

Regulatory Analysis Form

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2001-7-13 12:07

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-214

IRRC Number:

2254

(3) Short Title

Fees and Collection Procedures

(4) PA Code Cite

25 Pa. Code, Chapter 977, §977.12

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking
☐ Final Order Adopting Regulation
☒ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The rulemaking will bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on October 18, 2001. After reviewing this report, the Board determined that this increase is necessary to maintain the solvency of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by MMC Enterprise Risk Consulting, Inc., determined that an increase in the gallon and capacity fees was necessary to maintain the actuarial soundness of the Fund in the future.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411, and 412) provide the Insurance Commissioner with the authority to promulgate regulations governing the enforcement of the laws relating to insurance.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to amend Chapter 977, §977.12 to bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on October 18, 2001. This will allow the fund to remain solvent and be there for future claims against the fund.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The public will benefit from the regulation to the extent that the fund will be there for clean up claims when necessary.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the amendment of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all owners or operators of USTs and HOTs in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding the amendment of this regulation were not solicited from the various trade associations representing the insurance industry. However, the Underground Storage Tank Indemnification Board is comprised of members of the industry that are regulated under this rulemaking and voted at the OCTOBER 2001 meeting to increase the fees as proposed.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

The amendment of the regulation will have a minor impact on costs associated with all owners or operators of USTs and HOTs in the Commonwealth. According to the Energy Information Administration, the average gasoline consumption per household in Pennsylvania is 973 gallons per year or 81 gallons per month. This increase will be \$0.0005 per gallon or \$0.04 per month per household ($\$0.0005 \times 81 \text{ gallons} = \0.04). Since this increase is so minimal, it will probably not be transferred to the average gasoline consumer.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There will be no legal or accounting costs associated with this rulemaking. However, the costs which the local governments are currently paying will increase by approximately \$79,000 per quarter. As the local governments currently pay the gallon fee to the distributor and the capacity fee directly to USTIF, the only change will be a larger fee. State-owned tanks are exempt from all USTIF fees.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$828,245	\$3,412,369	\$3,514,740	\$3,620,183	\$3,728,788	\$3,840,652
Local Government	\$78,755	\$324,471	\$334,205	\$344,231	\$354,558	\$365,195
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$907,000	\$3,736,840	\$3,848,945	\$3,964,414	\$4,083,346	\$4,205,847
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the cost estimates listed above were derived.

According to our actuarial study, without a rate increase, USTIF would have a negative net worth in year 2006. This minor increase will avoid this negative situation. As we anticipate an inception date of 4/1/2002, the figures for the current fiscal year will only include three (3) months, whereas the subsequent fiscal years will include 12 months and an anticipated 3% increase in gasoline sales per year.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
USTIF	\$30,920,034	\$43,155,590	\$49,971,703	\$22,424,488

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No adverse effects are anticipated as a result of this regulation, since the increase in costs are so minimal. The current fiscal year will only include four (4) months, whereas the prior three (3) fiscal years include 12 months.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Amending Chapter 977, §977.12 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the statute.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department, all owners or operators of USTs and HOTS in the Commonwealth, or the general public.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect upon the approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon publication in the *Pennsylvania Bulletin* with an effective date of March 1, 2002.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis. Under the Storage Tank and Spill Prevention Act (act) (35 P. S. §§ 6021.101–6021.2104), the Board may also use an actuarial review to determine the soundness of the Fund and may promulgate regulations as necessary to maintain the Fund.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

12254

11-22-07

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

By _____
(Deputy Attorney General)

Date of Approval

Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

Insurance Department and
Underground Storage Tank
Indemnification Board

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-214

DATE OF ADOPTION: _____

BY: M. Diane Koken

M. Diane Koken
Insurance Commissioner
and
E. Bruce Sheller
Chair

TITLE: E. Bruce Sheller
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

BY: John V. Turner
1/22/08

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(CHIEF COUNSEL, INDEPENDENT AGENCY)
(STRIKE INAPPLICABLE TITLE)

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF FINAL-OMITTED RULEMAKING

INSURANCE DEPARTMENT

25 Pa. Code, Chapter 977, §977.12

Fees and Collection Procedures

PREAMBLE

By this notice the Insurance Department (Department), and the Underground Storage Tank Indemnification Board (Board), hereby amends 25 Pa. Code, Chapter 977, Subchapter B, Fees and Collection Procedures, § 977.12, to read as set forth in Annex A. Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411, and 412) provide the Insurance Commissioner with the authority to promulgate regulations governing the enforcement of the laws relating to insurance. Public notice of this amendment is impractical and unnecessary because the proposed changes are needed to ensure the solvency of the Fund and any input from the public would not decrease the necessity to increase the fees collected.

Notice of the proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) known as the Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)). In accordance with section 204(3) of the CDL, notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, under the circumstances, impracticable and unnecessary.

Purpose

The amendments will bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on October 18, 2001. After reviewing this report, the Board determined that this increase is necessary to maintain the solvency of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by MMC Enterprise Risk Consulting, Inc., determined that an increase in the gallon and capacity fees was necessary to maintain the actuarial soundness of the Fund in the future.

Explanation of Regulatory Requirements

Section 977.12 is being changed to reflect the fees that the actuary recommended in the report.

