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Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

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Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, or the Agency) is promulgating financial responsibility requirements applicable to local governmental owners and operators of underground storage tanks containing petroleum. EPA promulgates these requirements under the authority of section 9003 (c) and (d) of the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). This rule establishes four alternative mechanisms for use by local governments to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental underground storage tank releases. The Agency is adding these local governmental financial assurance mechanisms to the existing mechanisms contained in the financial responsibility rule promulgated October 26, 1988. These additional mechanisms will allow a greater number of local governmental entities to comply with the financial assurance requirements and will result in a net cost savings to local governments estimated at approximately $32 million over a ten year period.

EFFECTIVE DATE: This rule becomes effective on March 22, 1993.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (703) 412–9810 in Virginia, or Sammy Ng in EPA's Office of Underground Storage Tanks at (703) 308–8882.

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I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended. The principal amendments to this Act have been under the Resource Conservation and Recovery Act of 1976, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Background

This section provides the legislative and regulatory background for this rule and summarizes today's additional mechanisms for financial responsibility for local government entities.

A. Legislative and Regulatory Overview

This section discusses the statutory authority for financial responsibility regulations for UST owners and operators, the provisions of the financial responsibility regulations promulgated on October 26, 1988 and the scope of the financial responsibility regulations being promulgated today.

1. RCRA Subtitle I

The Hazardous and Solid Waste Amendments of 1984 (HSWA) extended and strengthened the provisions of the Resource Conservation and Recovery Act (RCRA). HSWA added Subtitle I to RCRA, establishing provisions for the development and implementation of a regulatory program for underground storage tanks (USTs) containing certain substances, including petroleum and other regulated substances (such non-petroleum regulated substances are hereinafter referred to as "hazardous substances"). Section 9003(a) of Subtitle I requires the EPA Administrator to promulgate requirements for release detection, prevention, and correction as necessary to protect human health and the environment. These technical standards were promulgated at 53 FR 37082 (September 23, 1988).

The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended sections 9003 (c) and (d) of Subtitle I to mandate that the Agency establish financial responsibility requirements for UST owners and operators to assure the costs of corrective action and third-party liability caused by sudden and nonsudden accidental releases from USTs. SARA also modified Subtitle I by specifying the minimum statutory levels of financial responsibility for petroleum marketers and the factors that EPA may consider in setting minimum levels for non-marketers. The objective of the financial responsibility requirements is to ensure that owners and operators can respond promptly to clean up releases and to compensate third parties for any injuries or damages associated with UST releases.

2. October 26, 1988 Rule

The final financial responsibility rule, promulgated on October 26, 1988 applies to owners or operators of "petroleum UST systems" with the following exceptions:

(1) Federal or State entities that own or operate USTs containing petroleum; and

(2) Owners and operators of tank systems excluded from the technical standards.

To cover the potential costs of corrective action and third-party

liability claims from sudden and nonsudden accidental releases from USTs, the rule requires the following parties to obtain financial assurance of at least $1 million per occurrence:

(1) All owners or operators of petroleum USTs at facilities engaged in petroleum production, refining, or marketing; and

(2) Owners or operators of USTs with an average monthly throughput of more than 10,000 gallons.

Owners or operators of USTs at facilities not engaged in petroleum production, refining, or marketing with an average monthly throughput of 10,000 gallons or less must maintain financial assurance of at least $500,000 per occurrence. All owners or operators must maintain an annual aggregate of $1 million or $2 million, depending on the number of USTs assured. The responsibility for cleanup and third-party compensation in the event of UST releases was established under the technical standards published in September 1988. The October 1988 financial responsibility rule made owners and operators responsible for complying with the financial responsibility requirements, but otherwise imposed no new liability; rather, the rule was intended to verify that local government owners or operators of USTs would be able to meet their liabilities in the event of an UST release. It is important to note that exemption from the financial responsibility requirements would not exempt an owner or operator from their liabilities in the event of an UST release.

UST owners or operators may use the following mechanisms to satisfy the requirements: Insurance or risk retention group coverage, surety bond, guarantee, letter of credit, financial test of self-insurance, trust fund, a State-required mechanism, or a State fund or other State assurance. (Under the October 26, 1988 rule, only private companies reporting to credit reporting agencies, publicly-held companies reporting to the Securities and Exchange Commission, and public utilities reporting to specified agencies are eligible to use the financial test of self-insurance.) Mechanisms can be used alone or in combination to cover the costs of taking corrective action and compensating third parties as long as a mechanism or a combination of mechanisms provides the full amount of required assurance. The only combination of mechanisms that is not allowed is the financial test of self-insurance and a guarantee where the financial statements of the owner or operator and the guarantor are consolidated.

The October 26, 1988 final rule requires owners or operators to submit documentation of financial responsibility to the implementing agency for three occurrences: (1) After a known or suspected release occurs, (2) when a provider becomes incapable of providing assurance, and (3) when a provider revokes a mechanism and the owner or operator is unable to obtain alternate coverage. Owners or operators must also submit documentation of financial responsibility if requested by the implementing agency. In addition, UST owners or operators must notify the implementing agency of their methods of demonstrating financial responsibility upon installation of new tanks. Owners or operators must also maintain records of the financial assurance mechanisms used to satisfy these requirements on-site or at their place of business.

The October 26, 1988 rule also contains provisions that require third-party providers of financial assurance (i.e., sureties, insurance companies, risk retention groups, guarantors, and providers of letters of credit) to provide notice of cancellation with an adequate time period for the UST owners and operators to seek alternative coverage and to determine whether there has been a release that would trigger the third-party mechanism. On November 9, 1989, EPA published an interim final rule that modified the required language of endorsements required for insurance policies as they relate to cancellation (54 FR 47077).

The State program approval objective for financial responsibility of owners and operators of petroleum UST systems was also promulgated October 26, 1988. This objective outlines two general provisions: (1) The considerations used to determine whether States' financial responsibility requirements will be considered "no less stringent" than the corresponding Federal requirements standard, and (2) the standards that must be met to demonstrate adequate enforcement of compliance.

3. Discussion of the Financial Responsibility Requirements for Governments in the October 26, 1988 Rule

Although the final financial responsibility rule (53 FR 43322, October 26, 1988) exempts those government entities whose debts and liabilities are the debts and liabilities of Federal or State governments, local government entities are required to provide financial assurance for USTs that they own or operate. Under the Agency's schedule for phased compliance with the final rule, local government entities have been given until February 18, 1994, one year from the promulgation of today's rule, to comply. In the October 1988 final rule, the Agency stated its intention to develop a financial test in the interim that would allow local governments to demonstrate that they have the requisite financial strength and stability to pay the costs associated with UST releases. After passing this financial self-test, local government entities will be allowed to demonstrate financial responsibility in a manner similar to private companies that meet the criteria of the corporate financial test of self-insurance.

Under the compliance schedule, Indian tribes are required to comply with financial responsibility requirements under the same schedule as local governments; that is, within one year from the promulgation of today's rule (i.e., before February 18, 1994).

4. The Proposed Rule

The proposed rule was published on June 18, 1990. The Agency received comments from 23 commenters. Most supported the development of the new financial responsibility mechanisms, stating that these additional mechanisms allow more local governments to comply with the financial assurance requirements, and that they would be able to do so at lower cost. Some commenters suggested changes or additions to the mechanisms proposed. Where appropriate, the Agency has adopted these suggestions. The specific issues raised and the Agency's responses are addressed in "Summary of Comments and Responses on Proposed Additional Financial Responsibility Mechanisms for Local Governments Subject to Subtitle I of the Resource Conservation and Recovery Act."

One commenter proposed as a new alternative mechanism that EPA issue regulations allowing implementing agencies to redirect funds from Federal- or State-funded programs to pay for the expenses associated with corrective actions. The Agency rejected this suggestion because it has no statutory authority to redirect funds from other State or Federal programs.

B. Key Provisions in Rule

In today's rule, the Agency is providing additional mechanisms that will allow local governments to comply with the financial responsibility requirements. These mechanisms do not replace the existing methods; rather, they supplement them. These mechanisms are similar in intent to the corporate guarantee and the financial

test of self-insurance now allowed as mechanisms for corporations. Local governments eligible to use the mechanisms may use them alone or in combination with other mechanisms, as described below.

One commenter questioned the language indicating that all local governments "may use" the new financial assurance mechanisms, since the criteria associated with using the mechanisms by definition restricts their use by certain entities. The Agency emphasizes that all local governments may seek to use all mechanisms, but only those that meet all qualifying criteria may use a specific mechanism to demonstrate financial responsibility.

EPA is promulgating four additional mechanisms for use by local government entities to demonstrate financial responsibility:

(1) Bond rating test. Local government entities with $1 million or more of total outstanding issues of general obligation bonds (excluding refunded obligations) and having investment-grade ratings would be eligible to demonstrate financial responsibility. Non-general purpose local governments (e.g., special districts and school districts) with $1 million or more of investment-grade revenue bonds may also use this mechanism if they do not have the authority to issue general obligation bonds. General obligation bonds that are backed by credit enhancement mechanisms other than bond insurance may not be included in the bond rating test. Revenue bonds that are backed by any type of credit enhancement mechanism may not be included in the bond rating test. Bonds with investment grade ratings are defined as those having a Moody's bond rating of Baa or higher (i.e., Aaa, Aa or A), or a Standard and Poor's bond rating of BBB or higher (i.e., AAA, AA, or A). Passing the bond rating test will be considered a sufficient demonstration of financial responsibility.

(2) Worksheet test. A worksheet test has been developed for use by local government entities that do not have general obligation or revenue bond ratings or that have less than $1 million in outstanding issues of investment-grade-rated general obligation or revenue bonds. (Governments meeting the requirements of both the bond rating test and the worksheet test may use either mechanism but are assumed to use the bond rating test as a matter of administrative convenience.) Local governmental entities having outstanding issues of general obligation or revenue bonds that are rated as less than investment grade are not eligible to use the worksheet test. The worksheet incorporates several financial criteria designed to measure a local government entity's financial stability. Passing the worksheet test will be a sufficient demonstration of financial responsibility.

(3) Guarantee. A local government entity can demonstrate financial responsibility by obtaining a binding guarantee from another governmental entity able to demonstrate financial responsibility assurance through the alternative mechanisms. The guarantor must have the authority to provide a guarantee to the local government entity seeking financial assurance. For example, a town may serve as the guarantor for a special district, a county may serve as the guarantor for a school district, a State may serve as the guarantor for a county, or a city may act as a guarantor to a special district (e.g., a transportation authority or a government utility). A guarantee for the entire aggregate limit for which a local government must demonstrate financial responsibility will be a sufficient demonstration of financial responsibility. A guarantee for a lesser amount may be used in combination with one or more other allowable mechanisms to demonstrate financial responsibility.

(4) Maintenance of a funded balance. Local government entities may satisfy the financial responsibility regulations by developing a self-administered emergency response fund to finance an UST corrective action and pay for third-party damages. A fund balance established for the entire aggregate limit for which a local government must demonstrate financial responsibility will be a sufficient demonstration of financial responsibility. A fund balance established for a lesser amount may be used in combination with one or more other allowable mechanisms to demonstrate financial responsibility.

The October 1988 rule allows the use of combinations of financial responsibility mechanisms. This feature is extended to include the financial self-test mechanisms being promulgated today. For example, a local government entity may use the guarantee or funded balance mechanisms to satisfy the deductible amounts of insurance policies. Local governmental entities may use the mechanisms being promulgated today in addition to the mechanisms allowed by the October 1988 rule: insurance, risk retention group (RRG) coverage, surety bond, letter of credit, State-required mechanisms, or a State fund or other State assumption of responsibility.

In contrast to the specifications for the corporate self-test, EPA does not believe that local governments will use consolidated financial statements to support both the worksheet and the guarantee mechanisms. Local governments are separate legal and financial entities from States and from each other. The situation wherein a local government will consolidate its financial statements with a State, or vice versa, and use the consolidated statements to support both the worksheet and the guarantee, cannot occur. In addition, most local governments are independently chartered. By the nature of the local government charters, local government operations that are consolidated, such as utility operations accounted for as enterprise funds, never issue stand-alone financial statements, because they have no independent standing. Thus, there is no potential that the consolidated entities could first use their own financial statements for the worksheet, and then rely on the consolidated financial statements for a guarantee, because they have no independent financial statements. Independent authorities (e.g., independent school districts) are independent because they have separate charters and/or articles of incorporation; they operate independently and their financial statements are never consolidated with the statements of the nearby general purpose governments.

