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3737-1-01 Notice of administrative rules hearing.

- (A) Public notice of the intention of the petroleum underground storage tank release compensation board to consider adopting, amending or rescinding a rule in accordance with divisions (A) to (E) of section 119.03 of the Revised Code shall be published in the register of Ohio (www.registerofohio.state.oh.us) pursuant to division (A) of section 119.03 of the Revised Code.
- (B) The public notice shall specify the date, time and place of the hearing and shall include:
 - (1) A statement of the intention to consider adopting, amending or rescinding a rule and the purpose or reason therefore;
 - (2) A synopsis of the proposed rule, amendment or rescission or a general statement as to the subject to which it relates.
- (C) A copy of the public notice shall be provided by the board to any person who requests a copy, provides an electronic mail address, mailing address or fax number, and, if appropriate, pays the cost of copying and mailing.

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3737-1-02 Public meetings.

- (A) Meetings of the petroleum underground storage tank release compensation board, in addition to the meetings required by section 3737.90 of the Revised Code, may be held at the call of the chairman or vice-chairman or upon a majority vote of a quorum of the members present at a meeting.
- (B) Any person desiring to determine the time, place or purpose of any meeting of the board, may do so by accessing the board's web site at www.petroboard.com or contacting the chairman or vice-chairman of the board or personnel employed by the board.
- (C) Any person may provide an email address and be placed on an electronic mailing list for advance notification of all meetings of the board or meetings at which any specific type of public business is to be discussed. The requestor may request notification be provided by fax or first-class mail. Any person requesting notification by first-class mail shall provide a postage-prepaid self-addressed envelope and pay the cost of copying.
- (D) Public notice specifying the date, time and place of all meetings of the board shall be posted on the board's web site at www.petroboard.com and at its office.

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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 3737-1-22 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) “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) “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) “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) “Director” means the director of the petroleum underground storage tank financial assurance fund.
 - (9) “Fee” means:
 - (a) The annual petroleum underground storage tank financial assurance fee;
 - (b) The supplemental petroleum underground storage tank financial assurance fee; or
 - (c) Any other fee as established by the board.
 - (10) “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) “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) “Fire marshal” means the fire marshal of the state of Ohio.
 - (13) “Fiscal year” means the time period July first through June thirtieth.
 - (14) “Imminent hazard” means the appearance of threatened and impending risk or peril.

- (15) "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.
- (16) "Obligated account" means monies segregated and maintained, on a year by year basis, for reimbursing necessary corrective action costs.
- (17) "Obligations" mean undertakings by the board to reimburse or pay a responsible person or the designee of the responsible person.
- (18) "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.
- (19) "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.
- (20) "Program task" means one of the tasks defined by rule 3737-1-12 of the Administrative Code.
- (21) "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.
- (22) "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.
- (23) "Release" means a "release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (24) "Responsible person" means a "responsible person" as defined in division (N) of section 3737.87 of the Revised Code.
- (25) "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.
- (26) "Suspected release" means a "suspected release" as defined in rule 1301:7-9-13 of the Administrative Code.
- (27) "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.
- (28) "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.
- (29) "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, 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.

(30) "Year" means twelve consecutive months.

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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) (1) 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 owed, 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, 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, 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. 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; or
 - (d) Pay any fee assessed pursuant to this chapter.
- (2) Where ownership of an underground storage tank has been transferred and notice has been given to the director in accordance with paragraph (F) of this rule, a new certificate of coverage shall be issued to the new underground storage tank owner for the fiscal year in which the transfer occurred provided that the new owner pays a transfer fee of five hundred dollars per facility, pays all outstanding fees, if any, 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.
 - (3) The director shall accept the annual petroleum underground storage tank financial assurance fee required by this rule but shall not issue a certificate of coverage when the criteria of this rule for issuance are not satisfied.
 - (4) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of denial.

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

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

- (F) 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, 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 has notified the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, has paid the required annual fees for the new or existing tank, all outstanding fees, if any, 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.

In the event of a transfer of an underground storage tank for which a certificate of coverage is currently in place, the transferee shall give notice to the director within thirty days of the date of the transfer. If the new responsible person notifies the director within thirty days and complies with the requirements set forth in this rule, the certificate of coverage shall be effective as of the date of the transfer of the underground storage tank. If the new responsible person fails to notify the director of the transfer within thirty days or, if no certificate of coverage for the tank is in effect at the time of the transfer, a certificate of coverage will not be effective until the new responsible person notifies the director of the transfer, pays the transfer fee, and all outstanding fees, if any, 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.