Fiscal Impact

An owner or operator transacting business in this Commonwealth will be affected by the amendment to this regulation. However, any fiscal impact will be minimal, as the proposed increases still result in very low fees in relation to the benefits provided by the Fund to the owners and operators.

The costs that local governments are currently paying will increase by approximately \$79,000 per quarter. Because local governments currently pay the gallon fee to the distributor and the capacity fee directly to USTIF, the only change will be a larger fee.

State-owned tanks are exempt from all USTIF fees.

General Public

Because the public is a consumer of goods and services provided by owners and operators of a UST or a HOT, any increase to the fees could result in higher prices to consumers. However, it is expected that this increase in fees will only result in an additional \$.04 per month to motorists, in accordance with a survey on vehicle fuel consumption and expenditures by United States' households, conducted by the Energy Information Administration, Office of Energy Markets and End Use

This increase is proposed to keep the Fund solvent after an actuarial study completed in November 2001 indicated the need for additional revenue, to maintain the Fund's actuarial soundness

Effectiveness/Sunset Date

This rulemaking will become effective March 1, 2002.

Paperwork

Adoption of these regulations should not require any significant paperwork for the owners or operators of USTs or HOTs. The paperwork necessary after the increase is expected to be the same as before the increase was implemented.

Persons Regulated

This regulation applies to all owners or operators of USTs and HOTs in the Commonwealth.

Contact Person

Questions regarding the final omitted rulemaking may be addressed to Peter J. Salvatore, Regulatory Coordinator, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, Pennsylvania 17120, phone number (717) 787-4429. Questions may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, Act 24 of 1997, the agency submitted a copy of the regulations with the proposed rulemaking omitted on February 7, 2002 to the Independent Regulatory Review Commission (the Commission) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506).

In accordance with section 5 (c) of the Regulatory Review Act, the regulations were (deemed) approved by the Senate Banking and Insurance Committee on _____, and (deemed) approved by the House Insurance Committee on _____. The

Attorney General approved the regulation on _____ IRRC met on _____ and approved the regulation.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to amend Chapter 977, Subchapter B, effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of these regulations would be impractical and not serve the public interest. Under section 204(3) (45 P.S. §1204(3)) of the CDL there is no purpose to be served by deferring the effective date. An immediate effective date will best serve the public interest by ensuring that fees have the full potential that the actuarial study predicted.

(2) There is good cause to forego public notice of the intention to amend Chapter 977, Subchapter B, because notice of the amendment under the circumstances is unnecessary and impractical because the changes proposed are necessary to ensure the solvency of the Fund and any input from the public would not decrease the necessity to increase the fees collected.

Order

The Insurance Commissioner, acting under the authority in sections 206, 506, 1501 and 1502 of the Administrative Code of 1929, orders that:

(1) The Regulations of the Department at 25 Pa.Code, Chapter 977, Subchapter B, are amended as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(3) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect March 1, 2002.

M. DIANE KOKEN, Insurance Commissioner

E. BRUCE SELLER, Chair, Underground Storage Tank Indemnification Board

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION. PART VIII. UNDERGROUND STORAGE TANK
INDEMNIFICATION BOARD. CHAPTER 977. UNDERGROUND STORAGE TANK
INDEMNIFICATION FUND**

Subchapter B. FEES AND COLLECTION PROCEDURES

Sec.

977.12. Owner and operator fees.

§ 977.12. Owner and operator fees.

(a) * * * * *

(b) * * * * *

(2) *Gallon fee.* A gallon fee on all regulated substances entering a UST of ~~\$.0005~~ \$.0010 per gallon.
(For example, 10,000 gallons at ~~\$.0005~~ \$.0010 per gallon equals \$5 \$10).

(c) * * * * *

(d) *Capacity fee.* An owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by the DEP may be assessed a capacity fee of ~~\$.01~~ \$.02 per gallon of capacity, which amount is established in accordance with section 705(d)(2) of the act (35 P.S. § 6021.705(D)(2)). (For example, 10,000 gallons at ~~\$.01~~ \$.02 per gallon equals ~~\$100~~ \$200).



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-Mail: psalvato@ins.state.pa.us

February 7, 2002

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Final- Omitted
Regulation No. 11-214, Fees and
Collection Procedures

Dear Mr. Nyce:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final-omitted regulation 25 Pa. Code, Chapter 977, Fees and Collection Procedures.

The amendment will bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on October 18, 2001 (see enclosed report). After reviewing this report, the Board determined that this increase is necessary to maintain the solvency of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by MMC Enterprise Risk Consulting, Inc., determined that an increase in the gallon and capacity fees was necessary to maintain the actuarial soundness of the Fund in the future.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script, reading "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-214
SUBJECT: Underground Storage Tank Indemnification fund
AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-7-02	<i>Shelia C. Eubank</i>	HOUSE COMMITTEE ON INSURANCE
2/7/02	<i>Diane W. Hein</i>	
2/7/02	<i>Deanne Boerell</i>	SENATE COMMITTEE ON BANKING & INSURANCE
2/7/02	<i>S. McDermott</i>	
2/2/02	<i>St. Selmer</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
2-7-02	<i>Pam Lubold</i>	ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 22, 2002