

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 an application on a form prescribed by the director 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.
- (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.
- (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.
- (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.
- (9) "Director" means the director of the petroleum underground storage tank financial assurance fund.
- (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.
- (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.
- (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.
- (13) "Fire marshal" means the fire marshal of the state of Ohio.
- (14) "Fiscal year" means the time period July first through June thirtieth.
- (15) "Imminent hazard" means the appearance of threatened and impending risk or peril.
- (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.
- (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.

- (18) "Obligated account" means monies segregated and maintained, on a year by year basis, for reimbursing necessary corrective action costs.
- (19) "Obligations" mean undertakings by the board to reimburse or pay a responsible person or the designee of the responsible person.
- (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.
- (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.
- (22) "Program task" means one of the tasks defined by rule 3737-1-12 of the Administrative Code.
- (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.
- (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~~ [3737.91](#) of the Revised Code.
- (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.
- (27) "Responsible person" means a "responsible person" as defined in division (N) of section 3737.87 of the Revised Code.

- (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.
- (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.
- (30) "Suspected release" means a "suspected release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (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.
- (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.
- (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.
- (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.
- (35) "Year" means twelve consecutive months.

3737-1-06

The deductible and the reduced deductible.

- (A) The deductible is fifty-five thousand dollars, ~~which deductible may thereafter be modified by the~~ The board may modify the deductible pursuant to in accordance with rule 3737-1-15 of the Administrative Code.
- (B) Any responsible person owning, or owning or operating, a total of six or fewer tanks may purchase the reduced deductible of eleven thousand dollars, ~~which reduced deductible may thereafter be modified by the board pursuant to rule 3737-1-15 of the Administrative Code, for all tanks owned by the person eligible to elect the reduced deductible.~~ If a responsible person eligible to elect the reduced deductible purchases the reduced deductible, the reduced deductible shall be purchased for all tanks owned by the responsible person. The additional fee due for the reduced deductible shall be two hundred dollars per tank. The board may modify the reduced deductible in accordance with rule 3737-1-15 of the Administrative Code.
- (C) If a responsible person discovers one or more underground storage tanks, which were previously unknown to the responsible person and which have not been registered with the fire marshal pursuant to rule 1301:7-9-04 of the Administrative Code, on ~~his~~ the responsible person's property, the discovered underground storage tank(s) shall not affect the responsible person's qualification for the reduced deductible for any fiscal year prior to and including the fiscal year of discovery. If the responsible person is required to demonstrate financial responsibility for the discovered underground storage tank(s), the discovered underground storage tank(s) shall be used to determine the responsible person's qualification for the reduced deductible in succeeding fiscal years.

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 of the release incident ~~was required to be reported to the fire marshal;~~
 - (2) At the time of the 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 of the release incident, 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 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 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.

3737-1-09

Limitations of fund coverage.

(A) Nothing in this chapter shall be construed to authorize reimbursement for:

- (1) Costs of corrective actions for releases prior to July 1, 1989;
- (2) Costs of corrective action for a release for which eligibility for reimbursement was not sought or the director has issued a determination denying eligibility for reimbursement;
- (3) Litigation costs of any kind incurred by a responsible person including, but not limited to: litigation costs involving acquisition of site access; local, state, or federal permit decisions; any ordinance, rule or regulation; or any order issued by the fire marshal;
- (4) Costs associated with:
 - (a) Achieving compliance with the provisions of sections 3737.881 to 3737.98 of the Revised Code, with the exception of costs associated with corrective action and compensation to third parties for expenses associated with bodily injury or property damages caused by an accidental release of petroleum;
 - (b) Interest or carrying charges of any kind;
 - (c) Insurance premiums other than specific policies or bonds required for corrective action;
 - (d) Studies or surveys of an underground storage tank site or on property nearby other than from a site check or a tier 1 source investigation conducted in accordance with rule 1301:7-9-13 of the Administrative Code;
 - (e) Corrective action costs which are determined to be non-reimbursable as a result of an audit performed in accordance with this chapter.
- (5) Costs incurred in conducting corrective action for non-petroleum products or corrective action for petroleum or petroleum products unrelated to a release from an assured underground storage tank system;
- (6) Costs incurred in conducting corrective action for a release from an unassured underground storage tank system;

