

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p style="font-size: 2em; font-weight: bold; margin: 10px 0;">RECEIVED</p> <p>Independent Regulatory Review Commission</p> <p>January 7, 2025</p> <p>IRRC Number: 3428</p>
<p>(1) Agency</p> <p>Insurance Department, Underground Storage Tank Indemnification Board</p>		
<p>(2) Agency Number: 11</p> <p style="padding-left: 20px;">Identification Number: 263</p>		
<p>(3) PA Code Cite: 25 Pa. Code §§ 977.4, 977.31</p>		
<p>(4) Short Title: Eligibility Requirements</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact:</p> <p>Kimberly Sheaffer Office Manager 1341 Strawberry Square Harrisburg, PA 17120 (717) 346-1458 kimsheaffe@pa.gov</p> <p>Secondary Contact:</p> <p>Carole Clarke Smith, Esq. Department Counsel 901 North 7th Street, 3rd Floor Harrisburg, PA 17102 717-886-2081 cclarke-sm@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p style="padding-left: 20px;"><input type="checkbox"/> Certification by the Governor</p> <p style="padding-left: 20px;"><input type="checkbox"/> Certification by the Attorney General</p>

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed regulation amends 25 Pa. Code §§ 977.4 and 977.31 (relating to definitions; and eligibility requirements) to make the Underground Storage Tank Indemnification Fund (USTIF) and Tank Installer Indemnification Program (TIIP) eligibility requirements clearer for its participants. The USTIF is proposing amendments that: (1) clarify USTIF and TIIP eligibility requirements in response to Pennsylvania Commonwealth Court and Supreme Court decisions; and (2) require that an underground storage tank be registered with the Pennsylvania Department of Environmental Protection (DEP) under Section 503 of the Storage Tank and Spill Prevention Act (act) (35 P.S. § 6021.503) within 60 days of when a release is confirmed.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is proposed under USTIB's rulemaking authority as set forth in section 705(d) and (f)(2) of the Storage Tank and Spill Prevention Act of 1989 (act) (35 P.S. § 6021.705(d) and (f)(2)), which authorizes the Underground Storage Tank Indemnification Board (USTIB) to promulgate regulations concerning fees, the administrative procedures and business of USTIB and operation and administration of USTIF. *See Shrom v. USTIB*, 292 A.3d 894 (2023) (further explaining USTIB's authority to promulgate regulations relating to claim eligibility requirements).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, this regulation is not mandated by any federal or state law or court order, or federal regulation. However, after the decision of the state Supreme Court in *Shrom v. USTIB*, 292 A.3d 894 (2023), USTIB believes that the regulations require clarification.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

USTIB seeks to amend §§ 977.4 and 977.31 to clarify the eligibility requirements for participants to be eligible for USTIF coverage based on case law developments since the last regulatory amendments to the eligibility requirements made in 2001. The amendments also require that a UST be registered with DEP under section 503 of the act within 60 days of when a release is confirmed to provide a clear compliance date to the regulated community. Following the Pennsylvania Supreme Court's decision in *Shrom*, it is clear that USTIF must amend its regulations to set forth a deadline for section 503 registration compliance to remedy uncertainty and to prevent the lapse of tank registrations.

USTIF's amended eligibility regulation will benefit USTIF and Tank Installers Indemnification Program (TIIP) participants. All Commonwealth residents will also benefit from the amended regulation to the extent that the Fund will continue to ensure that the eligibility requirements are easy to understand, and

participants understand their obligations under the law and regulations. Ease of participant compliance will ensure that more USTIF and TIIP claims will be found eligible for USTIF coverage and that USTIF resources can be utilized to indemnify its participants for the remediation of eligible releases, thereby protecting the lands and waters of the Commonwealth.

(11) 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 regulations.

No provisions are more stringent than federal standards. There are federal regulations related to state underground storage tank programs (see 40 C.F.R. §§ 281.10, 281.11) and financial responsibility for underground storage tanks containing petroleum (see 40 C.F.R. § 281.37) but they do not set forth eligibility requirements.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation does not affect Pennsylvania's ability to compete with other states. USTs are generally a necessity when some type of fuel or other regulated substance needs to be stored or dispensed at a facility so there is not a competitive market across states. However, the regulations of the contiguous states are summarized below.

