

# Regulatory Analysis Form

This space for use by IRRC

Rec'd

11/2/07

4:05 p.m.

(1) Agency

Insurance Department

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

11-239

IRRC Number: 2650

(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 adopted by the Underground Storage Tank Indemnification Board (Board) following their extensive review and discussion of an actuarial report that was completed on September 20, 2007. After reviewing this report, the Board determined that this increase is necessary to prevent growth of the unfunded liability of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by Milliman, Inc., determined that an increase in the gallon fee was necessary to maintain a positive cash balance in 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. Section 705 of the Storage Tank and Spill Prevention Act of 1989 (35 P.S. §6021.705) authorizes the Board to promulgate regulations concerning the establishment of fees for participants in the Fund.

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(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 and the Board seek to amend Chapter 977, §977.12 to bring the regulation's fees to the appropriate levels as adopted by the Board after an extensive review and discussion of an actuarial report that was completed on September 20, 2007. Based on data as of June 30, 2007, the actuarial report determined that the Fund currently has an unfunded liability (an excess of liabilities over assets) of \$374,348,395 and the unfunded liability will grow to \$1,008,477,000 by 6/30/2017 should no change in fees occur. The report further finds that a negative cash balance will occur by 2015. This increase in the gallon fee will maintain a positive cash balance and prevent growth in the unfunded liability.

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

If the recommended fee increase is not promulgated as recommended by the Board, the Fund will not have sufficient monies to pay ongoing clean up costs associated with existing underground storage tank releases and new releases that occur following the September 20, 2007 actuarial report. This could result in the releases from underground storage tanks not being cleaned up and creates a public health, safety and environmental risk.

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

Tank owners and operators as well as the public will benefit from the regulation to the extent that the Fund will be there to pay for the clean up of covered 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.)

The gallon fee is assessed on product (primarily gasoline) sales by distributors to retailers. The Underground Storage Tank Indemnification Fund (USTIF) receives the gallon fees collected by the distributors and hence, has no direct contact with retailers or consumers. As it is generally understood that retailers pass the gallon fee on to consumers, those adversely affected by the regulation would be all retail gasoline consumers in Pennsylvania. At a retail price of \$2.50 per gallon, the fee increase represents a 0.36% price increase (about 1/3 of 1%); at \$3.00 per gallon, the increase is 0.30%. According to the Energy Information Administration, the average per capita gasoline consumption in Pennsylvania is 386.8 gallons per year or 1,001 gallons per household. This increase will be \$0.009 per gallon or \$3.48 per capita or \$9.01 per household per year ( $\$0.009 \times 386.8 \text{ gallons} = \$3.48$  or  $\$0.009 \times 1,001 \text{ gallons} = \$9.01$ ).

(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 Underground Storage Tanks (USTs) 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 September 20, 2007 Board 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 an impact on costs associated with all owners or operators of USTs in the Commonwealth. However, it is believed that the fee increase will be transferred to the average gasoline consumer, as determined by competition in the market place. Local municipalities, including school districts, will see an increase only to the extent they are gasoline consumers. As stated above in (14), consumers may see about a 1/3 of 1% increase in the retail price per gallon of gasoline as a result of this increase.

### 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. State-owned tanks are exempt from all Underground Storage Tank Indemnification Fund fees. Again, local municipalities, including school districts, will see an increase only to the extent they are gasoline consumers.

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
<b>Regulated Community</b>	\$22,091,000 (see Note 1)	\$44,721,000	\$45,242,000	\$45,770,000	\$46,305,000	\$46,847,000
<b>Local Government</b>	\$ (see Note 2)	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$ (see Note 2)	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$22,091,000	\$44,721,000	\$45,242,000	\$45,770,000	\$46,305,000	\$46,847,000
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

The actuarial analysis prepared by Milliman included three scenarios, one with no fee increase, a second with the fee increase necessary to prevent the current unfunded liability from growing, and a third with the fee increase necessary to eliminate the discounted current unfunded liability in seven (7) years. The second and third scenarios prepared by Milliman assumed an increase for both the gallon fee and the capacity fee. However, the Board approved an increase for the gallon fee only. The cost estimates shown above start with the initial Milliman amounts adjusted for the gallon fee increase to \$0.02 per gallon while keeping the capacity fee at its current level. In recent years, the breakdown of fee revenue has been 90% for gallon fees and 10% for capacity fees. The absence of an increase for capacity fees will not materially alter the scenario and the gallon fee increase by itself will be sufficient to maintain a positive cash balance and to prevent the current unfunded liability from growing in the next five (5) years.

**Note 1:** As we anticipate an inception date of January 1, 2008, the figures for the current fiscal year will only include six (6) months, whereas the subsequent fiscal years will include 12 months and an anticipated 1.3% increase in gasoline sales per year.

**Note 2:** Local and state government will incur additional costs only to the extent they are consumers of gasoline. This fee increase will result in an approximate 1/3 of 1% increase in their total cost for gasoline.