To support this rule, the Agency has prepared a Background Document, "Background Document in Support of Financial Self-Test for Local Governments Subject to the Financial Responsibility Requirements of Subtitle I of the Resource Conservation and Recovery Act," that describes in detail the methodology and analyses used to evaluate potential financial responsibility mechanisms.

C. Rationale for Agency's Approach

The Agency had four main goals in developing the additional alternatives being promulgated today for local governments to demonstrate financial responsibility under Subtitle I. First, the Agency wanted to recognize fundamental differences between governmental entities and private entities. Second, the Agency wanted to keep the rule as flexible as possible to allow local governments a variety of choices in demonstrating financial responsibility. Thus, the Agency is promulgating several financial assurance mechanisms for local governments. Third, the Agency wanted to keep the mechanisms as simple as possible to minimize the administrative burden on local governments as well as the implementing agency. Thus, the

Agency is promulgating options that use data believed to be readily available to local governmental entities or that are consistent with governmental practices and is maintaining the same approach to reporting requirements adopted in the regulations published in the October 1988 rule. Fourth, the Agency wanted financial responsibility mechanisms that could realistically be used by local governments.

In the October 1988 rule, the Agency provided a mechanism whereby financially secure corporations can self-insure. The rule provided two alternatives for corporations. Under Alternative I, a firm can self-insure if it meets four criteria: (1) Tangible net worth equal to 10 times the sum of its financial responsibility amounts for underground storage tanks, its closure, post-closure care, liability coverage, and/or corrective action costs for Subtitle C facilities, and its plugging and abandonment costs for Class I Hazardous Waste Injection Wells, (2) tangible net worth equal to at least $10 million, (3) annual filing of its financial statements with the Securities and Exchange Commission (SEC), the Rural Electrification Administration (REA), the Energy Information Administration (EIA), or Dun & Bradstreet (which must have assigned a financial strength rating of 4A or 5A), and (4) annual reports which, if independently audited, did not include an adverse auditor's opinion or a disclaimer of opinion. Under Alternative II, a corporation can self-insure if it meets four criteria: (1) Tangible net worth of at least $10 million, (2) tangible net worth at least six times its UST obligation, (3) U.S. assets equal to at least 90 percent of total assets, or at least six times its UST obligations, and (4) net working capital equal to at least six times the required amount of UST aggregate coverage, or a current Standard and Poor's bond rating of AAA, AA, A, or BBB, or a current Moody's bond rating of Aaa, Aa, A, or Baa. In addition, a firm using Alternative II must either report its financial information to the SEC, the EIA, or the REA or obtain a special auditor's report.

Local government entities, however, differ in several important characteristics from corporations, which makes the application of the corporate self-test mechanism in the October 1988 rule impractical for local governments. For example, "general purpose" local governments (counties, municipalities, and townships) generally use accounting systems that do not recognize assets in a manner similar to private companies. For example, municipal buildings and infrastructure (e.g., streets and utility lines) are not generally carried as assets on the local government financial statements. Thus, a test based on "tangible net worth" is, by definition, unworkable for many local governments. (It should be noted, however, that government-owned utilities that provide financial data to the Rural Electrification Administration or the Energy Information Administration are allowed to use the corporate financial test under the October 1988 rule.) Also, the accounting standards used by most local governmental entities are not the same as the Generally Accepted Accounting Principals ("GAAP") used by private entities. Most local governments use either cash basis accounting (often mandated by State law) or "modified" accrual accounting, where the recognition of revenues may be delayed. Consequently, a test based on "net working capital" may be unworkable for most local governmental entities. In addition, local governments are not generally required to report financial information to a regulatory agency similar to the Securities and Exchange Commission. Thus, it is impossible to incorporate mandatory reporting to an independent organization into a self-test.

Nevertheless, the Agency believes that a mechanism parallel to self-insurance is particularly appropriate for local government entities. The Agency has determined that local government entities are, in general, more financially stable than private companies. Most local governments, unlike private entities, have the authority to levy taxes or to independently set rates, which provide a consistent, reliable source of income. In contrast to corporations, they are less likely to dissolve or merge with other entities which means that they are less likely to have abrupt changes in financial structure. They are, by definition, geographically fixed, eliminating potential concerns that they may move and abandon their USTs. They rarely go bankrupt, suggesting that they are, as a class, more financially stable. As discussed in the background document, the available literature suggests that even bankruptcy does not allow local government entities to void their legal obligations. Additionally, unlike some private companies, local governments are generally required to make their financial data publicly available.

These factors suggest that a self-test for municipalities does not necessarily require the same level of built-in safeguards as required of private entities. Assurance that local government owners and operators will be financially responsible for their UST-related obligations, therefore, can be demonstrated more easily than assurance for private entities. Consequently, the primary concern of the Agency in developing this rule is that local governments show evidence of financial stability and prudent financial management.

D. Description of the Regulated Community

This section describes the nature of the local governmental entities that would be regulated under today's rule, including a description of their UST ownership characteristics, a brief description of their operation, and an overview of the considerations the Agency has used in developing today's rule.

The Agency estimates that about 62,000 petroleum USTs that are subject to Subtitle I jurisdiction are owned or operated by approximately 25,000 local government entities. Most of these USTs store petroleum products for purposes other than retail motor fuel sales. A local government entity may, for example, own USTs that store gasoline to fill police and fire vehicle tanks.

Local government entities include both general purpose local governments and special purpose local government entities. General purpose local government entities include municipalities, counties, townships, towns, villages, parishes, and New England towns. Special purpose local governments include entities that perform a single function or a limited range of functions. Special purpose local governments are generally designated as either public authorities or special districts such as school districts, water and sewer authorities, transit authorities, redevelopment authorities, irrigation districts, or power authorities. All local governments, both general and special purpose, are subject to this rule and are eligible to use the new financial assurance mechanisms described in today's rule. Several commenters requested an expansion or clarification of the definition of local government entities to include local public transit systems and redevelopment authorities. The Agency originally intended these types of local government entities to be included in the definition, and has clarified the definition as requested by the commenters.

The Agency's research has shown an extremely low rate of fiscal emergencies among governmental entities through the 1970s and 1980s. A 1983 study by the Advisory Council on Intergovernmental Relations (ACIR)

found only three incidents of bankruptcy among general purpose governments, only one of which caused a general purpose governmental body to void a legally binding agreement. In all other cases, even local government entities that entered bankruptcy were forced to make full restitution, although sometimes over a stretched-out payment term. Since 1983, only five additional general purpose governments are known to have declared bankruptcy. There has been a similarly low rate of bankruptcy among special purpose districts. Between 1972 and 1989, 29 utility special districts, two school districts, and six other special purpose districts and hospitals filed for bankruptcy (out of a total of more than 40,000 school districts and special purpose districts).

Although bankruptcy is an extreme condition, the Agency believes this very low incidence (0.003 percent per year) reflects general stability of local government entities. In contrast, 56,423 (1.3 percent) of the 4,256,243 private companies in operation filed bankruptcy petitions in 1982.[1] This number increased to 88,278 in 1987. Combined with the relatively low costs of UST financial responsibility obligations (relative to other environmental obligations and most governmental activities in general), the relative stability of local governments is interpreted by EPA to indicate a general ability to meet financial obligations under Subtitle I.

In addition, the Agency's research has shown relatively few cases where releases were known to have come from local government-owned USTs. For releases that did occur, local government entities were generally able to clean up and to pay for the costs of corrective actions associated with the releases. Because of the limited data regarding local government responses to UST releases, however, the Agency has relied primarily on data and analyses regarding the overall financial health of local governments. One commenter indicated that cleanups of UST releases at airports are generally funded from operations or funds for construction projects. The Agency interprets this statement as additional support for allowing local governments to demonstrate financial responsibility based on their internal financial condition, rather than requiring the use of third-party mechanisms.

[1] "Statistical Abstract of the United States," 109th Edition. United States Department of Commerce, Washington, D.C., 1989; and "General Report on Industrial Organization," 1982 Enterprise Statistics. Issued October 1986.

III. Section-by-Section Analysis

A. Applicability

Today's rule would apply to all non-exempt governmental owners and operators of underground storage tanks containing petroleum. 40 CFR § 280.90(c) exempted from financial responsibility requirements State and Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States. Although the October 1988 rule excluded State and Federal governments, it required local government entities to demonstrate financial assurance for USTs that are owned or operated by the government.

Data available to the Agency in preparing the Regulatory Impact Analysis for the October 1988 rule suggest that local government entities collectively own approximately 62,000 USTs. Additional analysis of the New York State tank notification data base suggests that larger local government entities are more likely to own USTs and are more likely to own multiple USTs, but a specific breakdown of how many of each type of local government own USTs is not available from the data available to EPA. Overall, EPA estimates that about approximately 25,000 local governments own USTs.

Local government entities are created under State law, and consequently vary significantly from State to State. All local government entities recognized under State law may seek to use the financial assurance mechanisms being promulgated today. As recognized by the Bureau of the Census, local government entities generally fall into the following categories:

County Governments: Organized county governments are found throughout the nation except for Connecticut, Rhode Island, the District of Columbia, and limited portions of other States. In Louisiana, the county governments are officially designated as "parish" governments, and the "borough" governments of Alaska resemble county governments in other States. In general, county governments are defined in terms of a geographical area served, rather than a specific population.

Municipal Governments: Municipal governments include active government units officially designated as cities, boroughs (except in Alaska), towns (except in the six New England States and Minnesota, New York, and Wisconsin), and villages. This concept corresponds to the "incorporated places" that are recognized in Census Bureau reporting of population and housing statistics.

Township Governments: Township governments exist to serve inhabitants of areas without regard to population concentrations. This category includes governments officially designated as "towns" in the six New England States, New York, and Wisconsin, some "plantations" in Maine, and "locations" in New Hampshire, as well as governments called townships in other areas. In Minnesota, the terms "town" and "township" are used interchangeably.

School Districts Governments: Forty-five States have established public school systems with sufficient autonomy and fiscal authority that they can be classified as independent local government entities.

Special Purpose Districts: Special purpose districts are governmental entities created to perform a single or limited range of functions (e.g., school districts, park and recreation districts, libraries, fire protection districts, cemeteries, transit districts, redevelopment authorities, etc.). These districts may be subdivided into any of the following distinct categories: (1) Local or metropolitan districts; (2) districts dependent on or independent of a municipality for their creation or operation; and (3) districts created by State enactment or by municipal resolution. They have sufficient administrative and fiscal autonomy to qualify as separate governments.

Indian Tribes: Indian Tribes are included in the statutory definition of municipality in RCRA Section 1004(13) and are, therefore, required to comply with the financial responsibility requirements by the same compliance date as other local government entities. This rule treats Indian Lands as local government entities and allows them to use the self-test mechanisms to demonstrate financial responsibility.

Several commenters requested exemptions from the UST financial responsibility requirements for local governments. Commenters gave the following reasons for such an exemption: (1) Local governments, as a class, have sufficient financial strength and stability to pay for corrective actions without the need to demonstrate financial responsibility; and (2) the adverse effects on the ability of local governments to fund emergency services if required to divert funds to pay for assurance mechanisms. One commenter, a small rural town, indicated that it cannot qualify to self-insure and added that the financial responsibility regulations impose financial burdens with which the town, and presumably other towns, could not possibly comply.

EPA believes that commenters may have failed to distinguish between: (1) The need for local governments to pay for costs associated with UST releases, as required under the technical standards; and (2) the financial responsibility regulations, which merely require that UST owners be able to demonstrate that they will be able to meet such costs if they occur. Even if EPA were to exempt local governments from the requirement to demonstrate financial responsibility, such an exemption would not, under Subtitle I, relieve them from the legal liability to pay for the costs of UST releases and to compensate third parties for damages caused by releases.

The Agency agrees that most local government entities do have the resources and the will to meet financial responsibilities. This belief underlies the effort to develop mechanisms by which local governments can demonstrate compliance with the financial responsibility requirements without the need to obtain insurance or the use of other third-party mechanisms.

The Agency also agrees with commenters who noted that some local governments may not have the resources to meet their UST-related financial obligations. Consequently, it would not be appropriate to exempt all local governments from the need to demonstrate financial responsibility. Further, EPA believes that exempting all local governments from the requirement to demonstrate financial responsibility would not be consistent with statutory intent as discussed in 9003(d)(5).