According to the Environmental Protection Agency (EPA), New Jersey, Delaware, Maryland, and West Virginia do not have funds that reimburse UST release remediation. According to the EPA, New York previously had a fund that paid for releases, but that program concluded via a sunset provision.

Delaware, West Virginia, Maryland, and New York have programs that will assist with cleanup and tank removal that are summarized below but these are not comparable to the benefits offered by USTIF.

- Delaware has a fund to assist with tank closure and appears to offer some form of financial assistance, but it is not a fund comparable to USTIF.
- West Virginia has a State-Lead Tank Removal program that will step in when an emergency exists (such as an imminent health threat), the responsible party does not have the financial means to respond to the release, the responsible party refuses to comply with the requirements, or no viable responsible party can be found for the release. However, this is not an indemnification program.
- Maryland had a residential heating oil tank system site rehabilitation reimbursement program; however, that program expired on June 30, 2024.
- New York has programs that help local governments and school districts pay for replacement and cleanup of tanks but there are no funds available for private parties.

Currently, Ohio is the only border state that has a reimbursement fund. Ohio's eligibility requirements for corrective action costs are as follows: receipt of an application from a responsible person within one year from the date the release incident was required to be reported to the fire marshal; at the time of the

release the responsible person possessed a valid certificate of coverage for the UST system; the corrective action has been authorized by the fire marshal; the costs of performing the corrective action comply with the rules of the fire marshal governing corrective actions; at the time of the release the UST system was registered or the fire marshal recommends reimbursement because good cause existed for the failure to register and the responsible person has paid all back registration fees; the fire marshal has determined that when the claim was filed a responsible person was in compliance with all orders issued related to confirming or disproving a suspected release and any corrective action program; the responsible person demonstrates financial responsibility for the deductible amount; the responsible person has not falsified any attestation contained on a registration application; the responsible person has met the petroleum release, suspected release and confirmed release reporting requirements; and at the time of the release the UST system from which the release occurred was in compliance with rules adopted by the fire marshal related to the corrective action program.

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

No, the regulation will not affect any other USTIB regulations or regulations of other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Under Executive Order 1996-1, on January 29, 2024, USTIB circulated an exposure draft of Annex A to representatives of USTIF’s participants who must comply with USTIF and TIIP’s eligibility requirements to receive remediation indemnification payments. This includes trade and professional organizations representing groups of USTIF participants, members of DEP’s Storage Tank Advisory Committee (STAC), and members of the USTIB, which is comprised of members of the industry that are regulated under this rulemaking. In addition, the exposure draft was posted prominently on the USTIF website. No comments were received in response to the exposure draft. However, STAC discussed the exposure draft at its December 2023 meeting and offered comment. Comments received were carefully considered in developing the proposed rulemaking and were discussed at the public meetings of USTIB on June 13, and September 19, 2024.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This proposed rulemaking will affect USTIF and TIIP participants who file a claim to receive indemnification for reasonable and necessary remediation costs following a qualifying release from a UST or heating oil tank (HOT).

As of June 30, 2024, there were 20,812 USTs registered with DEP. Tanks can be located at service stations, fuel distributors, farms, trucking companies, auto dealerships, utilities, manufacturers, schools/colleges, hospitals, and churches. There are currently 726 HOTs participating in the voluntary HOT program.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All tank owners, operators or certified tank installers that have a confirmed release and wish to receive indemnification for remediation activities will be required to comply with the regulation. In 2023, there were 168 USTIF claims filed—135 of those claims were filed by service stations, one claim was filed by a fuel distributor, 25 claims were filed by other entities (these can include farm owners, trucking companies, auto dealerships and utilities), three claims were filed by municipalities and four claims were filed by institutions (which includes schools, colleges, hospitals and churches). In addition, one TIIP claim was filed in 2023. The voluntary HOT program received 11 claims in 2023 and 20 claims in 2024 as of September 16, 2024.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulation provides clarity to the eligibility requirements for indemnification for remediation activities related to UST and HOT releases. This should benefit stakeholders by giving them clear deadlines for when all fees need to be paid and for when the tank needs to be registered.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This regulation will impose no additional costs and will benefit the regulated community by providing clarity to USTIF and TIIP participants to ensure ease of compliance with USTIF and TIIP eligibility requirements.