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 non-payment. 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) 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.
- (H) The amount of the annual fee is six hundred dollars per tank.
- (I) 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.

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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 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 (E)(4) 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 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.

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3737-1-05 Supplemental petroleum underground storage tank financial assurance fee.

- (A) In any fiscal year in which the board finds that the unobligated balance in the financial assurance fund is less than fifteen million dollars, the board may assess a supplemental 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.
- (B) The basis for the calculation of the supplemental fee will include but will not be 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 of the supplemental fee no less than thirty days before the date on which the supplemental fee is due.
- (D) The supplemental fee is due no later than thirty days from the date of the notification. In the event a responsible person fails to pay the fee within the thirty-day period set forth in this rule, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the supplemental fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the supplemental fee and a late fee of up to 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.
- (E) The director shall revoke the certificate of coverage upon the failure to pay the supplemental fee.
- (F) In the event that a new tank is placed in service after July first of the year in which the supplemental fee is imposed, the director shall notify the responsible person by certified mail of the assessment of the fee. The responsible person shall tender the fee assessed no later than thirty days from the date of notification of fees. If the responsible person fails to submit the fee within thirty days after the notification has been mailed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the supplemental fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the supplemental fee and a late fee of up to 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.
- (G) A responsible person may file with the board written objections to the order of the director no later than thirty days from the mailing of the order. The board, upon receipt of the objections, shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

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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 board pursuant to 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. The additional fee due for the reduced deductible shall be two hundred dollars per tank.
- (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 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 tank(s) shall be used to determine the responsible person's qualification for the reduced deductible in succeeding fiscal years.

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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, was required to be reported to the fire marshal;
 - (2) At the time of the suspected release or release, whichever is first, 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)(1) 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, 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 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, 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 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 division (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.
- (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.

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3737-1-08 Disbursement of the financial assurance fund.

- (A) Once eligibility of the fund has been determined in accordance with rules 3737-1-07 or 3737-1-19 of the Administrative Code and the director of the fund has determined that an application for reimbursement is complete, obligations of the fund will not occur unless and until the deductible or the reduced deductible, as applicable, set forth in rule 3737-1-06 of the Administrative Code has been met. Costs determined to be non-reimbursable pursuant to paragraph (A) of rule 3737-1-09 of the Administrative Code shall not be applied toward the responsible person's deductible or reduced deductible. Reimbursable costs covered by insurance policies or recoverable from any other party shall be applied toward the responsible person's deductible or reduced deductible.
- (B) Obligations of the fund for eligible claims will be made on a first-come, first-served basis as determined by receipt of a completed application in accordance with rule 3737-1-12 of the Administrative Code, except when:
 - (1) The fire marshal requests approval of an accelerated review on the basis of the threat posed to human health or the environment by the release to which the claim applies;
 - (2) An accelerated review is granted under paragraph (D) of this rule; or
 - (3) The director determines that efficiency and cost savings will be better served by a non first-come, first-served review.

Notwithstanding any of the above provisions, the director may prioritize claims for releases that have received no further action status.

- (C) The board may by resolution provide for the payment of claims by installments in a manner and for a period of time it deems appropriate when the board concludes that such action is necessary to maintain the financial soundness of the financial assurance fund.
- (D) A responsible person may file with the board a request for an accelerated review of a claim by submitting an application for hardship status on a form prescribed by the director, and by providing financial documentation to the director that demonstrates approval of hardship status is necessary to prevent an imminent financial hardship to the responsible person.
 - (1) As a result of such request, the director may:
 - (a) Seek additional information from the responsible person to demonstrate imminent financial hardship, including but not limited to, a statement of assets and liabilities and/or a detailed listing of living expenses and income;
 - (b) Request the responsible person sign a release to allow the director to obtain or inspect federal and state tax records; and
 - (c) Request copies of any contracts existing between the responsible person and his/her contractors and subcontractors remediating the site.
 - (2) Tank owners who refuse to provide the requested information shall be denied hardship status. Any documentation received by the board for a hardship application may be a public record except if specifically exempt under section 149.43 of the Revised Code.
 - (3) Upon review of financial data and/or other information provided by the responsible person, the director shall recommend to the board approval or denial of the request.