The Agency notes the concern about the potential impact on local governmental services. The Agency believes, however, that the mechanisms provided will allow any fiscally solvent local government to demonstrate financial responsibility and continue to operate its USTs, and will do so at minimum cost to the affected local governments. EPA encourages governments unable to demonstrate financial responsibility using the worksheet, bond rating, or fund balance mechanisms to seek guarantees from neighboring jurisdictions or from county governments. EPA believes that such entities are better able to determine the strengths of the government seeking the guarantee, and to measure how essential are the services offered, than the Agency would be in developing a uniform national standard.

B. Definition of Terms

1. Bond Ratings

A bond rating is an "evaluation of the credit quality of notes and bonds usually made by independent rating services . . . Ratings generally measure the probability of the timely repayment of principal and interest of municipal bonds." [2] In this rule, only ratings made by Moody's Investors Service and Standard & Poor's will be considered eligible for use in demonstrating financial responsibility.

2. Investment Grade Bonds

As defined by the Comptroller of the Currency, investment grade bonds are generally regarded as eligible for bank investment. In addition, the legal investment laws of various States may impose certain ratings or other standards for obligations eligible for investment by savings banks, trust companies, and fiduciaries generally. For purposes of this rule, investment grade bonds are considered to include bonds rated Aaa, Aa, A, and Baa by Moody's, or AAA, AA, A, and BBB by Standard and Poor's.[3]

3. General Obligation Bonds

General obligation (G.O.) bonds, also known as "full faith and credit" bonds, are secured by their issuers' ability to levy ad valorem taxes or to draw from other unrestricted revenue sources, such as sales or income taxes. These bonds are important mechanisms for financing municipal capital improvements such as schools, streets, and municipal buildings. The bond issuer's ability to generate revenues is evaluated by analyzing factors in four categories: socioeconomic, finance, debt, and administration.[4]

4. Revenue Bonds

A revenue bond is a long-term debt instrument that is issued to finance a specific public enterprise and that is payable solely from enterprise earnings or from a dedicated tax.[5] The Agency has determined that most revenue bonds issued by general purpose governments (i.e., counties, municipalities, and townships) are issued to fund specific projects with dedicated revenue streams not necessarily central to the operations of that government, and that the evaluation criteria associated with these revenue bonds may not fully reflect the socioeconomic, financial, and administrative condition of a general purpose government. Instead, the ratings reflect a more limited set of criteria pertaining to the specific project financed. In contrast, the Agency has determined that revenue bonds issued by special districts are generally used to finance projects central to the operations of the special districts, so that the ratings encompass a broader view of the overall financial condition of the issuing entities. In this rule, the Agency allows only special districts and school districts that do not have the authority to issue general obligation debt to use investment-grade ratings on revenue bonds to demonstrate financial responsibility.

5. Substantial Governmental Relationship

The October 26, 1988 rule authorized owners and operators to obtain a corporate guarantee to meet their financial responsibility requirements. The corporate guarantor must: (a) Have a controlling interest in the owner or operator or in a specified related firm; or (b) issue the guarantee as an act incident to a "substantial business relationship" with the owner or operator (§ 280.96). The object of the corporate guarantee is a valid and enforceable contract. Additionally, to insure that State insurance laws will not impair the enforceability or validity of the mechanism, a corporate guarantee may be used only if it is certified for use by the Attorney General of the State in which the USTs are located.

Local governments, however, do not have "controlling interests" in one another, and their interactions may not be of an economic nature constituting a "substantial business relationship." As with the corporate guarantee, the Agency is concerned that local governmental guarantees be valid and enforceable, and that they do not conflict with State insurance laws. Thus, a municipality using a local governmental guarantee must certify that there is a "substantial governmental relationship" underlying the guarantee. Such a relationship must include a clear commonality of interests, such as common constituencies served, overlapping geographical jurisdiction, or mutual impact in the event of an UST release. In addition, a local government acting as a guarantor must have the authority to enter into such agreements.

Examples of governmental guarantees could include: (1) A guarantee offered

[2] Moody's Investors Service, Inc., "Moody's on Municipals: An Introduction to Issuing Debt," 1989, p. 75.

[3] Both Standard and Poor's and Moody's recognize groupings within the major bond rating classes. Moody's signifies higher ranking bonds within a class with a "1" (e.g., Baa1), while Standard and Poor's uses a +/− system to designate higher and lower ranking bonds. This proposed rule does not consider these groupings. Thus, a Baa1 rating is classified as a Baa rating for the purposes of the test, while an AA+ or AA− rating is classified as an AA rating.

[4] Standard & Poor's Corporation, "Standard & Poor's Debt Ratings Criteria: Municipal Overview," 1986.

[5] Standard & Poor's Corporation, "Standard & Poor's Municipal Finance Criteria," 1989.

by a county to an incorporated city located partially or entirely within the limits of the county; (2) a guarantee offered by one county to another if both counties cover a common aquifer subject to contamination by UST releases; (3) a guarantee offered by the State to a local government within the State; or (4) a guarantee offered by a general purpose local government to an independent school district, water district, utility district, or other special district serving the guarantor in whole or in part. One commenter questioned what types of publicly owned utilities would be eligible to receive a guarantee. Any special district is eligible to receive a guarantee if it has its own governing body and an independent accounting system.

Additional examples of appropriate intergovernmental relationships for a governmental guarantee would be joint operating agreements for emergency responses across jurisdictional boundaries, or purchase of non-UST-related services such as water or education.

One commenter asked three questions pertaining to activities that constitute a "substantial governmental relationship": (1) Whether a governmental entity may act as a guarantor for more than one entity; (2) whether a contractual relationship (under an intergovernmental pooling arrangement) of a pool to provide safety and risk management services in addition to risk pooling will be recognized as a "substantial governmental relationship"; and (3) what criteria determine that a relationship is "sufficiently non-monetary."

The Agency concludes that a local government may act as guarantor for multiple entities. A guarantee from a risk pool, however, is not considered a governmental guarantee for the purposes of establishing financial responsibility. The role of a risk pool is almost exclusively monetary, similar to that of insurance. Issuance of a guarantee would not change the nature of that relationship. The Agency recognizes that participation in a risk pool provides a means for local governments to reduce their liability for large unforeseen events. However, risk pools have not been approved as a Federal financial responsibility mechanism because no comprehensive yet manageable set of Federal guidelines could be developed to ensure that all risk pools would have adequate oversight to make them comparable to the other financial responsibility mechanisms allowed.

The Agency notes that, under § 280.100, risk pools can be adopted as Federal financial responsibility mechanisms by individual States as State-required mechanisms. That is, a State may allow or require local governments to demonstrate financial responsibility through participation in a risk pool if the State can demonstrate to the Agency that the risk pool would be at least equivalent to the other financial responsibility mechanisms allowed.

C. Amount and Scope

The amount and scope of financial responsibility is not being changed from the requirements established in the October 1988 rule. Governmental entities owning or operating USTs at facilities with a monthly throughput of less than 10,000 gallons must demonstrate financial responsibility in the amount of $500,000 per occurrence. Governmental owners and operators owning or operating one or more USTs at facilities with a monthly throughput of 10,000 gallons or more must demonstrate financial responsibility in the amount of $1 million. In addition, owners and operators of USTs must demonstrate financial responsibility in the amount of an appropriate annual aggregate. Owners and operators of 100 or fewer USTs must demonstrate financial responsibility in the annual aggregate amount of $1 million, and owners and operators of more than 100 USTs must demonstrate financial responsibility in the annual aggregate amount of $2 million.

One commenter suggested incorporating a mechanism in the rule that would allow for reductions in the required level of assurance when tanks are replaced with intrinsically safe tanks or upgraded to be intrinsically safe. The commenter believed that this proposal would result in more equitable and less burdensome requirements for assurance. The Agency disagrees with the commenter's suggestion for the reasons cited in the October 1988 final rule and the June 1990 proposed rule.

Another commenter indicated that disclosing the amount of money that will be paid per release by an assurance mechanism may adversely affect a local government's position in litigation or settlement negotiations. The commenter recommended deleting this provision from the financial officer's letter. EPA believes that the commenter may have misinterpreted the intent of the financial officer's letter. The amount assured, as cited in the financial officer's letter, is not meant to be a minimum amount that must be paid in the event of a release, but rather the minimum amount that a local government must be able to pay if required to meet corrective action costs and third-party liabilities. EPA assumes that governments will use all defenses and mechanisms to ensure that payments for third-party liabilities are fair and equitable. Conversely, the amount of financial assurance demonstrated does not limit a local government's potential liability in the event of a release. Local governments are liable for all costs resulting from a release, regardless of the amount for which they demonstrate financial responsibility. EPA requires that an amount be specified in the financial officer's letter to ensure that senior officials of the government are aware of their potential obligations as UST owners.

IV. New Mechanisms for Demonstrating Financial Responsibility

A. Description of New Mechanisms

Today's rule promulgates four additional financial assurance mechanisms for use by local government entities that own or operate USTs containing petroleum: A bond rating test, a worksheet test, a governmental guarantee, and maintenance of a funded balance. These additional mechanisms are described below. In addition to these mechanisms, local governments that are owners and operators of USTs may use any of the financial responsibility mechanisms authorized under 40 CFR § 280.94 (i.e., insurance, Risk Retention Group (RRG) coverage, surety bonds, letters of credit, fully-funded trust funds, State-required mechanisms, a State fund, or other State assumption of responsibility). The Background Document prepared in conjunction with this rule explains in more detail the data and methodology used to develop the new mechanisms now being finalized.

1. Bond Rating Test (§ 280.104)

In order to pass the bond rating test, local government entities must have outstanding issues of general obligation bonds that are currently rated at least "investment grade" by Moody's or Standard & Poor's. Special districts, such as school districts or airport authorities, that do not have the authority to issue general obligation bonds may substitute investment grade revenue bonds for general obligation debt to satisfy the bond rating test. In both cases, the municipality's total outstanding obligation must be $1 million or more, excluding refunded obligations. Investment grade bonds are those with a current Standard and Poor's bond rating of AAA, AA, A, or

BBB, or a current Moody's bond rating of Aaa, Aa, A, or Baa. If a local government has multiple outstanding issues of general obligation or revenue bonds with different ratings, or if the ratings assigned to a single class or issue of bonds by different ratings agencies differ, the *lowest* rating must satisfy the criterion of the test.

If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

The Agency is aware that municipal bonds are often insured by third-party insurance companies, and that the rating assigned to such insured bonds is established primarily by the credit-worthiness of the insurer. After examining the criteria used by the rating companies to evaluate bond insurance companies, however, the Agency has concluded that the provisions for on-going review and intervention granted to the bond insurance companies under the insurance agreements provides a level of third-party oversight comparable to that provided directly by the bond rating companies. For purposes of this rule, therefore, the Agency is not distinguishing between general obligation bonds that are uninsured or insured by a bond insurance company.

EPA has not found evidence that other providers of other methods of credit enhancement, such as letters of credit, provide a degree of oversight equivalent to that provided by bond insurers. Consequently, ratings that are supported by means of credit enhancement other than bond insurance may not be used to demonstrate financial responsibility.

The Agency has selected the existence of investment-grade bond ratings on general obligation debt as an option for demonstrating financial responsibility for several reasons. First, EPA took into consideration the use of bond ratings as a standard measure of risk by banks and other fiduciary entities. As a result of a 1938 agreement issued jointly by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Executive Committee of the National Association of Supervisors of State Banks, these agencies have given municipal bonds in the first four rating categories (Aaa through Baa or AAA through BBB) privileged status as investment securities. Banks are permitted to hold only a certain number of low or unrated bonds, and they must balance such holdings with higher rated or more credit-worthy securities. Second, bond ratings serve as one of the only independent evaluations of local government entities' financial health. To perform their evaluations, the bond rating companies must consider a variety of factors that affect both local government entities' current ability to pay and the likelihood of continued ability to pay in the future. In particular, the costs of environmental obligations are included in the evaluations. Thus, the costs of underground storage tanks, solid waste landfills, hazardous waste landfills, sewage treatment plants, and associated environmental liabilities are factored into the rating analysis.[6] Third, general obligation bonds are secured by the full faith and credit of the borrower, and backed by the issuers' ability to levy taxes or make legislative appropriations. The Agency considers this underlying security equivalent to the requisite level of financial responsibility intended under Subtitle I. Fourth, bonds are re-rated on a periodic basis. Local governments are required to provide current financial data annually; failure to do so can result in removal of the bond rating. Also, the rating agencies receive local newspapers from around the country to monitor local conditions.[7]

Today's rule allows the use of insured issues of general obligation bonds. Information from bond rating companies indicates that local governments do not purchase insurance as a means of earning an investment grade rating, but rather to increase the rating from a lower investment grade (e.g., Baa, Baa1, or A) to the very highest (Aaa). In exchange for the cost of the insurance, the local governments obtain a lower interest rate for the life of the bond. Analysis undertaken by Moody's of four major bond insurers shows that virtually all of the insured debt would have earned an investment grade rating without the insurance, and so would qualify under the bond rating test.[8] In addition, bond insurers, unlike bond rating agencies, have a strong financial interest in the soundness of the local governments. If a local government defaults on a payment, the bond insurers must meet the payment. Consequently, bond insurers track the financial obligations of insured local governments closely and often have covenants that allow them to intervene in local government operations. Insurers, for example, may insist on more conservative fiscal policies to preserve the financial strength of a community, which in turn, lowers the risk and cost associated with the bond insurance. Although the bond rating of insured bonds does not directly indicate a local government's financial condition, it does demonstrate both that the government has assured the insurance company of its ability to meet its debts, and that a third party has a strong confidence in the financial health of the local government.