(19) 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. Explain how the dollar estimates were derived.

This rulemaking will not impose any costs and/or savings on the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will not impose any costs and/or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will not impose any costs and/or savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The amended regulation requires no additional legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork for the implementation of the regulation.

(22a) Are forms required for implementation of the regulation?

There are no forms required for implementation of this regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

As there are no forms required, this question is not applicable.

(23) 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:	0	0	0	0	0	0
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 Costs	0	0	0	0	0	0
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

*As explained above, there are no expected costs, savings, or revenue losses that would be incurred by local or state government as a result of these amendments.

** As explained above, there is no additional cost of compliance with the rulemaking.

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 21-22	FY -2 22-23	FY -1 23-24	Current FY 24-25
USTIF	\$46,084,298	\$44,165,438	\$44,083,620	\$44,400,000 Projected

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Identification and Estimate of Small Business Subject to the Regulation

USTIB reviewed standards set forth by 13 CFR § 121.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to Pennsylvania small businesses. The standards for small business classification vary by type of business written as follows:

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars / Size Standards in number of employees
424710	Petroleum Bulk Stations and Terminals	225 employees
424720	Petroleum and Petroleum Products Merchant Wholesalers	200 employees
424690	Chemical and Allied Products Merchant Wholesalers	175 employees
424990	Miscellaneous Nondurable Goods Merchant Wholesalers	100 employees
445110	Supermarkets and Other Grocery Retailers	\$40.0
445131	Convenience Retailers	\$36.5
455211	Warehouse Clubs and Supercenters	\$47.0
457110	Gasoline Stations with Convenience Stores	\$36.5
457120	Other Gasoline Stations	\$33.5

457210	Fuel Dealers	100 employees
237120	Oil and Gas Pipeline and Related Structures Construction	\$45.0
238910	Site Preparation Contractors	\$19.0

There is likely a low number of small businesses subject to the regulation. Most fuel distributors and retailers would not qualify as a small business.

(b) *Projected costs of compliance and probable effect on impacted small businesses*

The proposed rulemaking does not impose any additional recordkeeping requirements on small businesses. All tank owners have the same compliance requirements for reporting a release and requesting reimbursement.

(c) *Probable impact on small businesses*

The proposed rulemaking would have a neutral impact on small businesses as the regulation only clarifies the procedure that was already in place.

(d) *Alternative methods*

There are no alternative methods available clarify these requirements after the *Shrom* decision.

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

Because USTIB is not aware of any alternative methods for achieving the purpose of the amendment, no provisions were developed to meet the particular needs for minorities, the elderly, small businesses, or farmers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

USTIB considered requiring that the Section 503 tank registration be current at the time the release was discovered—the standard applied by USTIF prior to the Pennsylvania Supreme Court’s decision in *Shrom*. Through discussions with DEP, permitting a tank owner a period of 60 days following the date a release is confirmed to comply with the Section 503 tank registration requirement was determined to be a less burdensome acceptable alternative and was incorporated in the proposed amendment set forth in Annex A.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

USTIB applied regulatory methods to minimize adverse impact on small businesses. The proposed rulemaking provides a period of 60 days following the confirmation of a release to ensure that a participant's USTs are registered under section 503 of the act. Also, it should be noted that USTIB does not have the statutory authority to grant an exemption of small businesses from all or any part of the proposed amendments.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this proposed rulemaking.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: No hearings were held.
Public meetings were held on June 13 and September 19, 2024.
- C. The expected date of delivery of the final-form regulation: Summer/ Fall 2025
- D. The expected effective date of the final-form regulation: Upon publication as final
- E. The expected date by which compliance with the final-form regulation will be required: Fall 2025
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

USTIB reviews its regulations for continued effectiveness on an ongoing basis.