## 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	\$71,725,147	\$71,847,398	\$73,651,477	\$70,208,000
(period ending)	06/30/2005	06/30/2006	06/30/2007	06/30/2008
				(see Note below)

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

According to the actuarial study prepared by Milliman, Inc., without a rate increase, USTIF will reach a \$0 cash balance and hence be unable to pay clean up costs for current and future underground storage tank releases by 2015 and will have a total unfunded liability of \$1,008,477 by 6/30/2017. This fee increase will provide sufficient funding for the Fund to continue paying clean up costs for current and future claims beyond 2015 and provide a means for preventing the growth of future unfunded liabilities.

**Note for Current FY.** The amount shown of \$70,208,000 is a projection for the entire FY and is taken from the Milliman Report, Table 3. At the time this form was prepared, actual claim expenditures for FY 2007-08 July and August were available and totaled \$9,515,253:

(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 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 January 1, 2008.

(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)

Rec'd  
4/2/07  
4:05 pm

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. 11-239

DATE OF ADOPTION: \_\_\_\_\_

BY: \_\_\_\_\_

Joel Ario  
Acting Insurance Commissioner  
and  
E. Bruce Sheller  
Chair

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR  
SECRETARY)

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

By Andrew C. Clark  
NOV 2 2007  
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 amend 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. Section 705 of the Storage Tank and Spill Prevention Act of 1989 (35 P.S. §6021.705) provides the Board with the authority to promulgate regulations concerning the establishment of fees to be paid by participants in the Underground Storage Tank Indemnification Fund ("Fund"). Public notice of this amendment is impractical and unnecessary because the proposed changes are needed to maintain a positive cash balance and to prevent the growth in the unfunded liability 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 September 20, 2007. After reviewing this report, the Board determined that this increase is necessary to prevent the growth in the unfunded liability (defined as the excess of Fund liabilities over assets) of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by Milliman, Inc, determined that an increase in the gallon fee is necessary to maintain a positive cash balance in the Fund in the future.

### ***Explanation of Regulatory Requirements***

Section 977.12 is being changed to reflect the fees that the Board approved after extensive review and discussion of the report.

### ***Fiscal Impact***

As only the gallon fee was increased and this fee is by and large passed on to consumers, local municipalities, including school districts, and tank owners or operators transacting business in this Commonwealth, will be affected by the amendment to this regulation only to the extent they are consumers of the goods and services provided by tank owners or operators.

State-owned tanks are exempt from all Underground Storage Tank Indemnification Fund fees.

### ***General Public***

Because the public is a consumer of goods and services provided by owners and operators of an Underground Storage Tank (UST), any increase to the fees could result in higher prices to consumers. (USTIF fees are not charged directly to consumers, but it is generally understood that gallon fees are passed on to consumers by those parties who are billed by USTIF.) According to the Energy Information Administration, Office of Energy Markets and End Use, the annual per capita consumption of gasoline in Pennsylvania is 386.8 gallons or 1,001 per household. Based on this information, it is expected that this fee increase will result in an additional \$3.48 per capita or \$9.01 per household per year.

This increase is proposed to prevent the Fund's projected unfunded liability from growing after an actuarial study completed in September 2007 indicated the need for additional revenue. Currently the Fund's revenues are not sufficient to cover claim payments and administrative expenses.

### ***Effectiveness/Sunset Date***

This rulemaking will become effective January 1, 2008.

### ***Paperwork***

Adoption of these regulations should not require any significant paperwork for the owners or operators of USTs. 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 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](mailto: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 **November 2, 2007** to the Independent Regulatory Review Commission (IRRC) 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 effective date of January 1, 2008 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 maintain a positive cash balance and to prevent the growth of the unfunded liability 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, §§ 977.12, 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 January 1, 2008.

JOEL ARIIO, Acting 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 [\$.011] \$.02 per gallon. (For example, 10,000 gallons at [\$.011] \$.02 per gallon equals [\$110] \$200).

\* \* \* \* \*



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

**BUREAU OF ADMINISTRATION**  
1326 Strawberry Square  
Harrisburg, PA 17120

Phone: (717) 787-4429  
Fax: (717) 705-3873  
E-Mail: [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us)

November 2, 2007

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Comm.  
333 Market Street  
Harrisburg, PA 17101

Re: Insurance Department Final- Omitted Regulation No. 11-239, Fees and Collection Procedures

Dear Mr. Kaufman:

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 amendments will bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on June 30, 2007. After reviewing this report in September 2007, 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 Milliman USA, Inc., determined that an increase in the gallon fee was necessary to maintain the actuarial soundness of the Fund in the future. A copy of the actuarial report is attached.

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

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore  
Regulatory Coordinator

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

I.D. NUMBER: 11-239  
SUBJECT: FEES AND COLLECTION PROCEDURES  
AGENCY: DEPARTMENT OF INSURANCE

Rec'd  
4/2/07

**TYPE OF REGULATION**

4:05 pm

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

HOUSE COMMITTEE ON INSURANCE

MAJORITY CHAIRMAN Rep. DeLuca

SENATE COMMITTEE ON BANKING & INSURANCE

MAJORITY CHAIRMAN Sen. D. White

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

November 2, 2007