Two commenters agreed with and endorsed the methodology of the bond rating test, stating that the test will serve as a simple method for demonstrating financial responsibility and will provide the Agency with the assurance it seeks without imposing too great a burden on the regulated community.

Several commenters suggested that the Agency expand the bond rating test to include revenue bonds and other sorts of debt instruments as well as general obligation bonds. The Agency has researched the criteria used to assign credit ratings on short-term notes, certificates of participation, lease rental debt, and revenue bonds, and examined how well the credit rating addresses the financial health and fiscal management practices of local governments. The Agency also reviewed the default rates of these types of securities.

EPA is expanding the bond rating mechanism to allow non-general purpose governments (i.e., special districts and school districts) that do not have the authority to issue general obligation bonds to demonstrate financial responsibility if they have earned an investment-grade rating on at least $1 million in outstanding revenue bond issues not backed by any form of credit enhancement.

EPA has determined that revenue bond financing is central to the operation of most special districts and that the ratings on revenue bonds issued by special districts therefore provide an adequate representation of their financial strength. Special districts are created for a specific purpose, such as to provide airport services to a community. The revenue stream underlying the strength of a special district is the same as the base underlying its associated revenue

[6] Linda Reidt Critchfield, EPA Office of Underground Storage Tanks, memorandum to the record, "Conversation with Al Medioli, Moody's Investor Services on August 29, 1989," September 15, 1989.

[7] Ibid.

[8] Memorandum from Kate Donaldson, James Dickson, and Tony Bansal, ICF Incorporated, to Stephanie Bergman, EPA Office of Underground Storage Tanks, "Municipal Bond Insurance," May 31, 1989; memorandum from Kate Donaldson, James Dickson, and Tony Bansal, ICF Incorporated, to Stephanie Bergman, EPA Office of Underground Storage Tanks, "Municipal Bond Insurance Companies," June 22, 1989.

bonds. Ratings on revenue bonds are, therefore, appropriate measures of special districts' financial capabilities. (This is not the case for a general purpose government that issues revenue bonds, such as a city, because the revenue stream supporting a specific revenue bond is not equivalent to the overall tax base supporting the local government.) In addition, EPA determined that there has been a low incidence of default of investment-rated revenue bonds not enhanced by third-party support—e.g., bond insurance or a letter of credit. EPA examined information on revenue bond defaults between January 1989 and May 1991. Over that time period, approximately 150 issues defaulted. EPA estimates that no more than five of these issues had unenhanced investment-grade bond ratings from Moody's at the time of default, representing a default rate of less than 0.1 percent per year of rated bonds. Eight of the defaulted issues were backed by letters of credit, and two were insured by bond insurance companies.

Because the credit rating for revenue bonds issued by general purpose governments (e.g., townships, cities, and counties) would not measure the financial health and fiscal management practices of that type of government as a whole, and because revenue bonds are not usually used to finance projects central to the operation of a general purpose government, the Agency has determined that general purpose governments with the authority to issue general obligation debt may not use revenue bonds to demonstrate financial responsibility.

Similarly, because the credit rating for short-term notes, lease rental debt, and certificates of participation does not provide sufficient information on the financial strength of local governments, local governments may not use these instruments to demonstrate financial responsibility.

Two commenters asserted that the bond rating test is unavailable to many local governments simply because the amount of outstanding debt is less than one million dollars and suggested that the required amount of outstanding debt should be decreased. EPA intends the bond rating mechanism to be used by local governments that have shown their capability to sustain debts comparable in size to the minimum level of financial assurance as determined by statute. Governments that are not able to demonstrate such capability may use another mechanism to demonstrate financial responsibility. Based on the analysis conducted for the proposed rule, the Agency estimates that approximately 87 percent of general obligation bonds are issued for aggregate amounts greater than $1 million.

One commenter endorsed the bond rating test, but noted that a governmental entity will no longer qualify for the bond rating test if it reduces its total debt below $1 million. The commenter suggested that the amount of unused debt capacity may be more important than the amount of debt. Another commenter stated that the essential factor in the test should not be the dollar limit outstanding, but rather the statutory right of the authority to issue bonds and the credit ratings which have been established for that particular government entity on debt which has or could be issued. Because a local government entity does not have a credit rating from Standard and Poor's or Moody's unless it has outstanding debt, the commenter urged the Agency to devise some test, presumably a worksheet test, to measure credit worthiness if bond ratings have not been issued.

The Agency has determined that it is appropriate to require $1 million in outstanding debt as part of the bond rating mechanism. The requirement ensures that the bond rating used to demonstrate financial responsibility is based on a level of outstanding debt consistent with the amount of financial responsibility being demonstrated. Although there may be merit in the argument that the level of debt capacity is an indicator of potential financial abilities, EPA does not believe that incorporating available debt capacity would be feasible. First, calculating levels of available capacity is more difficult than applying the bond rating test as written, and is subject to greater uncertainties. Second, the fact that the local government has available debt capacity does not ensure that it will be able to issue the debt and maintain its bond rating, particularly if the amount of outstanding debt is substantially less than the amount of required financial assurance. The Agency notes that excess bond authority may be used as one part of one alternative of the fund balance mechanism.

Because bond rating information is easily obtainable, the use of bond ratings as a self-test mechanism will impose minimal administrative burden in determining a local government entity's eligibility. Many local government entities, however, do not currently have general obligation bond ratings. As of July, 1991 Moody's had ratings for a total of 7,653 investment-rated general obligation bonds issued by local government entities that were "investment grade" and were not insured.[9] (Because some local government entities may have multiple issues of general obligation bonds, the number of local governments with rated bonds may be lower.) Although Standard & Poor's rates additional entities, there is a substantial overlap—one study found that 94 percent of cities of 2,500 or more residents with a rating from Standard & Poor's also had a rating from Moody's.[10] In contrast, there are more than 80,000 local government entities in the United States, of which an estimated 25,000 own USTs. To provide local governments with as many compliance choices as possible to meet the requirement, the Agency has also developed additional self-test mechanisms to demonstrate financial responsibility.

2. Local Government Financial Test (§ 280.105)

As part of the underground storage tank requirements proposed on June 18, 1990, EPA included a local government financial test that could be used by local government owners and operators of USTs to satisfy the financial responsibility requirements of § 280.93. The local government financial test, or "worksheet test", was designed for local governments that cannot use the bond rating test (§ 280.104) because they have less than $1 million in outstanding investment grade bonds. As described in the preamble to the proposed rule, however, local government entities that have applicable outstanding debt rated lower than investment grade, even if this amount is less than $1 million, cannot use the worksheet test. This limitation on the use of the worksheet test applies, therefore, to the general obligation debt of general purpose local governments and to outstanding revenue bonds of those local government entities that are legally restricted from issuing general obligation bonds.

As described in the preamble to the proposed rule, the Agency designed and developed the worksheet test to capture local government variation using an index of financial strength. The index assigns a rank to each of the general purpose governments in the Census of Governments. After arraying the governments according to their rank on the index, the test establishes a cut-off

[9] Brenda Ramos, Moody's Investors Service, Public Finance Department, letter to Linda Critchfield, EPA, July, 1991.

[10] Cluff, George S., and Farnham, Paul G., "Standard & Poor's vs. Moody's: Which City Characteristics Influence Bond Ratings?", Quarterly Review of Economics and Business, Board of Trustees of the University of Illinois, Volume 24, No. 3, 1984.

point that, in the Agency's opinion, excludes that bottom fraction of local governmental entities that might not be able to meet their financial obligations in the event of an UST release. The procedures used to develop the index and establish the threshold cut-off are discussed in the preamble to the proposed rule, the background documents to this rulemaking, and in subsequent sections.

The test was designed to isolate the fraction of governmental entities that are in poor financial condition from those other governments that, in general, have sufficient resources and flexibility to respond to an UST release. Consequently, the Agency is not establishing the worksheet test as a precedent for other Agency regulations affecting local governments, because other regulations may require either larger required levels of funds or more certain cash flows.

Features of the Proposed Local Government Financial Test

The proposed worksheet test had the following features:

• Using a worksheet, an eligible local governmental entity would calculate nine financial ratios using easily available financial data. The nine ratios were:

—Debt service to total revenues,
—Total funds to total expenses,
—Total revenues to total expenses,
—Debt service to population,
—Total revenues to population,
—Total expenses to population,
—Total funds to total revenues,
—Total funds to population, and
—Local revenues to current expenditures.

• Each of the nine ratios was compared to the national distribution of that ratio to calculate a z-score, which is a measure of how far above or below the national average the municipality's ratio lies.

• The individual z-scores for the nine ratios were then weighted and added to calculate a total score, or index.

• Governments with a total score that passed the specified threshold could use the test as a mechanism for demonstrating financial responsibility for UST corrective action and third-party liability claims. To simplify the use of the worksheet test, the threshold value was incorporated into the calculation of the final score, so that governments achieving a final score greater than zero passed the worksheet test.

Comments on the Proposed Local Government Financial Test

EPA received several comments on its proposed financial test for local governments. The comments focused on (1) the exclusion of local governments with less than investment grade debt; (2) use of the term "self-insurance"; (3) updating the worksheet test using 1987 Census of Governments data; (4) deleting specific ratios from the test; (5) lowering the threshold level; and (6) the appropriateness of the worksheet test for non-general purpose local governments. The substance of the major comments received is briefly summarized below, followed by the Agency's rationale for accepting or rejecting the commenters' recommendations in the final worksheet test requirements.

(1) *Exclusion of Local Governments with Less than Investment Grade Debt.* One commenter believed the worksheet test should be available to all local governments, even those with outstanding debt rated below investment grade. The commenter reasoned that bond rating entities are not always accurate and, moreover, provide ratings that allow investors to assess a potential investment, a different purpose than assessing financial responsibility to respond to an UST release. The commenter stated that allowing use of the worksheet test would recognize these realities without undercutting the purpose of the test.

For reasons cited in the preamble to the proposed rule, however, EPA does not agree that local governments with bond ratings of less than investment grade should be eligible to use the worksheet test. The Agency notes that (1) failure to earn an investment rating is costly to local governments, (2) local governments have the incentive and ability to work with bond rating agencies to establish policies and procedures that would raise the bond ratings, and (3) the bond rating process involves a more detailed examination of local government financial condition than can be accomplished through a simple worksheet test.

(2) *Use of the Term "Self-insurance."* One commenter stated that State law might prohibit certain otherwise eligible government entities from using the worksheet test. The commenter noted that New York State law authorizes specific programs for self-insurance and that, because they have not been specially authorized for this purpose, component school districts cannot use the worksheet test (or, indeed, the bond rating test) to demonstrate the ability to self-insure.

EPA understands that the term "self-insurance" has specific legal meanings that may be limiting and has, therefore, modified the rule to delete references to "self-insurance." The modifications clarify that the use of the worksheet test mechanism is to demonstrate compliance with the financial responsibility regulations, and not to "self-insure."

(3) *Updating the Worksheet Test Using 1987 Census of Governments.* Although not proposing specific amendments to the worksheet, two commenters criticized the use of data from the 1982 Census of Governments in developing the worksheet test. One commenter believed that use of decade-old data could introduce inaccuracies in the results of the worksheet test. As an example, the commenter pointed out that changes in the financial practices of local governments, such as an increase in the size of new debt issues, could mean that the reality of what makes a local government financially strong is different now than it was in 1982.