CDL-1

RECEIVED

Independent Regulatory
Review Commission

January 7, 2025

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>Amy M. Elliott <small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=ae Elliott@attorneygeneral.gov, c=US Date: 2024.12.19 12:29:16 -0500</small></p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p><u>12/19/2024</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Underground Storage Tank Indemnification Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-263</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u><i>J. Stephen Nicker</i></u> <small>Digitally signed by J. Stephen Nicker DN: cn=J. Stephen Nicker, o=Underground Storage Tank Indemnification Board, ou=Chair, email=jsnicker@usttib.com, c=US Date: 2024.10.29 09:17:06 -0400</small></p> <p>TITLE <u>Chair</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><u>Cynthia K. Montgomery</u> <small>Digitally signed by Cynthia K. Montgomery DN: cn=Cynthia K. Montgomery, o, ou, email=cymontgome@pa.gov, c=US Date: 2024.10.29 09:17:06 -0400</small></p> <p>BY: _____</p> <p><u>October 29, 2024</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

25 PA. CODE CH. 977

CHAPTER 977. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

SUBCHAPTER A. GENERAL PROVISIONS

ELIGIBILITY REQUIREMENTS

The Underground Storage Tank Indemnification Board (USTIB) proposes to amend §§ 977.4 and 977.31 (relating to definitions; and eligibility requirements) to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is proposed under USTIB’s rulemaking authority as set forth in section 705(d) and (f)(2) of the Storage Tank and Spill Prevention Act of 1989 (act) (35 P.S. § 6021.705(d) and (f)(2)), which authorizes USTIB to promulgate regulations concerning fees, the administrative procedures and business of USTIB, and operation and administration of the Underground Storage Tank Indemnification Fund (USTIF). *See Shrom v. USTIB*, 292 A.3d 894 (2023) (further explaining USTIB’s authority to promulgate regulations relating to claim eligibility requirements).

Background and Purpose

The proposed rulemaking, as set forth in Annex A, is necessary to clarify the eligibility requirements for participants to be eligible for USTIF coverage based on case law developments since the last regulatory amendments to the eligibility requirements made in 2001. All Commonwealth residents will also benefit from the amended regulation to the extent that the USTIF will continue to ensure that the eligibility requirements are easy to understand, and participants understand their obligations under the law and regulations. Ease of participant compliance will ensure that more USTIF and Tank Installer Indemnification Program (TIIP) claims will be found eligible for USTIF coverage and that USTIF resources can be utilized to

indemnify its participants for the remediation of eligible releases, thereby protecting the lands and waters of the Commonwealth.

Description of the Proposed Amendments

This proposed rulemaking adds a definition for “UST facility” to § 977.4 to clarify that the term includes a storage tank facility (as that term is defined in § 245.1 (relating to definitions), pertaining to the administration of the storage tank and spill prevention program, that has one or more underground storage tanks (USTs) or heating oil tanks (HOTs).

The USTIB proposes to amend paragraph (1) of § 977.31 to clarify that the eligibility requirements for USTIF coverage apply to both USTs and HOTs.

Paragraph (2) of § 977.31 is proposed to be amended to clarify what fees need to be paid to be eligible for reimbursement from USTIF and the timing of payment of those fees. Currently, § 977.31(2) does not provide a deadline for payment of the fees required by Subchapter B (related to fees and collection procedures) to be eligible for coverage from USTIF. This has created confusion for participants. These fees finance USTIF and are necessary to ensure the continued financial solvency of USTIF. The proposed amendment would clarify that the fees required by Subchapter B must be paid prior to the time that the release giving rise to the claim is discovered, providing a clear deadline to participants.

Paragraph (3) of § 977.31 is proposed to be amended to require that registration and annual registration fees required under §§ 245.41 and 245.42 (related to tank registration requirements; and tank registration fees) for USTs located at the UST facility where the release occurred are current and paid on or before 60 days of when the release giving rise to the claim is discovered. This allows tank owners or operators to come into compliance with payment of the required fees for up to 60 days after a release is discovered. The regulation, as currently written, did not specify

when the participant had to pay the fees to be eligible for reimbursement. USTIF interpreted the regulation as requiring fees to be paid at the time the release was discovered, but the Commonwealth and Supreme courts found that the fees could be paid at any time prior to the USTIF eligibility determination. To address the courts' decisions, USTIB considered the establishment of different time periods within which these fees must be paid. After input from the Department of Environmental Protection (DEP), USTIB determined that participants should be provided 60 days after discovering the release to pay all the fees required by §§ 245.41 and 245.42.