- (7) Costs not required for performing corrective action completed in accordance with rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code or, where applicable, completed in accordance with an order which establishes corrective action procedures and criteria for the site;
- (8) Costs covered by insurance policies;
- (9) Costs associated with the closure or removal of underground storage tank systems in compliance with rule 1301:7-9-12 of the Administrative Code. Where closure or removal costs, associated with rule 1301:7-9-12 of the Administrative Code, are intermingled with corrective action costs and are not separately ascertainable, the director shall determine corrective action costs to be reimbursed based upon a reasonable standard;
- (10) Costs for corrective action other than those costs which are usual, customary, and reasonable for similar corrective action activities and under similar circumstances, as determined from the fund's experience;
- (11) Costs for corrective action not submitted in accordance with rule 3737-1-12 of the Administrative Code;
- (12) Additional corrective action costs for a release after a no further action letter has been issued by the fire marshal for the subject release, unless the additional corrective action activities are required by the fire marshal due to the discovery of chemicals of concern, as defined by rule 1301:7-9-13 of the Administrative Code, resulting from the original release but not reasonably discovered prior to the issuance of the no further action letter. Under no circumstances shall additional corrective action costs be reimbursed when the original no further action letter for the subject release is rescinded more than five years from the date it was issued;
- (13) Costs necessary for performing corrective action authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section greater than fifty per cent of the usual, customary, and reasonable costs of the least expensive alternative for similar corrective action activities and under similar circumstances as determined from the fund's experience when pre-approval is required by paragraph (A), (B), or (D) of rule 3737-1-12.1 of the Administrative Code but pre-approval was not sought or granted;
- (14) Undocumented corrective action costs, unless the responsible person submits documentation to support the corrective action costs within ninety days from

the date that the director or the director's designee requests such documentation in writing pursuant to rule 3737-1-13 of the Administrative Code;

(15) Costs for corrective action and/or third-party claims where the responsible person has failed to comply with rule 3737-1-22 of the Administrative Code that are greater than the lesser of:

(a) Fifty per cent of eligible corrective action and third-party claim costs, as determined by the director; or

(b) The total of eligible corrective action and third-party claim costs, as determined by the director, minus the amount of the deductible and minus the amount that has been or will be paid by any party to the responsible person.

(16) Cost for performing corrective action not authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;

(17) Markup for any of the following:

(a) Costs of disposal, disposal facilities, and treatment facilities;

(b) Internal expenses including labor, supplies, per diem travel expenses, and intra-company billings;

(c) Charges for supplies;

(d) Charges for materials;

(e) Charges for equipment;

(f) Charges for utilities;

(g) Costs for transportation of soil and backfill materials;

(h) Lump-sum charges that include any of the costs in paragraphs (A)(17)(a) to (A)(17)(g) of this rule.

(18) Costs that have been or will be paid by any party under rule 3737-1-22 of the

Administrative Code.

- (B) The board, upon payment or reimbursement from the fund to a responsible person for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other 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 to the fire marshal, 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 person shall submit an estimated cost and completion schedule for the corrective actions as set forth in the free product monitoring plan.
- (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 [ongoing free product](#) recovery is ~~ongoing~~ [required by the fire marshal](#).
 - (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), (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.

3737-1-16

Third-party claims.

- (A) Reimbursement or payment from the fund for compensation paid or to be paid for third-party claims shall be limited to the reasonable costs of bodily injury or property damage, if any, if the responsible person was in compliance with rule 3737-1-19 of the Administrative Code at the time the judgment or settlement was entered and the responsible person has been determined eligible for reimbursement for the third-party claim.
- (B) Upon notifying the board of a third-party claim pursuant to rule 3737-1-19 of the Administrative Code, the responsible person shall keep the board informed of the status of the third-party claim including but not limited to any pending negotiations, litigation, mediations, settlements, or judgments.
- (C) Where there has been a judgment or settlement of a third-party lawsuit, the director shall determine and reimburse only those portions, if any, of the judgment or settlement which apply to bodily injury or property damage as defined in paragraphs (A)(3) and ~~(A)(22)~~ (A)(23) of rule 3737-1-03 of the Administrative Code. The board shall have no obligation to pay for the reasonable costs of bodily injury or property damage that are not documented in a third-party claim.
- (D) The total amount reimbursed, including payment to a third party under this rule, shall not exceed the maximum disbursement set forth in division (D)(3) of section 3737.91 of the Revised Code.
- (E) Reimbursement or payment from the fund under this rule shall not include payment or reimbursement for bodily injury or property damage covered by insurance policies, or that has been or will be paid by any party under rule 3737-1-22 of the Administrative Code.
- (F) Determination of third-party eligibility for the responsible person does not constitute an obligation for reimbursement from the fund.
- (G) Nothing in this rule precludes the board from participating or intervening in any pending negotiations, litigation, mediations, or settlement discussions or entering into a settlement with either the responsible person or the third party.
- (H) Nothing in this rule shall be construed that the board is acting as a representative of the responsible person.