EPA agrees with the commenter and, in response, has updated the analyses used to develop the worksheet test using data from the 1987 Census of Governments, which was not available when this rule was proposed. As further described below and in the Background Document, the new analyses show that the ratios included in the proposed worksheet test were highly correlated with similar factors in the analyses of both the 1982 and 1987 Census of Governments data, and that incorporation of the 1987 data did not significantly alter the structure of the worksheet test. In particular, EPA confirmed that ratios incorporating population (for example, total revenues per capita) and fiscal autonomy (e.g., local revenues to current expenditures) are important indicators of the relative financial strengths of governments. In addition, EPA has updated the worksheet to reflect changes in the means, standard deviations, and weights associated with each of the ratios.

(4) *Deleting Specific Ratios from the Worksheet Test.* One commenter urged the Agency to delete Factor 5, "local coverage" (local revenue to current expenses), from the worksheet test as inappropriate for use in assessing a local government's level of financial responsibility. The commenter argued that Factor 5 disadvantages those local governments that rely more heavily on State funding than others. While this factor is designed to measure local autonomy and the ability of local governments to redirect funds to meet the cost of UST releases, the commenter argued that a significant proportion of

the funds that local governments receive from States is not tied to specific purposes and may be used as the local government deems appropriate.

EPA believes that, because local governments do not control and cannot assure the continuance of State or Federal aid, local governments with a high dependence on non-local sources are less assured of the ability to respond to UST releases, whether the funds are dedicated to specific programs or not. The Agency notes that a local government may be weak in a particular variable but still pass the worksheet test. For example, a government with a high reliance on intergovernmental aid may still pass the worksheet test if its overall financial situation is predominantly sound as measured by the remaining variables. The selection of factors was developed through extensive statistical analysis of local government financial conditions. For reasons described below, however, the Agency has modified the proposed worksheet test to replace the ratio of local revenues to current expenditures with the ratio of local revenues to total revenues, an alternate ratio representative of "local coverage".

(5) *Lowering the Threshold Level.* One commenter recommended that the threshold value should be reduced from 15 to a maximum of 10 percent. The commenter argued that EPA's own statements in the preamble that local governments rarely go bankrupt, are not permitted to void obligations through bankruptcy, and generally possess the ability to meet financial obligations through taxation were inconsistent with the finding that 15 percent of local governments should be disqualified from using the worksheet test to demonstrate financial responsibility. In addition, the commenter believed that the worksheet analysis exaggerated the actual impacts likely to occur by not including consideration of incidence of UST ownership. The commenter reasoned that small local governments, the ones that are most likely to rely on a worksheet test, are much less likely to own USTs than larger local governments. Thus, the average impacts assumed exaggerate actual impacts likely to occur. The commenter concluded that these factors suggested that a 15 percent failure rate was too stringent, but that a maximum cutoff of 10 percent would recognize the reality of the financial strength of local governments.

The Agency notes that costs associated with clean-ups can range widely and that different standards cannot be applied to different owners. In fact, if standards were based on size of the local government, proportionately fewer smaller governments would be able to demonstrate financial responsibility because of the more limited total resources of small local governments. As shown in the background document, however, EPA believes that smaller governments are more likely to pass the worksheet test than are their larger counterparts. Consequently, the Agency believes its overall approach used to set the threshold is appropriate.

Two commenters pointed out that the difference between the 10 and 15 percent cutoffs in the Agency's analysis was not great. Another commenter stated that the threshold should be reconsidered or justified because the commenter did not believe the preamble or supporting documents contained evidence that 15 percent of local government entities are, in fact, financially unstable and, even if they are generally unstable, that they will be incapable of meeting their UST obligations.

As described below, the Agency has updated the worksheet test using the 1987 Census of Governments, including updated means, standard deviations, and weights for each ratio, as well as a reevaluation of the threshold level. Based on its review of the updated information, the Agency has determined that a threshold level that allows 90 percent of local governments to demonstrate financial responsibility based on the worksheet test represents a reasonable balance between the statutory requirement that UST owners demonstrate financial responsibility and the demonstrated stability of most local governments. Consequently, the Agency agrees with the commenters that a 10 percent threshold offers adequate safeguards.

(6) *Appropriateness of the Worksheet Test for Non-general Purpose Local Governments.* Two commenters stated that a financial test, such as the worksheet, designed to measure the financial strength of general purpose governments, is unsuitable for special purpose organizations such as airports, bridge and toll road authorities, and publicly-owned utilities. Unlike general purpose governments, one commenter argued, these so-called "proprietary" government entities conform to generally accepted accounting procedures similar to accounting systems employed in the private sector, rather than the modified accrual accounting terms and criteria appropriate to measure the success of a traditional government. Because the corporate test is similarly inappropriate for these special-purpose entities, the commenter requested that the Agency develop an alternative financial test for government entities required to use accrual accounting. The commenter suggested that the corporate test in 40 CFR 280.95, based on the accrual method, might be modified to take into account the substantially greater financial stability of publicly-owned utilities.

The Agency recognizes that specific data requirements preclude most special districts from using the worksheet test. In limited cases, however, some special districts (e.g., school districts that serve a specific population) may have the information necessary to complete the worksheet test (e.g., they can measure population). EPA believes that the new mechanisms, particularly with the inclusion of revenue bonds issued by special districts using the bond rating test, will allow most UST-owning governments to demonstrate financial responsibility without the need for an additional financial test targeted specifically at special districts.

Update of Worksheet Test Using 1987 Census of Governments

Although its basic features have not been modified, the Agency has updated the worksheet test using the 1987 Census of Governments. The procedures used to conduct the new analyses were the same as for the proposed rule, as documented in the preamble to the proposed rule and the background documents to this rulemaking, and as summarized below.

Starting with 78 different financial ratios and variables commonly used in financial analysis, the Agency used a statistical technique called "factor analysis" to group the variables. Factor analysis serves two purposes. First, it identifies underlying characteristics, or factors, that differentiate between the members of a population (in this case, between different counties, municipalities, and townships). Second, it tells how much of the difference (the "percent of variance explained") between the members of the population is accounted for by each factor. The Background Document contains a more detailed explanation of the statistical analyses performed, including the factor analysis.

The factor analysis identified a total of 15 factors that distinguish between local government entities. Based on its review of the results of the factor analysis, the Agency identified six factors that (1) captured the variation in financial performance of local governments and (2) appeared appropriate for the UST financial test. As with the proposed worksheet test,

the final worksheet test includes the following six factors: (1) Debt burden, (2) funds coverage, (3) outlays per capita, (4) funds per capita, (5) local coverage, and (6) revenues to expenses. In selecting the factors and variables to be included in the worksheet test, however, the Agency rejected size, because the Agency did not wish to exclude financially strong smaller local government entities simply because of size.

After selecting the factors to be represented in the worksheet, it was necessary to select the specific ratios to represent the factors. In choosing ratios, the Agency wished to (1) keep the total number of ratios to a manageable level, while (2) retaining as large a number of specific indicators as feasible. The final worksheet uses nine ratios, which include the variables (1) debt service, (2) total revenues, (3) total expenditures, (4) population, (5) total funds, and (6) local revenues. The ratios selected and the factors that they represent are presented below.

Factor 1—debt burden: debt service to total revenues.

Factor 2—funds coverage: total funds to total revenues; total funds to total expenses.

Factor 3—outlays per capita: total revenues per capita; total expenses per capita.

Factor 4—funds per capita: total funds per capita; debt service per capita.

Factor 5—local coverage: local revenues to total revenues.

Factor 6—revenues to expenses: total revenues to total expenses.

EPA found that, in general, the same ratios included in the proposed worksheet test were important in the factor analyses of both the 1982 and 1987 Census of Governments data. There is, however, one change to the worksheet test ratios as a result of the updated factor analysis. Factor 5, "local coverage", is now represented by the ratio of local revenues to total revenues rather than the ratio of local revenues to current expenses. The factor analysis of 1987 Census of Governments data found that the ratio of local revenues to total revenues was very highly correlated with Factor 5, while the ratio of local revenues to current expenses was correlated less highly and was also correlated with several different factors. The preamble to the proposed rule provides a detailed description of the importance of each of these factors. One other minor addition to the final test is inclusion of payments for retirement of debt principal (not just interest payments) in the calculation of total expenses. This was inadvertently omitted from the proposed rule. (EPA has modified the parameters of the test to reflect the revised definition of total expenses.)

Together, these factors provide a balanced view of the stability and financial strength of a local government entity. The Agency does not believe that any single factor or variable can provide a sufficient indication of overall financial stability. Specifically, EPA does not believe a focus on funds alone, without adequate safeguards, would provide as good an indication of the ability of local government entities to provide financial assurance for an UST release.

These factors serve to achieve the Agency's goal of identifying and eliminating those local government entities that have overall financial characteristics that are in the bottom fraction of all local government entities, and that may, therefore, be at sufficient risk of experiencing financial distress that would prevent them from meeting their UST obligations.

As described at proposal, in developing the worksheet the Agency determined that performance on the specific ratios selected to represent the six factors should be standardized so that all ratios are placed on an equal basis. This is done by calculating the "z-score" for each of the ratios in the test. The z-score of an individual ratio is calculated by first subtracting the mean, and then dividing by the standard deviation:

$$z = \frac{\text{(ratio—mean)}}{\text{standard deviation}}$$

The distribution of the z-scores will always have a mean of 0 and a standard deviation of 1, thereby placing each variable in the index on a common level. To calculate a single index value, the z-scores are then weighted and added together; the weights are based on the percentage of variance explained by the underlying factors.

Selection of the Final Threshold Value

Having updated the financial index, the Agency then examined different threshold levels to determine a cut-off for selecting those local governments that have fiscal characteristics adequate to demonstrate financial responsibility to meet UST obligations. As described in the preamble to the proposed rule, EPA evaluated the impacts of a $1 million release to determine an appropriate threshold for allowing local governments to demonstrate financial responsibility through the worksheet test. In selecting a threshold, the Agency was guided by two important considerations: (1) most local governmental entities are expected to be able to meet their financial obligations under Subtitle I, so a cut-off threshold in the lower range (i.e., 1 to 30 percent) is appropriate, and (2) local governmental entities on the margin of the selected threshold should clearly be able to pay the emergency response and corrective action costs of an average UST release.

For purposes of the evaluation, EPA assumed that the release costs would be financed by a mortgage-type loan over a 20 year period at an interest rate of 10 percent. This interest rate is meant to be illustrative; local governments may be able to borrow at rates lower than 10 percent. Under a mortgage-type loan, repayment is made in equal annual installments consisting of both interest payments and principal repayment. The annual payment of a $1 million loan over 20 years at an interest rate of 10 percent is $117,459; the first year's payment consists of $100,000 interest and $17,459 principal repayment.

To evaluate whether a debt of $1 million would be too burdensome, the Agency considered the post-release performance on the nine ratios used to develop the index. The Agency paid specific attention to two financial parameters that financial institutions regularly use to evaluate prospective debtors: Debt service capability and accumulated funds. The Agency felt that it is important to consider the potential debtor's debt servicing capability because excessive debt would require excessive funds for debt servicing, which could result in a negative cash flow (expenditures greater than revenues) for weak debtors. Continuous negative cash flows increase the risk of financial instability in the short run and financial insolvency in the long run. It is important to consider the amount of accumulated funds available to a prospective debtor because a reserve of accumulated funds provides an extra "cushion" for those emergencies when routine cash flows are disrupted as a result of unforeseen circumstances. As long as a local government that is on the margin of the cut-off threshold being evaluated can demonstrate that it can service its debts and has a "cushion" of accumulated funds for emergencies, the Agency feels comfortable that it will be able to perform its routine business when faced with an UST release.

In its evaluation, however, the Agency did not use a precise yardstick for evaluating the impacts of a $1 million release. It is the Agency's belief that proposing a cut-off threshold that is applicable to the majority of local

governments with diverse size, demographic, and financial characteristics is more a matter of informed judgment than one of precise measurement.

Impacts were evaluated on the bottom 30 percent of all general purpose local governments in the 1987 Census of Governments with data sufficient to calculate the index score (11,487 governments). For each government, the following adjustments were made to 1987 financial performance in accordance with the definitions of terms used in calculating the index:

- Total expenses were increased by $117,459 (total incremental debt service);
- Current expenses were increased by $117,459 (total incremental debt service);
- Total debt was increased by $982,451 (loan amount of $1 million minus first-year principal repayment);
- Total funds were reduced by $117,459 (total incremental debt service); and
- Debt service was increased by $117,459 (total incremental debt service).