The board may accept or reject the director's recommendation. Should the board's action result in the approval of hardship status, the approval shall be for one year from the date of the board's action. A

responsible person may file a subsequent request for hardship status on or before the expiration of a one-year period of hardship status.

- (4) The board may suspend or discontinue the hardship program when it determines that doing so is in the interest of the fund. Any hardship statuses that are currently in effect at the time the board suspends or discontinues the hardship program shall remain effective until the expiration of the one year period from the date the application was approved.

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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 suspected release or release for which 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 solely 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 solely 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 or recoverable from any other party;
- (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 actions 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 for corrective action greater than fifty percent 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 paragraphs (A), (B) and (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; or
 - (15) Costs for corrective action and/or third-party claims determined to be non-reimbursable pursuant to paragraph (E) of 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.

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3737-1-09.1 Inclusions of fund coverage.

- (A) The following costs shall be specifically reimbursable:
- (1) Primary contractor or primary consultant markup on reimbursable subcontractor charges but only to the extent that the amount of primary contractor or primary consultant markup is not greater than ten per cent of the subcontractor's actual costs. However, no markup shall be paid for any of the following:
 - (a) Costs of disposal, disposal facilities, and/or treatment facilities;
 - (b) Markup charged by the subcontractor(s);
 - (c) Primary contractor or primary consultant internal expenses including labor, supplies, per diem travel expenses, and intra-company billings;
 - (d) Charges for supplies;
 - (e) Charges for materials; or
 - (f) Charges for equipment.
 - (2) Per diem for travel costs directly related to corrective action at a release site, up to a maximum amount, as established by the director, to reimburse the costs of mileage, food, and lodging incurred by a primary consultant or primary contractor when the release site is at a distance from the primary consultant's or primary contractor's nearest office of business which, under state of Ohio travel reimbursement policy, would allow for reimbursement. The costs of travel by common carrier (i.e. plane, boat and bus) shall not be reimbursable.
- (B) Nothing in any part of this rule shall be interpreted to preclude coverage for corrective action costs or third-party bodily injury or third-party property damage which are generally or specifically included in coverage under Chapter 3737 of the Revised Code or Chapter 3737 of the Administrative Code.

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3737-1-10 **Financial audits.**

- (A) The director or the director's designee may perform financial audits as necessary to ensure compliance with this chapter, to certify corrective action costs and to assess whether costs are reimbursable from the fund. Prior to any financial audit, the director shall give the responsible person written notice of the proposed audit. The responsible person shall make available to the director, or the director's designee, all records and documents which the director or the director's designee deems necessary to the completion of the audit.

- (B) The director shall upon completion of the audit prepare a written report of the findings. A copy of this report shall be sent to the responsible person and to the fire marshal. The responsible person may file written objections to the director's report within thirty days after the mailing of the director's report. The board, upon receipt of the objections, shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code. Thereafter the board shall make a decision to approve, disapprove, or modify the referee's findings and recommendations.

- (C) Nothing within this rule shall be deemed to grant standing to a non-responsible person to bring a claim against the financial assurance fund.

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3737-1-11 **Technical audits.**

- (A) The director or the director's designee may conduct technical audits during reviews of applications for reimbursement to determine if the work performed was substantially in excess of that necessary to meet the requirements of the fire marshal, to ensure compliance with applicable rules and to verify site corrective actions. Prior to any technical audit, the director shall give the responsible person written notice of the proposed audit. The responsible person shall make available to the director or the director's designee all records and documents which the director or the director's designee deems necessary to the completion of the audit.

- (B) The director shall upon completion of the audit prepare a written report of the findings. A copy of this report shall be sent to the responsible person and to the fire marshal. The responsible person may file written objections to the director's report within thirty days after the mailing of the director's report. The board, upon receipt of the objections, shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code. Thereafter the board shall make a decision to approve, disapprove, or modify the referee's findings and recommendations.

- (C) Nothing within this rule shall be deemed to grant standing to a non-responsible person to bring a claim against the financial assurance fund.