The USTIF proposes to amend paragraph (4) of § 977.31 to clarify that a participant must have received the appropriate permit or certification for the UST before the release giving rise to the claim is discovered. As currently written, the regulation does not specify when the permit or certification must be obtained.

The remaining proposed amendments to paragraphs (5) and (7) are clarifying non-substantive amendments.

Public Input

USTIF circulated an exposure draft on January 29, 2024, by emailing a copy of the draft Annex to trade associations representing USTIF participants who must comply with the eligibility requirements to receive remediation indemnification payments as well as the Storage Tank Advisory Committee (STAC) of the DEP. In addition, the exposure draft was posted on the USTIF website. No comments were received in response to the exposure draft. The contents of the proposed regulation were discussed at the December 13, 2023, and June 5, 2024, STAC meetings. The substance of the proposed regulation was also discussed at the December 14, 2023, June 13, and September 19, 2024, USTIB meetings.

Affected Parties

This regulation affects USTIF and TIIP participants who file a claim to receive indemnification for reasonable and necessary remediation costs following a qualifying release from a UST or HOT.

As of June 30, 2024, there were 20,812 USTs registered with DEP. Tanks can be located at service stations, fuel distributors, farms, trucking companies, auto dealerships, utilities, manufacturers, schools/colleges, hospitals, and churches. There are currently 726 HOTs participating in the voluntary HOT program.

All tank owners, operators or certified tank installers that have a confirmed release and wish to receive indemnification for remediation activities will be required to comply with the regulation. In 2023, there were 168 USTIF claims filed—135 of those claims were filed by service stations, one claim was filed by a fuel distributor, 25 claims were filed by other entities (these can include farm owners, trucking companies, auto dealerships and utilities), three claims were filed by municipalities and four claims were filed by institutions (which includes schools, colleges, hospitals and churches). In addition, one TIIP claim was filed in 2023. The voluntary HOT program received 11 claims in 2023 and 20 claims in 2024 as of September 16, 2024.

Fiscal Impact

State Government

There will not be any fiscal impact to the Department or USTIB as a result of this proposed rulemaking.

General Public

The proposed rulemaking will have no fiscal impact upon the general public.

Local Government

The proposed rulemaking will have no fiscal impact upon political subdivisions.

Regulated Community

The proposed rulemaking will have no fiscal impact on the regulated community.

Paperwork

There are no additional legal, accounting, or consulting procedures as a result of this regulation.

Sunset Date

USTIB continuously monitors the effectiveness of regulations on an ongoing basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Kimberly Sheaffer, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to kimsheaffe@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(f) of the Regulatory Review Act (71 P.S. § 745.5(f)), on January 7, 2025, USTIB submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). A copy of this material is available to the public upon request. On the same date, the Department submitted this proposed rulemaking to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. USTIB will deliver a copy of this proposed rulemaking and required materials to the chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee, no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by USTIB, the General Assembly and the Governor of any comments, recommendations and objections raised.

J. Stephen Hieber
Chair, USTIB

ANNEX A

INSURANCE DEPARTMENT

25 PA. CODE CH. 977

CHAPTER 977. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

SUBCHAPTER A. GENERAL PROVISIONS

§ 977.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicated otherwise:

* * * * *

UST facility – For purposes of § 977.31 (relating to eligibility requirements), the term **means a storage tank facility as defined by § 245.1 (relating to definitions) that includes one or more USTs or HOTs.**

* * * * *

SUBCHAPTER C. COVERAGE AND CLAIM PROCEDURES

§ 977.31. Eligibility requirements.

To be eligible for Fund coverage, the participant shall, under section 706 of the act (35 P.S. § 6021.706), **regarding eligibility of claimants**, meet the following requirements:

(1) The claimant is the owner, operator or certified tank installer of the **[tank] UST or HOT** which is the subject of the claim.

(2) **[The current fee] All fees** required under **[section 705 of the act (35 P.S. § 6021.705) has been paid.] Subchapter B for every UST or HOT located at the UST facility where the**

release occurred are paid prior to the time that the release giving rise to the claim is discovered.