In essence, the evaluation was made as if the release had been incurred in 1987 and reflected in end-of-year financial data, with no adjustments made by the local government to redirect funds or to increase revenues.

After adjusting the financial values, each of the nine ratios in the index test was recalculated. Impacts were examined by looking at the "marginal" local governments at each threshold in one percent increments. That is, to evaluate the effects of selecting a threshold of −6.425 (the index value exceeded by 95 percent of all general purpose local governments), EPA examined the 383 local governments scoring between −6.425 and −6.043 (the index value exceeded by 94 percent of all local governments). The remainder of this discussion presents results of the "post-release" ratios for each of five different threshold levels: −6.425, −4.937, −3.990, −3.242, and −2.586. Details of the results are provided in the Background Document supporting this rule.

It should be noted that no attempt was made to weight the potential impacts in terms of the likelihood of UST ownership. That is, although only about 2,764 of the 26,189 general purpose local governments serving fewer than 2,500 residents are believed to own USTs, the release costs were imposed on all local governments.[11] Consequently, the average impacts shown exaggerate the actual impacts likely to occur. (Nevertheless, an individual government experiencing an UST release may experience the full effects assumed in estimating the average impacts.) Also, the results assume that the local governments make no efforts to mitigate the financial impacts, either through increasing taxes and fees or reducing other expenditures.

Because the index ranks local governments in terms of a smooth array, there is unlikely to be a single value at which clear differences in performance appear. Instead, an evaluation of impacts is likely to show increasing performance and ability to accommodate the costs of an UST release with increasing threshold value.

Evaluation of Threshold of −6.425. The marginal local governments meeting a threshold of −6.425 (those between the fifth and sixth percentiles on the index test) have an average post-release fund balance of about $3,052,000 and a median post-release fund balance of about −$49,000.[12,13] About 62 percent of the marginal local governments have a negative fund balance, with the median of total funds per capita equal to −$46. The median debt service per capita is $167. The median ratio of local revenues to total revenues equals 32 percent. For the median local government, total revenues are about 47 percent of total expenditures.

Evaluation of Threshold of −4.937. With an increase in threshold to −4.937 (corresponding to the 10 percentile value), the average post-release fund balance of the marginal local governments is $1,673,000 and the median post-release fund balance increases to −$34,400. The percentage of local governments with negative cash balances improves to about 56 percent. The median ratio of total funds per capita improves marginally to −$25. The median annual debt service per capita decreases to $131. The median ratio of locally derived revenues to total revenues increases to 40 percent, whereas the median ratio of total revenues to total expenses increases slightly to about 49 percent.

Evaluation of Threshold of −3.990. When the minimum score is changed to −3.990 (corresponding to the 15 percentile value), the average post-release fund balance is $4,180,000 and the median fund balance decreases slightly to about −$35,000. The percentage of local governments with negative fund balances increases slightly, to about 58 percent, while the median ratio of funds per capita improves slightly to −$24. The median ratio of debt service per capita decreases to $127. The median ratio of local revenues to revenues increases to 47 percent, whereas the median of total revenues to total expenses decreases slightly to 48 percent.

Evaluation of Threshold of −3.242. At a threshold of −3.242 (corresponding to the 20 percentile value), the average post-release fund balance is $5,693,000 and the median post-release fund balance increases to about −$20,000. The percentage of local governments with negative fund balances decreases to 55 percent, while the median fund balance per capita increases to −$14. The median ratio of debt service per capita decreases to $119. The median ratio of local revenues to total revenues increases to 52 percent, whereas the ratio of total revenues to total expenses remains steady at 48 percent.

Evaluation of Threshold at −2.586. At a threshold of −2.586 (corresponding to the 25 percentile value), the average post-release fund balance is $6,651,000 and the median post-release fund balance improves to about −$15,000. The percentage of local governments with negative fund balances decreases to 52 percent. The median ratio of fund balance to population improves to $10. The median value of debt service per capita increases slightly to $123. Local governments show increasing coverage of their expenses, including an increase in the median ratio of local revenues to total revenues to 57 percent and in the median ratio of total revenues to total expenses to about 54 percent.

Analysis of Impacts on Households. EPA has considered the impacts of tank closures that may be caused by the inability of local governments to demonstrate financial responsibility. EPA estimated the impacts on households of compliance with the financial responsibility requirements for the median size, marginal government at each threshold examined. EPA estimates that the median "marginal" general purpose government (by population) at the 5 percentile threshold serves

[11] EPA, "Economic Impact Analysis of Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks," EPA Office of Underground Storage Tanks, November 1992.

[12] A threshold value set at the 5 percentile would exclude the local governments with index values in the lowest five percent and would include the remaining 95 percent. A threshold value set at the 10 percentile would be more stringent—it would exclude the local governments with index values in the lowest 10 percent, and allow only those local governments with index values in the upper 90 percent to pass the worksheet test.

[13] The median value is the value for which half of the local governments have a higher value, and half have a lower value.

approximately 1,011 residents, or 389 households. EPA's analysis of UST ownership patterns suggests that governments of this size own an average of 1.1 USTs. Based on an average present value cost per UST closure of $7,000, the residents would incur an estimated present value cost of $19.80 per household.[14] The present value of closure costs are estimated to range from $18.00 to $54.00 per household for residents served by median governments owning one to three USTs, respectively.

Based on the average number of USTs owned by the median "marginal" general purpose local government at the 10 percentile, the costs to governments required to close their USTs are estimated to be $15.81 per household. Costs may range from $14.37 to $43.11 per household for residents served by median governments owning one to three USTs, respectively.

Based on the average number of USTs owned by the median "marginal" general purpose local government at the 15 percentile, the costs to governments required to close their USTs are estimated to be $16.81 per household. Costs may range from $15.28 to $45.86 per household for residents served by median governments owning one to three USTs, respectively.

Based on the average number of USTs owned by the median "marginal" general purpose local government at the 20 percentile, the costs to governments required to close their USTs are estimated to be $14.95 per household. Cost may range from $13.59 to $40.78 per household for residents served by median governments owning one to three USTs, respectively.

Based on the average number of USTs owned by the median "marginal" general purpose local government at the 25 percentile, the costs to governments required to close their USTs are estimated to be $13.90 per household. Costs may range from $12.64 to $37.91 per household for residents served by median governments owning one to three USTs, respectively.

These estimates tend to exaggerate the costs per household, because they use the total estimated aggregate cost over a ten-year period. Consequently, they represent the cost to households if the entire cost associated with closing USTs were incurred and levied in a single year, rather than paid out over time.

Summary. Based on its review, the Agency has concluded that there are significant improvements in the "post-release" financial conditions of governments as the threshold is increased to about the 10 percentile, modest improvements as the threshold is increased from about the 10 percentile to the 20 percentile, and further increases beyond the 20 percentile. Because the extent of the increases from the 10 to the 15 percentile is minor, the Agency has determined that a threshold level of 10 percent provides adequate safeguards, and is consistent with statutory intent.

3. Governmental Guarantee (§ 280.106)

In today's rule, EPA is providing for the use of a guarantee mechanism for governmental entities. This mechanism, although not strictly a "self-test" mechanism, provides local government entities with a financial assurance mechanism comparable to the corporate guarantee allowed for private owners and operators of USTs. To be eligible to act as a guarantor, a local government entity must pass the bond rating or worksheet test.

The governmental guarantee differs in several respects from the current corporate guarantee. Under the governmental guarantee, local governments would be allowed to choose between a guarantee with or without a standby trust requirement. Under the corporate guarantee, firms are required to use a standby trust. If a local government chooses the governmental guarantee without the standby trust option, it is required to pay for corrective actions as needed and as directed by the implementing agency. Under the standby trust option, local governments will be required to fund a separate trust fund to the full amount of coverage upon discovery of a release. Again, the Agency's decision to allow local governments the option of a guarantee without the standby trust fund is based on local governments' history of meeting obligations and on their ability to consistently raise revenue through taxation. In addition, the governmental guarantee requires that the local governments entering into the agreement demonstrate a "substantial governmental relationship." This parallels the requirement in the corporate guarantee for a "substantial business relationship," while recognizing that the types of relationships between governments is fundamentally different than business relationships and that they are primarily based on common or overlapping constituencies.

The requirement of a "substantial governmental relationship" reflects two concerns of the Agency. First, EPA wishes to ensure that the guarantee contract is founded on a sufficient basis to be held valid and enforceable. Second, EPA seeks to avoid conflict with State insurance laws and regulations. The existence of a "substantial governmental relationship" should provide sufficient nonmonetary consideration to address these concerns.

One commenter supported the requirement for a substantial governmental relationship, stating that the governmental guarantee mechanism needs to be based on a substantial governmental relationship, and that the relationship should incorporate the full faith and credit of the guaranteeing agency.

One commenter asked whether, in States that allow intergovernmental risk pooling, the contractual relationship of a pool to provide safety and risk management services in addition to risk pooling would be recognized as a "substantial governmental relationship," thereby allowing existing pools to act as guarantors to their members. EPA does not believe that a risk pool should be allowed to operate as a guarantor, because the nature of the relationship is strictly monetary and does not necessarily involve a substantial governmental relationship. It should also be noted that risk pools can be included as compliance mechanisms on a state-by-state basis as state-required mechanisms.

Another commenter claimed that EPA should explicitly recognize the relationship between a "joint action agency" and its member publicly-owned utilities as a "substantial governmental relationship", thus allowing these entities to qualify for use of the governmental guarantee mechanism. The commenter reasoned that these agencies, not-for-profit entities created by State law to allow publicly-owned utilities to combine resources for various purposes, could include the provision of a guarantee of UST financial responsibility within their operation. EPA has concluded that because joint action agencies are non-profit organizations and not governmental entities, they are not eligible to act as guarantors.

A guarantee is a promise by one party (the guarantor) to pay specified debts or satisfy the specified obligations of another party (the principal) in the event that the principal fails to satisfy its debts or obligations. In the corporate guarantee, if the owner or operator fails

[14] As discussed in the EIA, the present value cost of closure includes the costs of closure associated with the technical standards (e.g., tank excavation and removal, product removal, and site assessment), plus the present value of the incremental cost of fuel purchased at retail service stations, minus the present value of the expected cost of corrective action for UST releases if the USTs were not closed.

to perform corrective action or satisfy third-party claims, the guarantor agrees to fund a standby trust from which the implementing agency will direct the payment of corrective action costs or third-party claims.

EPA believes that the guarantee mechanism would work well for governments, and is establishing two possible constructions for such a mechanism (discussed below). Using this mechanism, a municipality, for example, might obtain a guarantee from the State, a town might obtain a guarantee from the surrounding county or parish, or a special district might obtain the guarantee of the sponsoring local government entity. Guarantors must demonstrate that they are qualified to provide financial assurance by satisfying the bond rating test under 40 CFR 280.104, the worksheet test under 40 CFR 280.105, or the fully-funded fund balance test under 40 CFR 280.107.

Several commenters supported the inclusion of the governmental guarantee mechanism, although some also noted specific cases where the mechanism might not be applicable. Two commenters did not believe that the mechanism would be used by certain classes of government entities, arguing that special districts would be unable to obtain guarantees from local governments and that local governments would be unable to obtain guarantees from their State governments.

EPA believes that the guarantee is likely to be used primarily by governments with close and long-standing ties. The Agency emphasizes that the guarantee mechanism was developed to allow governments with common interests to cooperate to keep necessary USTs in operation. The mechanism is not intended to require any government to act as a guarantor. Nevertheless, if even a small number of governments are able to qualify using this mechanism, it will serve the purpose intended.

Commenters agreed that the guarantor should not be required to fund a standby trust, arguing that (1) a standby trust is not appropriate for local governments, given their strong history of meeting their financial obligations and their ability to raise revenue consistently, (2) a standby trust was unnecessary for guarantees among governmental entities, and would add unnecessary paperwork and administrative costs that were contrary to the Agency's goal of reducing the burden on local government, and (3) the governmental guarantee would not necessarily be similar to a corporate guarantee because of State-by-State differences in statutory restrictions. EPA agrees with the commenters and has allowed for use of a governmental guarantee with or without a stand-by trust fund.