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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 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 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, 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 paragraph (G) 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 tier 1 source investigation program task completion date shall be the date the tier 1 delineation notification or the tier one 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 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 an interim response action associated with a tier evaluation shall be the date the interim response action report is required to be submitted to the fire marshal. An interim response action 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 remedial action plan preparation associated with a tier evaluation shall be the date the remedial action plan is required to be submitted to the fire marshal. Remedial action plan preparation 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 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) 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) or (C) of this rule.
- (F) 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) If the fire marshal issues a deficiency letter or requests additional information, the costs for additional work required to address the deficiency or fire marshal's requests for additional information 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 letter, within one year from the date of the letter. This rule will be applied to all the program tasks performed under all versions of rule 1301:7-9-13 of the Administrative Code.
- (H) 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) 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) 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) 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 operation and maintenance and/or the monitoring program tasks, 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.

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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) 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) 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 on a form prescribed by the director 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.

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3737-1-13 Reimbursement application review.

- (A) The director or the director's designee shall review the application for reimbursement and notify the responsible person of any apparent errors or omissions in the application for reimbursement and request any additional information or documentation which is required to complete the application.
- (B) Additional information may be requested if information contained in and submitted with the application for reimbursement is inconsistent with:
 - (1) Appropriate corrective actions for the release; or
 - (2) Approved reports and plans for the release, or where applicable, an order issued by the fire marshal with regard to the release; or
 - (3) Costs for corrective action which are usual, customary and reasonable for similar corrective action activities and under similar circumstances, as determined from the fund's experience.
- (C) Any additional information or documentation requested to complete the application shall be submitted within ninety days from the date requested by the director or the director's designee. All costs of corrective action that are not documented within ninety days after requested by the director or the director's designee shall not be reimbursed regardless of whether documentation is later provided.
- (D) The fire marshal and the responsible person shall be given written notice of the director's determination to approve, approve with modifications, or deny the application.

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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, for which application for reimbursement is being made.

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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) 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 that has been or will be paid from the responsible person's insurance or another 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 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.

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3737-1-17 Petroleum underground storage tank linked deposit program.

- (A) In order to participate in the petroleum underground storage tank linked deposit program an applicant must:
- (1) Be headquartered in the state of Ohio;
 - (2) Own six or less tanks exclusively in Ohio;
 - (3) Be organized for profit;
 - (4) Have a total annual revenue of not more than two million dollars and fewer than fifty employees;
 - (5) Apply to an eligible lending institution; and
 - (6) Certify that the reduced rate loan will be used exclusively for the replacement or upgrading of one or more petroleum underground storage tanks or tank systems in compliance with division (A) of section 3737.88 of the Revised Code.
- (B) The board upon receipt of a linked deposit application from the eligible lending institution may accept or reject the application on the basis of:
- (1) The board's evaluation of the eligible owner and the amount to be deposited from the petroleum underground storage tank financial assurance fund including:
 - (a) The manner in which the linked deposit benefit will materially contribute to the relative financial need of the business in question;
 - (b) The economic needs of the area in which the owner's tanks are located;
 - (c) Whether it appears from the linked deposit application that the replacement or improvement of the petroleum underground storage tanks or tank system will allow the eligible owner to continue operations at present levels in an environmentally sound manner; and
 - (d) Such other factors as the board considers appropriate.
 - (2) The criteria set forth in paragraph (A) of this rule.
 - (3) Whether the amount of the linked deposit requested by the eligible lending institution is no greater than one hundred thousand dollars.
- (C) The board may on an annual basis commit no more than ten percent of the gross receipts of the annual billing of the petroleum underground storage tank financial assurance fund created under section 3737.91 of the Revised Code to be included in the petroleum underground storage tank linked deposit program.

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04/01/97

3737-1-18 **Certificate of coverage.**

- (A) The board shall issue a certificate of coverage to any responsible person who has met the criteria of division (D) of section 3737.91 of the Revised Code and rule 3737-1-04 of the Administrative Code.
- (B) Effective with the 1992 fiscal year there will be one master certificate of coverage issued for each owner or operator making payment to the fund and a facility certificate of coverage issued for each assured facility site.
- (C) The certificate of coverage shall contain the following information:
 - (1) The amount of coverage to which the responsible person is entitled from the fund;
 - (2) The time period for which the certificate provides coverage; and
 - (3) The number of tanks which are included in the coverage.

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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, 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)(1) 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, 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 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, 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 division (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.

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3737-1-20 Fees for materials and services.

The board may approve reasonable fees to be charged to persons requesting materials or services from the board.

