 notification, or tier 1 evaluation report, if appropriate, is required to be submitted to the fire marshal. The tier 1 source investigation program task is comprised of those actions set forth in paragraph (H) of rule 1301:7-9-13 of the Administrative Code;

(4) The tier 1 delineation program task completion date shall be the date the tier 1 investigation report is required to be submitted to the fire marshal. The tier 1 delineation program task is comprised of those actions set forth in paragraph (I) of rule 1301:7-9-13 of the Administrative Code;

(5) The tier 2 evaluation program task completion date shall be the date the tier 2 evaluation report is required to be submitted to the fire marshal. The tier 2 evaluation program task is comprised of those actions set forth in paragraph (L) of rule 1301:7-9-13 of the Administrative Code;

(6) The tier 3 evaluation program task completion date shall be the date the tier 3 evaluation report is required to be submitted to the fire marshal. The tier 3 evaluation program task is comprised of those actions set forth in paragraph (M) of rule 1301:7-9-13 of the Administrative Code;

(7) The completion date for the interim response action program task associated with a tier evaluation shall be the date the interim response action report is required to be submitted to the fire marshal. The interim response action program task is comprised of those actions set forth in paragraph (K) of rule

1301:7-9-13 of the Administrative Code.

(8) The completion date for the remedial action plan preparation program task associated with a tier evaluation shall be the date the remedial action plan is required to be submitted to the fire marshal. The remedial action plan preparation program task is comprised of those actions set forth in paragraphs (N)(1) and (N)(2) of rule 1301:7-9-13 of the Administrative Code;

(9) The completion date for the remedial action plan implementation program task and the monitoring plan program task shall be the date the fire marshal issues a no further action determination. The remedial action plan implementation program task is comprised of those actions set forth in paragraphs (N)(3) and (N)(4) of rule 1301:7-9-13 of the Administrative Code. The monitoring plan program task is comprised of those actions set forth in paragraph (O) of rule 1301:7-9-13 of the Administrative Code; and

(10) For any costs not associated with an above described program task, the associated completion date shall be the earliest of:

(a) A completion date specified by the fire marshal;

(b) The date the fire marshal issues a no further action determination; or

(c) The date the work was completed.

~~(E)~~(F) Where applicable, a responsible person shall submit approvals from the fire marshal to remain in an earlier version of rule 1301:7-9-13 of the Administrative Code. Where a responsible person has been conducting corrective action under an earlier version of rule 1301:7-9-13 of the Administrative Code and elects, or by operation of law, is mandatorily transitioned to continue corrective action under rule 1301:7-9-13 of the Administrative Code in effect on or after March 1, 2005, the election date or the mandatory transition date shall be used as the completion date for submitting the following costs:

(1) For program tasks that are incomplete at the date of the election or mandatory transition date, submit all costs incurred within one year from the date of the election or mandatory transition; and

(2) For all program tasks that are complete at the time of such election or mandatory transition, submit all costs in accordance with paragraph (B), (C), ~~(D)~~, or (E) of this rule.

~~(F)~~(G) If the responsible person has made a timely (prior to the original due date for completion) written request to the fire marshal in accordance with rule 1301:7-9-13 of the Administrative Code, to extend the time for completing a program task and if

the fire marshal grants that request, the claim submission date for costs associated with that program task shall be as follows:

- (1) For costs incurred prior to the original completion date, any claim for such costs shall be submitted within one year from the original completion date;
- (2) For costs incurred after the original completion date, any claim for such costs shall be submitted within one year from the newly approved and extended deadline and, if no deadline is stated in the fire marshal's letter, within one year from the date of the letter.

~~(G)~~(H) If the fire marshal issues a written request for additional information, the costs for the additional work required to address the requests are due within one year from the date the work is required to be completed by the fire marshal and if no completion date is stated in the original request, within one year from the date of the request. This rule shall be applied to all program tasks performed under all versions of rule 1301:7-9-13 of the Administrative Code.

~~(H)~~(I) The application for reimbursement shall include documentation of all notifications and reports required under applicable versions of rule 1301:7-9-13 of the Administrative Code.

~~(I)~~(J) The application for reimbursement shall include the following documentation:

- (1) Certifications by the responsible person and the primary consultant or primary contractor that the information contained in and submitted with the application is true and correct and represents actual costs incurred;
- (2) Invoices, payment records and any other records documenting actual costs incurred and paid related to corrective action; and
- (3) Any other records, site-specific information or other relevant information necessary to demonstrate compliance with cleanup standards and tank rules, or any applicable order, as required by the director.