One commenter stated that certification by a State Attorney General was necessary because some States could presumably prohibit or restrict the ability of a municipal government to make such a guarantee. Another commenter supported the Agency's decision not to require a State Attorney General's certificate attesting to the legality of the governmental guarantee. The commenter agreed with the Agency that the added degree of certainty provided by this requirement was appropriate in the case of a corporate guarantee, but was unnecessary for guarantees among governmental entities, and would burden local governments with unnecessary paperwork and costs.

The Agency is not requiring certification by the State Attorney General prior to offering the guarantee. Local governments have strictly defined and enforced limitations on their abilities to enter into contracts. These limitations are codified in State law and constitution and vary by State. The Agency believes that these restrictions imposed on local government entities should, in general, act as a sufficient check to prevent local governments from entering into invalid guarantees, and that the nature and purpose of local governments will prevent the issuance of guarantees unless there is a clear governmental interest.

Because the Agency wants to avoid unnecessary paperwork and burden on the part of local governments, EPA intends to keep the rule as proposed. EPA encourages governments wishing to use the guarantee to seek clarification of their authority if they are unsure of whether they may issue guarantees.

EPA solicited comments on whether passing the fund balance test should qualify governmental entities to act as guarantors. The sole commenter on this issue stated that a government passing the fund balance test should qualify to act as a guarantor, assuming that State statute permitted a governmental entity to be a guarantor. After further review, EPA has decided that allowing governments using the fund balance mechanism to act as guarantors would be consistent with the overall approach taken in the development of the new mechanisms. The Agency has, therefore, modified the proposed rule to allow the fully-funded fund balance mechanism to serve as the basis for a governmental guarantee.

Government Guarantee With Standby Trust

The first alternative governmental guarantee parallels the corporate guarantee, in that it must include a pledge to fund a standby trust in the event of failure by the UST owner or operator to pay corrective action or third-party liability claims. In today's rule, the guarantor must have legal authority to issue the guarantee. The Agency anticipates that most guarantees will be based on a clear and significant governmental relationship such as overlapping geographical boundaries, taxing or service constituencies, or shared impact from an UST release.

Government Guarantee Without Standby Trust Requirements

In a governmental guarantee without a standby trust requirement, the guarantor agrees to provide funds for corrective action and third-party compensation as directed by the implementing agency on an on-going basis, up to the limits of the guarantee. Rather than fully funding a standby trust, the guarantor would make the payments directly as funds are required.

The current corporate guarantee requires the establishment of a standby trust, and requires a guarantor to fund the trust (1) after notification that a guarantee will be cancelled if a release has been detected and no alternate coverage has been obtained, or (2) when a release has occurred and the owner or operator has failed to perform corrective action or payment of a settlement or judgment for third-party liability. The corporate guarantee requires funding of a standby trust for several reasons. First, the issuance of a guarantee is founded on the existence of a substantial business relationship; such relationships are subject to change over time. Second, the underlying mechanism used by the guarantor depends primarily on the existence of readily liquidated assets, rather than on-going financial strength. Consequently, the Agency wishes to insure that the funds are made available before adverse events can occur. Third, the Agency wishes to reduce the potential delay involved in enforcing first against the UST owner or operator, and then against the guarantor for payment.

These concerns are mitigated under the governmental guarantee. First, the Agency believes that the governmental relationships that are likely to lead to the issuance of guarantees will be founded on geographical proximity and service to a common constituency. These relationships are not subject to rapid change. Second, the Agency

recognizes in this rule that local government entities, as a class, have greater financial stability than private corporations. It is, therefore, less critical to obtain funds immediately to pay for contingent liabilities (such as payment of third-party claims) that may not occur. Third, the Agency recognizes the difference in purpose between governmental and private organizations, specifically the role of local governments to serve the public. This service orientation may make local governments more likely to fulfill their financial obligations. Consequently, the Agency has less concern that the absence of a standby trust will result in a delay in securing cleanup actions by local government owners or operators. With its modified structure, the mechanism permits a "pay-as-you-go" approach. These provisions allow a guarantor to fund corrective action costs as they are incurred, instead of requiring the guarantor to fund the standby trust fully in advance of anticipated expenditures.

Commenters on this issue agree that the governmental guarantee provides adequate safeguards without the need for creation of a standby trust fund.

4. Maintenance of a Fund Balance (§ 280.107)

Under this option, the UST owner or operator would create a dedicated fund specifically for UST releases or general catastrophic events. The dedicated fund must meet the local government's aggregate financial responsibility requirements (or such amount needed to fulfill gaps in financial responsibility from other mechanisms used in combination with the funded balance). Use of the fund balance mechanism requires local governmental entities to establish irrevocable trusts pledged to use for UST response or use in responding to catastrophic events, including UST releases.

Control of the fund would continue to rest with the local government entity. Control and accounting for these funds would be administered following the standards appropriate for other insurance trusts already maintained by local government entities, including pension trusts and worker's compensation funds.

The fund balances must be held as cash or investment securities that will be available in the event of an UST release and must be irrevocably dedicated to use for UST response or for responding to catastrophic events, including UST releases. As discussed below, the Agency is providing three alternatives that may be used in establishing the fund.

Based on an analysis of Census data and data on Minnesota cities, the Agency believes that the fund balance mechanism is unlikely to be used widely by general purpose governments, because few who require an alternative mechanism to the bond rating and worksheet tests have adequate funds.[15] The fund balance mechanism may prove more useful for special districts and school districts that may not be able to use the worksheet test. The inclusion of a fund balance mechanism as a financial assurance option should increase the flexibility provided owners and operators in demonstrating financial assurance. Today EPA is providing the following three sub-options, any one of which may be used to demonstrate financial responsibility.

Fully-Funded Dedicated Fund

Under this alternative, the local government would establish a separate fund, dedicated to payment of UST corrective actions and third-party liability claims, in the amount of its aggregate financial responsibility requirements. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. This mechanism would be the most similar to the corporate trust fund option (§ 280.102 of subpart H) and is intended to be similar to "trust accounts" and "insurance accounts" held by local governments for pensions and insurance. Although there are currently no restrictions to local governments using the trust fund option under § 280.102, the fully-funded dedicated fund option would not require the local government to establish a third-party trustee for the fund. Instead, the fund would be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

Catastrophic Events Contingency Fund

Under this option, a municipality would be able to use a dedicated fund used for general emergency response and third-party liability (e.g., flood relief, hurricane relief, or other environmental cleanups) as evidence of UST financial responsibility. In the proposed rule, EPA required that a fund used to cover both UST costs and other emergency costs incurred by local governments be funded in the amount of $10 million to qualify as a mechanism for demonstrating financial responsibility. Numerous commenters requested that EPA reduce the required size of a combined emergency response fund. EPA conducted a limited survey of nine governments to determine the prevalence and typical size of emergency response funds.[16] The Agency found that most funds are relatively small (less than $5 million). Based on those findings, EPA has reduced the required size of a combined emergency response fund to $5 million. In making this determination, the Agency considered that, when a local government draws upon its emergency response fund, it must replenish the fund in order to be prepared to meet the costs of the next emergency that may arise. It should be noted that local governments may establish a dedicated fund equal to their aggregate annual UST liability if doing so requires sequestering less money.

A combined fund balance of $5 million will equal or exceed five times the aggregate financial assurance level for most local government entities, based on the number of USTs owned and operated. This requirement is analogous to the requirement in the corporate self-test that firms must have tangible net worth equal to at least ten times their aggregate financial assurance level. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. The fund may be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

In establishing this option, the Agency recognizes that States often permit local governments to administer fiduciary and trust accounts, such as pension funds and workers' compensation funds, while requiring private companies to establish third-party trustees or to subscribe to State-maintained funds. EPA believes the distinction between local government entities and private companies reflects differences in State oversight (e.g., State requirements that local government entities submit budgets or financial statements), differences in purpose (i.e., companies exist to make profits, whereas local government entities are created to provide a public service), and differences in financial stability.

The Agency is including this option to allow municipalities flexibility in establishing emergency response funds while ensuring that adequate funds are

[15] State Auditor of Minnesota, "Report of the State Auditor of Minnesota on the Revenues, Expenditures, and Debt of the Cities in Minnesota for the Fiscal Year Ended December 1987," November 1988.

[16] Memorandum from James Dickson, Rebecca Holmes, and William Driscoll, ICF Incorporated, to Andrea Osborne, EPA Office of Underground Storage Tanks, "Local Government Emergency Response Funds," October 13, 1992.

available to respond to an UST release. Although the Agency lacks data on municipal expenditures for general emergency response and third-party liability, it believes the $5 million requirement will assure the availability of funds for any number of UST releases should other catastrophic events occur in the same year. Thus, although the fund would not be solely dedicated to responding to UST releases, the required fund balance of five times the requirement for a dedicated UST fund will assure adequate resources to respond to an UST emergency. (UST clean-up costs currently average between $100,000–$150,000.)

Three commenters criticized the $10 million fund balance that would have been required in the proposed rule, arguing that (1) the funding level required by the catastrophic events contingency fund was too inflexible for local governments to use the option, (2) only a handful of existing utility funds that are or can be used to respond to releases currently meet the $10 million requirement, and (3) a fund balance level of $10 million would be infeasible for most transit systems. Some commenters argued that a lesser amount (e.g., three times the requirement for a dedicated UST fund) would be adequate for a general catastrophic events contingency fund.

The Agency emphasizes that the combined fund balance alternative was developed as an administrative convenience for those governments that already maintain large contingency funds. The Agency's primary concern is to ensure that funds will be available to meet the costs associated with UST releases. The Agency notes that a government able to reserve only three times the required amount (i.e., $3 million), as suggested by one commenter, could establish a $1 million UST emergency response fund and a separate $2 million catastrophic events fund. If commenters are correct that a combined $3 million fund would be adequate to meet all requirements of the catastrophic events fund while reserving the $1 million necessary to demonstrate financial responsibility, then a $2 million fund reserved for catastrophic events other than UST releases would be adequate to meet those costs. As discussed below, the Agency has determined that local governments have minimal financial incentives to commingle funds designated for UST-related costs with other funds.

Incrementally Funded Trust Fund Combined With Unused Bonding Authority

Under this option, a municipality would be required to fund a dedicated fund for UST releases incrementally, making payments equal to at least one-seventh of the aggregate liability each year. A municipality using this alternative must fully fund the trust fund by the beginning of the seventh year. The fund balance must be established as an irrevocable fiduciary or trust account, with proceeds invested in cash or readily marketable securities. The fund may be administered by the treasurer or chief financial officer of the local government entity as a separate trust account.

In addition, until the dedicated fund is fully funded, the municipality is required to demonstrate the authority to issue a specified amount of general obligation bonds to respond to an UST release. The authority may consist of either a voter-approved bond referendum specifically targeted for payment of the costs associated with an UST release, or certification from the State Attorney General that the government has the authority to issue the bonds without voter approval and that the proceeds of these bonds can be used to respond to an UST release. The Agency is requiring the unused bonding authority to ensure that municipalities have resources to respond to UST releases while allowing them to develop a dedicated fund over time.

The Agency believes this mechanism is appropriate for local government entities, but not private companies, for several reasons. First, local governments operate under statutory and constitutional limitations on debt issuance. By requiring prior voter approval or certification that such approval is not necessary, the Agency is relying on safeguards that do not exist for private companies. Second, local government entities exist to provide public services, whereas private companies do not. Third, local government entities have historically been much more stable than private companies. Fourth, local government entities have an ability to levy taxes or raise fees and charges that is not available to private companies.

In developing this option, the Agency learned that local government entities will frequently obtain a bond referendum before incurring costs related to specific projects, such as construction projects, and will delay the issuance of the bonds until the funds are needed. The Agency was also informed that New York law allows local governments to issue debt to pay certain obligations without passing a bond referendum. The Agency is also considering that the Tax Reform Act of 1986 penalizes local government entities for investing the proceeds of tax exempt bond issues. Thus, the Agency recognizes that there is both a precedent for having unused bonding authority and an incentive not to issue bonds unless necessary for actual payment of debts.

Commenters support the option of allowing use of a funded balance. One commenter noted that the availability of this option would give public entities greater flexibility in meeting their responsibilities under the financial responsibility requirements. Another commenter favored an incrementally funded trust fund as a possible financial assurance mechanism for local governments.

Two commenters identified particular situations in which local governments could be prohibited by State law from using a funded balance as a financial assurance mechanism. The Agency reiterates that it has provided multiple financial responsibility mechanisms to increase the options available to local governments so that each governmental entity can choose the mechanism most appropriate to its needs. EPA believes that State laws prohibiting the use of any of the mechanisms is consistent with the State Program Approval process, which allows States to set more stringent standards. EPA recognizes that limitations imposed by some States may act to disallow some or all of the mechanisms provided in the rule.