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3737-1-21 Obligated account.

Prior to the beginning of each fiscal year, the director shall propose that monies be obligated for reimbursement of corrective action costs. The proposed amount to be obligated shall be only that which is reasonably estimated by the director to be paid out for such costs in the upcoming fiscal year. Prior to the start of the upcoming fiscal year, the board shall consider the proposal and approve the amount of monies, representing estimated upcoming fiscal year claim reimbursements, to be transferred, during the first quarter of the upcoming fiscal year, to a special account named obligated account and be expressly used for reimbursements of corrective action costs.

Monies not placed in the obligated account, nor the debt service account or accounts, nor the debt service reserve account or accounts, nor in certificates of deposit purchased for linked deposits, shall remain in the unobligated balance. At the end of the fiscal year in which monies have been obligated, any excess monies in the obligated account shall remain in that account to reduce the transfer of monies into the obligated account for reimbursements of corrective action costs in the succeeding fiscal year.

If, during the fiscal year, the monies set aside in the obligated account are anticipated to be insufficient to cover reimbursements of corrective action costs for the remainder of the current fiscal year, the director may draw monies from the unobligated balance to obligate additional monies as necessary for reimbursements of corrective action costs, subject to board approval.

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3737-1-22 Subrogation.

- (A) A responsible person who has any settlement discussions with, or mediation or litigation against another party(s) for causing and/or contributing to the accidental release of petroleum from an assured underground storage tank system for which an eligibility application has been submitted to or approved by the board, shall:
- (1) Notify the board of the identity of all other parties against whom the responsible person has or may have a right of recovery;
 - (2) Provide reasonable advance notification to the board of any and all settlement meetings;
 - (3) Notify the other party(s) that no settlement, compromise, judgment, award, or other recovery in any action or claim by the responsible person shall be binding on the board;
 - (4) Notify the other party(s) of the board's right to subrogation under division (I) of section 3737.92 of the Revised Code and that the board may assert its right by written correspondence with the responsible person, the other party(s) or their legal representatives, or may institute and pursue legal proceedings against the other party(s) independently or in conjunction with the responsible person;
 - (5) Notify the other party(s) that any settlement, compromise, judgment, award, or other recovery in favor of the responsible person shall not preclude the board from enforcing its subrogation rights against the other party(s); and
 - (6) Notify the other party(s) that no attorney fees, court costs or other litigation costs shall be assessed against the board for enforcing its subrogation rights.
- (B) The responsible person shall not in any manner do any act that will impair the board's subrogation rights. The responsible person shall:
- (1) Notify the board in writing within thirty days of any action by another party causing and/or contributing to an accidental release of petroleum from an assured underground storage tank system or other sources; and
 - (2) Not enter into any settlement agreement without prior notice to and authorization by the board.
- (C) The responsible person shall cooperate with the board in enforcement of its subrogation rights, including but not limited to, providing documents, testimony, and access to experts relating to the third party(s) causing or contributing to the accidental release of petroleum.
- (D) As used in this rule subrogation means the board's rights to recover costs of corrective actions and/or third-party claims that the board has paid or will pay to a responsible person or a third party from any other party(s) and/or the other party(s) insurer; and/or a responsible person's insurer.
- (E) If the responsible person fails to comply with this rule, the board shall reimburse corrective action costs and/or third-party claim costs that are the lesser of:
- (1) Fifty percent of eligible corrective action and/or third-party claim costs, as determined by the board; or
 - (2) The total of eligible corrective action and/or third-party claim costs, as determined by the board, minus the amount of the deductible and minus the amount paid by the other party to the responsible person.
- (F) Where the board has withheld reimbursement for the costs of corrective action and/or third-party claims pursuant to paragraph (D) of this rule, and the board initiates a claim to recover any monies under its

subrogation rights, the board may reimburse the responsible person the amount withheld only if the amount recovered under the board's subrogation claim is greater than the amount withheld from the responsible person.

- (G) If the responsible person has received any monies from any other party(s) or the responsible person's insurance for reimbursement of corrective action costs and/or third-party claims, and the board has reimbursed the responsible person for all eligible corrective action costs and/or third-party claims, the responsible person shall indemnify the board the total cost paid by the board to the responsible person for eligible corrective action and/or third-party claims costs unless the responsible person and the board agree to a lesser amount in a written settlement agreement.

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