~~(J)~~(K) A responsible person may apply for reimbursement for partial completion of a program task provided that the total amount sought in the application for reimbursement is not less than fifty per cent of the applicable deductible of the responsible person except:

- (1) For those costs required to be submitted according to paragraph ~~(E)(2), (F), or (G)~~ (F)(2), (G), or (H) of this rule, the responsible person shall apply for

reimbursement as required by those paragraphs regardless of the total amount sought; and

- (2) For ~~the~~ those costs associated with remediation system operation and maintenance and/or ~~the~~ monitoring ~~program tasks~~activities, the director may grant permission to the responsible person to submit applications for reimbursement in which the total amount being sought is less than fifty per cent of the applicable deductible of the responsible person.

3737-1-12.1 **Mandatory and voluntary pre-approval of corrective action costs.**

(A) For corrective actions to be performed in accordance with all versions of rule 1301:7-9-13 of the Administrative Code, the responsible person shall submit to the director an application for initial pre-approval of costs for pending corrective actions, as follows:

- (1) Simultaneously with the submission of an interim response action notification, where prior approval of the fire marshal must be obtained, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the interim response action notification;
- (2) Simultaneously with the submission of a remedial action plan to the fire marshal, the responsible person shall:
 - (a) Submit a copy of the remedial action plan with a brief description of the remedial action alternatives considered, including a discussion of the reliability, effectiveness, cost, and time needed for completion, and the rationale for the selected remedial alternative; and
 - (b) Submit an estimated cost and completion schedule for the remedial actions as set forth in the remedial action plan;
- (3) Simultaneously with the submission to the fire marshal of a tier 3 evaluation plan where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the tier 3 evaluation plan with a description of the objective; the activities to be conducted; a discussion of the effectiveness, cost and rationale for selecting the tier 3 evaluation; and an implementation schedule and projected completion date;
- (4) Simultaneously with the submission to the fire marshal of a plan to calibrate or disprove the fate and transport model in conjunction with a tier 2 evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit a copy of the plan with a description of the objective; the activities to be conducted; and an estimated cost and completion schedule;
- (5) Simultaneously with the submission to the fire marshal of a monitoring plan in conjunction with a tier evaluation report, where the estimated costs exceed six thousand dollars, the responsible person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the monitoring plan.

(6) Simultaneously with the submission to the fire marshal of a free product

monitoring plan in conjunction with a tier 2 evaluation report, the responsible personal shall submit an estimated cost and completion schedule for the corrective actions as set forth in the free product monitoring plan.

- (6)(7) If free product is present one year after initiating free product recovery activities, the responsible person shall assess the effectiveness of free product recovery techniques and shall submit a brief written evaluation of the reliability, effectiveness, cost, and time needed for free product recovery in the upcoming year. Said written evaluation shall be submitted on a yearly basis for each year that recovery is ongoing.
- (a) Where free product recovery has been in place for one year, the first evaluation shall be submitted within ninety days following the anniversary date of free product recovery. Subsequent evaluations shall be submitted annually, unless otherwise determined by the director.
 - (b) Where free product recovery is in conjunction with a remedial action plan, the annual free product evaluation shall be incorporated into the annual remedial action plan submissions required by this rule.
- (B) Where estimated cost and completion schedules have been pre-approved in accordance with paragraphs (A)(2), ~~and~~ (A)(6), and (A)(7) of this rule, the responsible person shall submit pre-approval applications annually, unless otherwise determined by the director, on a form prescribed by the director.
- (C) Upon receipt of a pre-approval application submitted pursuant to this rule, the director shall evaluate the estimated cost and completion schedule. In evaluating the estimated cost and completion schedule to be pre-approved, the director shall consider what is usual, customary and reasonable for similar corrective action activities and under similar circumstances as determined from the fund's experience. At the director's discretion, other options including, but not limited to, pay-for-performance or risk sharing by the consultant and the responsible person may be considered for the corrective actions for which pre-approval is sought. The director shall notify the responsible person of the pre-approved costs and completion schedule.
- (D) The responsible person shall immediately notify the director and submit a revised estimated cost and completion schedule for pre-approval as follows:
- (1) If during the implementation of the corrective actions for which pre-approval has been granted, the actual costs will exceed the pre-approved costs by twenty per cent or six thousand dollars, whichever is less; or