(3) [A UST has been registered in accordance with the requirements of section 503 of the act (35 P.S. § 6021.503).] **Registration and annual registration fees required under §§ 245.41 and 245.42 (relating to tank registration requirements; and tank registration fees) for USTs located at the UST facility where the release occurred are current and paid on or before 60 days of when the release giving rise to the claim is discovered.**

(4) The participant [**has obtained**] **received** the appropriate permit or certification, if required under sections 108, 501 and 504 of the act (35 P.S. [§ §] **§§ 6021.108, 6021.501 and 6021.504**), **pertaining to interim certification of installers and inspectors, UST requirements, and permits and plans, prior to the time that the release giving rise to the claim is discovered.**

(5) The release that is the subject of the claim occurred after the date established by the Board for payment of the fee required by section 705(d) of the act (**35 P.S. § 6021.705(d)**), **regarding fees.**

(6) The participant cooperates, as defined in § 977.32 (relating to participant cooperation), with the Fund in its eligibility determination process, claims investigation, the defense of any suit, the pursuit of a subrogation action and other matters as requested.

(7) The participant [**has**] met the notification requirements of § 977.34 (relating to claims reporting).

(8) If the claimant is a certified company, the company conducted a tank-handling activity on a UST or a HOT from which the release occurred.



GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 7, 2025

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Proposed Rulemaking
Insurance Department – Underground Storage Tank Indemnification Board
No. 11-263 – Eligibility Requirements

Dear Chairman Bedwick:

Enclosed is a copy of a Proposed regulation package of the Underground Storage Tank Indemnification Board (Board) pertaining to eligibility requirements for reimbursement from the Underground Storage Tank Indemnification Fund.

The Board will be happy to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely yours,

A handwritten signature in cursive script that reads "Carole Clarke Smith".

Carole Clarke Smith
Department Counsel

Enclosure

From: [Bulletin](#)
To: [Clarke Smith, Carole](#)
Cc: [Sheaffer, Kimberly](#); [Speaks, Kathryn](#); [Adeline E. Gaydosh](#)
Subject: [External] Re: DELIVERY NOTICE OF PROPOSED REGULATION 11-263 Eligibility Requirements
Date: Tuesday, January 7, 2025 11:38:09 AM
Attachments: [image001.png](#)

Independent Regulatory
Review Commission

January 7, 2025

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Good morning, Carole,

Thank you for sending this proposed rulemaking. As requested, it is scheduled for publication in the 1.18 issue of the *Pennsylvania Bulletin*.

Have a terrific day!

Adeline

Adeline Gaydosh | Legal Assistant

agaydosh@palrb.us | 717.783.3984

Legislative Reference Bureau

Pennsylvania Code & Bulletin Office

647 Main Capitol Building

Harrisburg, PA 17120

From: Clarke Smith, Carole <cclarke-sm@pa.gov>
Sent: Tuesday, January 7, 2025 11:24 AM
To: Bulletin <bulletin@palrb.us>
Cc: Sheaffer, Kimberly <kimsheaffe@pa.gov>; Speaks, Kathryn <kspeaks@pa.gov>
Subject: DELIVERY NOTICE OF PROPOSED REGULATION 11-263 Eligibility Requirements

Good morning,

Please provide a written (email) confirmation that delivery of the rulemaking is complete.

Please be advised that the Underground Storage Tank Indemnification Board is delivering the below proposed rulemaking.

- Underground Storage Tank Indemnification Board, 11-263 Eligibility Requirements - The proposed regulation amends 25 Pa. Code §§ 977.4 and 977.31 (relating to definitions; and eligibility requirements) to make the Underground Storage Tank Indemnification Fund (USTIF) and Tank Installer Indemnification Program (TIIP) eligibility requirements clearer for its participants. The USTIF is proposing amendments that: (1) clarify USTIF and TIIP eligibility requirements in response to Pennsylvania Commonwealth Court and Supreme Court decisions; and (2) require that an underground storage tank be registered with the Pennsylvania Department of

Environmental Protection (DEP) under Section 503 of the Storage Tank and Spill Prevention Act (act) (35 P.S. § 6021.503) within 60 days of when a release is confirmed.

The Board will submit this proposed rulemaking and required material to the standing committees of the House and Senate no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*.

Thank you for your attention to this matter.

RECEIVED



Carole Clarke Smith | Department Counsel

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Office of Chief Counsel, Special Funds
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Independent Regulatory
Review Commission

January 7, 2025

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