3737-1-23

Access and maintenance of confidential personal information.

For purposes of confidential personal information that is maintained by the board, the following definitions apply:

(A) Definitions:

- (1) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.
- (2) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of this rule addressing requirements in section 1347.15 of the Revised Code.
- (3) "Computer system" means hardware, software, and other equipment that stores, maintains, or retrieves personal information using electronic data processing.
- (4) "Confidential personal information" has the same meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by paragraph (D) of this rule.
- (5) "Employee of the board" means each employee of the board regardless of whether he/she holds an appointed office or position within the board. "Employee of the board" is limited to the petroleum underground storage tank release compensation board.
- (6) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (7) "Individual contact" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (8) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (9) "Person" means a natural person.
- (10) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

- (11) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.
 - (12) "Research" means a methodical investigation into a subject.
 - (13) "Routine" means commonplace, regular, habitual, or ordinary.
 - (14) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees of the board and maintained by the board for internal administrative and human resource purposes.
 - (15) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
 - (16) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.
- (B) For personal information systems, whether manual or computer systems that contain confidential personal information, the following rules apply:
- (1) Criteria for accessing confidential personal information. Employees of the board are authorized to access personal information systems for valid reasons in accordance with paragraph (C)(1) of this rule to the extent required to perform assigned job duties;
 - (2) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the employee responding to such request shall do all of the following:
 - (a) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;

- (b) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and
- (c) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.

(3) Notice of invalid access.

- (a) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, notification shall be delayed for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individual's confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.
- (b) "Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.
- (c) Notification shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.
- (d) Notification may be made by any method reasonable designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(4) Appointment of a data privacy point of contact. The director shall designate an employee to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist with both the implementation of privacy protections for the confidential personal information that the board maintains as well as work to ensure compliance with section 1347.15 of the Revised

Code and this rule.

- (5) Completion of a privacy impact assessment. The director shall designate an employee to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.
- (C) Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information regardless of whether the personal information system is a manual system or computer system:
- (1) Performing the following functions constitutes valid reasons for authorized employees of the board to access confidential personal information:
 - (a) Responding to a public records request;
 - (b) Responding to a request from an individual for the list of confidential personal information the board maintains regarding that individual;
 - (c) Administering a constitutional provision or duty;
 - (d) Administering a statutory provision or duty;
 - (e) Administering an administrative rule, provision or duty;
 - (f) Complying with any state or federal program requirements;
 - (g) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
 - (h) Auditing purposes;
 - (i) Investigation or law enforcement purposes;
 - (j) Administrative hearings;
 - (k) Litigation, complying with an order of the court, or subpoena;

- (l) Human resource matters (e.g. hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
 - (m) Complying with an executive order or policy; or
 - (n) Complying with an agency policy or state administrative policy issued by the department of administrative services, the office of budget and management or other similar agency.
- (D) The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by the board in accordance with section 1347.15 of the Revised Code:
- (1) Social security numbers: 5 U.S.C. 552a . , "State ex rel Beacon Journal v. Akron (1994), 70 Ohio St. 3d 605.", unless the individual was told that the number would be disclosed.
 - (2) Records exempt from disclosure under the Ohio Public Records Act: Chapter 149. of the Revised Code.
- (E) For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:
- (1) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
 - (2) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to the system.
 - (3) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
 - (4) Logging requirements regarding confidential personal information in existing

manual and computer systems.

- (a) The board shall require employees of the board who access confidential personal information within the computer system to maintain a log that records that access.
- (b) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (i) The employee of the board is accessing confidential personal information for official authority purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (ii) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iii) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iv) The employee of the board accesses confidential personal information to the extent necessary to perform assigned job duties and the access is for a valid reason as defined in paragraph (C)(1) of this rule.
 - (v) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:
 - (a) The individual requests confidential personal information about himself/herself.
 - (b) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(c) For purposes of this paragraph, the director may choose the form or forms of logging, whether in electronic or paper formats.

(F) Log management. The director or designee shall maintain an electronic or paper log that records access to confidential personal information on existing computer systems for any reason not specified in paragraph ~~(D)(4)(b)~~ (E)(4)(b) of this rule. The director shall issue a policy that specifies the following:

- (1) What information shall be captured in the log;
- (2) How the log is to be stored; and
- (3) How long information kept in the log is to be retained.