- (2) If during the implementation of the corrective actions for which pre-approval was not required by paragraph (A)(3), (A)(4), or (A)(5) of this rule because the estimated costs did not exceed six thousand dollars, the actual costs will exceed six thousand dollars.
- (E) Where a revised estimated cost and completion schedule is submitted for pre-approval, the director may review the estimated cost and completion schedule in accordance with paragraph (C) of this rule or provide notification to the responsible person that the estimated cost and completion schedule will be evaluated when the application for reimbursement is submitted to the board in accordance with rule 3737-1-12 of the Administrative Code.
- (F) Where an estimated cost and completion schedule is required by this rule, estimated costs shall be detailed on a time and material basis.
- (G) Corrective action costs and completion schedules not submitted for pre-approval in accordance with this rule shall be evaluated for reimbursement and subject to reductions in reimbursement in accordance with rule 3737-1-09 of the Administrative Code.
- (H) Where pre-approval is not required by this rule but is desired by the responsible person, the responsible person may submit to the director a description of the proposed corrective actions and an estimated cost and completion schedule for pre-approval.
- (I) Pre-approval shall not accelerate fund reimbursement for a release. Payment for pre-approved costs shall be contingent upon the proper submission of an application for reimbursement in accordance with rule 3737-1-12 of the Administrative Code, and a determination that a responsible person is eligible to receive reimbursement from the fund.

3737-1-15

Modifying the deductible or the reduced deductible.

- (A) As a last alternative to maintain solvency of the fund and as a method of insuring that funding levels are maintained on the basis of known and estimated obligations of the fund, the board may modify the deductible or the reduced deductible. The basis for the modification of the deductible or the reduced deductible will include but not be limited to the amount needed to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.
- (B) The board shall notify each responsible person by certified mail of the change in the deductible or the reduced deductible no later than the first day of May preceding the first day of the fiscal year in which the deductible amount will apply. If the certified mail is returned unclaimed, it shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.
- (C) The applicable deductible for any claim is the deductible in effect at the time ~~the suspected release or release, whichever is first,~~of the release incident for which application for reimbursement is being made.

3737-1-19

Establishing fund eligibility for third-party claims.

(A) As a prerequisite to determining fund payment or reimbursement for compensation paid or to be paid for third-party claims for bodily injury or property damages caused by the accidental release of petroleum resulting in the need for corrective action, the director of the fund shall issue a determination of eligibility where all of the following conditions are established:

- (1) Receipt of an application for eligibility, from a responsible person, for third-party bodily injury or third-party property damage caused by an accidental release of petroleum within thirty days from the first of any of the following events: service of a third-party complaint against a responsible person, the submission of a third-party demand for settlement, or notice of representation of a third party in a lawsuit against a responsible person. Where a third-party eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information in writing and within sixty days from the date of the request. If the responsible person fails to make a written response within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in an eligibility denial. If the responsible person fails to make a written response within thirty days from the date the second request is sent, eligibility shall be denied;
- (2) At the time of the ~~suspected release or release, whichever is first~~, release incident, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to paragraph (E) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;
- (3) One of the following applies:
 - (a) At the time the ~~suspected release or release, whichever is first~~, release incident was required to be reported to the fire marshal, the petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code;
 - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground

storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

- (4) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
 - (5) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
 - (6) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
 - (7) The responsible person has met the petroleum ~~suspected release and release~~ release, suspected release, and confirmed release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code;
 - (8) At the time of the ~~suspected release or release, whichever is first,~~ release incident, the petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code; and
 - (9) The responsible person has been determined eligible for payment of or reimbursement for eligible corrective action costs pursuant to rule 3737-1-07 of the Administrative Code.
- (B) A responsible person determined eligible pursuant to paragraph (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:
- (1) Maintaining all records required to be kept by this chapter;
 - (2) Paying all fees assessed;
 - (3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and

3737.882 of the Revised Code; and

- (4) Maintaining compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.

- (C) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule has failed to maintain fund eligibility pursuant to paragraph (B) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.

If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.

- (D) A responsible person or the fire marshal may file written objections with the board to the director's determination of fund ineligibility no later than thirty days from the mailing of the determination of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.

- (E) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.