One commenter requested the Agency to clarify that an order or resolution of the governing body of a publicly-owned electric utility satisfies the requirement for an "order dedicating the fund." The commenter noted that this governing body would be the same entity which, for the vast majority of publicly-owned utilities, sets customer rates (e.g., a board of directors, commissioners or supervisors, or a city council).

EPA has determined that the legal authority of a municipal utility or other municipal corporation is specified in the State charter establishing the municipal corporation. Therefore, a dedicated fund for UST corrective actions may be established through a local government order by any municipal utility, or other municipal corporation, or special district whose State charter grants the authority to issue an order establishing such a fund. In their State charters, municipal corporations are granted express powers to conduct their primary business, and implied powers to carry out those

actions that are incidental and essential to the conduct of their business. Because meeting statutory and regulatory requirements are both incidental and essential to the operation of a municipal utility, it would appear that, in general, the board of directors of a municipal utility would have the legal authority to establish an UST trust fund. Because the specific authorities of municipal utilities may vary from State to State, however, and because within a State, each charter may be unique, it may be appropriate for the board of a municipal utility to obtain the advice of legal counsel before voting to establish a dedicated fund for UST corrective actions. The Agency notes, for example, that public comments on the proposed rule claim that a New York statute expressly prohibits the creation of emergency response funds by school districts and Boards of Cooperative Education.

One commenter requested clarification of the requirement that dedicated funds cannot be commingled or otherwise used in normal operations, presumably because the term "normal operations" is not defined or described in the rule or preamble. The commenter also points out that, while the commingling requirement appeared in the preamble, it was not written into the rule itself.

EPA's intent in allowing local governments to establish a dedicated fund for UST corrective actions was to reduce the burden on and cost to local governments by not requiring a third-party trust fund. Whereas a third-party trust fund was authorized for use by non-governmental owners and operators, a third-party requirement for local governments was not considered necessary because of the experience of local governments in establishing and administering such funds. Nevertheless, EPA is concerned that funds reserved for meeting the costs of corrective actions and third-party liabilities associated with UST releases be easily identifiable and readily available.

On the issue of commingling funds, EPA has found that the investment options typically available to local governments offer minimally higher returns with larger deposits. Moreover, deposits larger than $100,000 would not be insured by the Federal Deposit Insurance Corporation, exposing a commingled fund to the risk of bank failure unless alternative insurance were obtained (e.g., from an agency or State government). Commingling funds may not be practical for local governments that seek to obtain higher returns on deposits by having a bank's trust department actively manage their assets, because the timing of cash needs from an operational fund and from a trust fund are so widely divergent that a prudent manager would select a different mix of investment instruments for the two funds, and consequently would establish separate funds.

Because of the minimum income gains potentially available through commingling funds, as well as insurance and asset management considerations, EPA has concluded that the potential gains from commingling accounts do not outweigh the associated costs. EPA has modified the language in the rule to reflect this concern: money held for the purposes of demonstrating financial responsibility must be held in a separate account dedicated either to UST responses in particular or to emergency and catastrophic events in general.

5. Combinations of Mechanisms

The mechanisms being provided today may be used by themselves or in combination with other mechanisms. Local governments qualifying for use of the bond rating or worksheet test mechanisms are not required to obtain additional evidence of financial responsibility, but may do so if they so choose. A guarantee or dedicated fund balance may be used to demonstrate financial responsibility for amounts not assured by other mechanisms.

B. Reporting by Owner or Operator

Each government demonstrating financial assurance using the mechanisms promulgated today must notify the implementing agency at the times specified in § 280.110.

C. Recordkeeping

Owners and operators are required to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart until the tank has been properly closed or, if corrective action is required, until corrective action has been completed and the tank has been properly closed as required by 40 CFR Part 280, Subpart G. In general, the recordkeeping requirements for the mechanisms being promulgated today are equivalent to those required for the mechanisms promulgated in the October 1988 rule. Because local governments are not uniformly required to submit data to third-party agencies, however, local governments using the worksheet test must maintain a copy of the underlying financial statements or other data used to support the use of the worksheet test. Also, local government owners and operators must maintain evidence of the authority that is used to establish dedicated funds for use in responding to UST releases. An owner or operator using the mechanisms promulgated today is required to maintain at his UST site or his office the following types of evidence for mechanisms used to demonstrate financial responsibility:

Bond Rating Test. Each local government using the bond rating test must maintain

(1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the eligibility to use the bond rating test, and
(2) Originally signed and dated transmission from Moody's or Standard & Poor's, showing the amount, the type of bond and the bond rating assigned.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Worksheet Test. Each local government using the worksheet test must maintain

(1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the accuracy of the calculations and the underlying data,
(2) A copy of the completed worksheet, and
(3) A copy of the underlying financial data (e.g., year-end financial statements) used to compute the worksheet.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Guarantee. Each local government using the guarantee must maintain

(1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the use of the guarantee,
(2) An originally signed and dated guarantee contract, showing the addresses of all tanks for which financial assurance is guaranteed, the nature of the guarantee (third-party liability, corrective action, or both), and the limits of the guarantee,
(3) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) of the guarantor certifying (1) the eligibility to use the bond rating test (unless the guarantor is a State), (2) the eligibility to use the worksheet test (unless the guarantor is a State), or (3) the existence of a dedicated UST or emergency response trust fund meeting the requirements of § 280.107,
(4) For guarantors other than States, a copy of the documentation supporting

the bond rating or worksheet test, including (a) a copy of the originally signed and dated transmission from Moody's or Standard & Poor's to the guarantor, showing the issue size, the type of bond and the bond rating assigned, or (b) a copy of the completed worksheet and underlying financial data, and

(5) Originally signed duplicates of the standby trust funds worded as specified in this rule for guarantees, surety bonds, or letters of credit (as necessary).

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

Fund Balance. Each local government using the fund balance mechanism must maintain

(1) A letter signed by the chief financial officer (e.g., comptroller, controller, or treasurer) certifying the use of the fund balance mechanism,

(2) Originally-signed letter certification from the comptroller or treasurer worded as specified in the rule and letters or certificates from municipalities regarding coverage by municipal funds or other municipal assurances,

(3) A copy of the authorizing statute or resolution that clearly restricts use of the funds to the designated purposes,

(4) A financial statement showing the balance of cash or liquid investments in the fund, and

(5) A copy of either (a) the authorized bond resolution in an amount equalling or exceeding the unfunded portion of the fund or (b) State Attorney General's opinion showing that such authorization is unnecessary.

Such evidence must be on file on site or at the place of business no later than 120 days after the close of each fiscal year.

One commenter asserted that the proposed recordkeeping provisions were generally reasonable and did not represent an undue hardship to local government entities. Another commenter stated that the recordkeeping requirements of the proposed rule would be burdensome. The commenter indicated that requiring local government entities to be able to present evidence of financial capability upon request would be a suitable substitute for the proposed recordkeeping and reporting requirements.

The Agency emphasizes that there is no routine reporting requirement, but that the need to determine compliance with the requirements on an annual basis is considered to be a fundamental part of the rule. Records are to be retained by local governments and must be provided only when (1) a release occurs, (2) the local government becomes ineligible for a financial responsibility mechanism that it is using, (3) the local government installs a new tank, or (4) records are requested by the implementing agency.

D. Bankruptcy or Other Incapacity of the Owner or Operator

Any owner or operator named as a debtor in voluntary or involuntary bankruptcy proceedings (under Title 9 of the U.S. Code) is required to notify the Regional Administrator or the implementing agency within 10 days after commencement of such proceeding. In addition, any guarantor or indemnitor is required to notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 9 (Bankruptcy) of the U.S. Code that names such guarantor or indemnitor as debtor. Any owner who demonstrates financial responsibility using a third-party mechanism will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of a provider to issue the mechanism relied upon (e.g., guarantee, indemnity contract, surety bond, insurance policy, risk retention group coverage policy, letter of credit, or State-required mechanism). Finally, municipalities are required to notify the Director of the implementing agency within 30 days of being notified that a provider of financial assurance (e.g., a guarantor) has declared bankruptcy or is otherwise incapable to cover assured costs, unless they are able to obtain alternative coverage.

V. Economic Impact Analysis

In conjunction with this rule, the Agency has performed three impact analyses: an Economic Impact Analysis, a Federalism Assessment, and a Paperwork Reduction Act estimate. Summaries of these analyses are presented below:

A. Economic Impact Analysis

This section describes the methodology and results of an Economic Impact Analysis of the rule. EPA estimates that about 2,300 local governmental entities will be able to demonstrate financial responsibility using the mechanisms promulgated today that would not be able to demonstrate financial responsibility using only the mechanisms allowed by the October 1988 rule. The Agency estimates that the use of these mechanisms will result in approximately 5,700 fewer USTs bein closed because of a lack of financial assurance. The Agency estimates the total annualized cost savings to be about $4.5 million, with a present value of about $32 million over ten years, in constant 1987 dollars.

1. Compliance With Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires that a regulatory agency examine the potential impact of regulations. The regulatory agency must determine whether a new regulation will be "major." If it is, the regulatory agency must conduct a regulatory impact analysis (RIA). A major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has analyzed the local government financial responsibility rule. Based on this analysis, the Agency has concluded that this regulation will have an annual effect of less than $100 million. The rule is expected to reduce costs to the regulated community; these reductions are estimated to be less than $100 million on an annual basis. Accordingly, the regulation being promulgated today is not a major rule, as defined by Executive Order 12291. Nonetheless, the Agency is interested in the potential economic effects of the regulation and has developed an Economic Impact Analysis (EIA) to examine them. The following four sections summarize the results of the EIA: Section 2 describes the regulated community affected by this regulation; Section 3 presents some of the methods and assumptions used to produce the EIA; Section 4 discusses the regulation's cost impacts; and Section 5 describes its environmental impacts.

2. The Affected Community

EPA estimates that approximately 25,000 local government entities own more than 62,000 petroleum-containing USTs. For the purpose of this analysis, the regulated community is divided ' eight categories: very large, large,

medium, and small general purpose governments (i.e., cities, counties, and townships); and very large, large, medium, and small special purpose districts (including, for example, independent school districts and water districts). General purpose governments were grouped according to population: very large governments serve more than 50,000 persons; large governments serve more than 10,000 and fewer than 50,000 persons; medium governments serve more than 2,500 and fewer than 10,000 persons; and small governments serve fewer than 2,500 persons. These population categories are the same categories used in other EPA economic impact analyses, and have been used here at the suggestion of one commenter.

For this analysis, school districts were categorized by estimated population, assuming that the enrollment of a school district is one-sixth of the total population. Other special districts, which do not always have well-defined populations, were grouped according to annual revenues: very large districts have annual revenues of more than $100 million; large districts have annual revenues of more than $5 million and less than $100 million; medium districts have revenues of more than $200,000 and less than $5 million; and small districts have revenues of less than $200,000.

Table 1 shows the estimated total number of governments in each category, the number of UST-owning governments in each category, and the number of USTs owned. (A summary of the method used to develop these estimates is provided below.)

TABLE 1.—PROFILE OF LOCAL GOVERNMENTS

Category	Number of entities	Number of entities owning USTs	Total USTs owned
Very large governments	1,360	1,360	13,813
Large governments	4,351	3,870	9,580
Medium governments	7,054	3,643	5,126
Small governments	26,189	2,764	2,921
Very large special districts	862	840	3,148
Large special districts	4,930	4,785	17,359
Medium special districts	12,558	6,617	9,399
Small special districts	26,480	646	654
Total	83,784	24,525	62,000

Source: EPA Analysis.

EPA estimates that 1,360 very large general purpose local governments own approximately 13,800 USTs, 4,350 large general purpose governments own approximately 9,580 USTs, approximately 7,000 medium general purpose governments own approximately 5,100 USTs, and more than 26,000 small governments collectively own fewer than 3,000 USTs. That is, most small governments are not estimated to own any USTs. EPA estimates that about 860 very large districts (including school districts) own about 3,100 USTs, approximately 4,900 large districts own about 17,000 USTs, about 12,500 medium districts own roughly 9,400 USTs, and more than 26,000 small districts own about 650 USTs. All very large local government entities are assumed to own at least one UST. The Agency used probability theory and an estimate of the total number of USTs owned by all UST-owning entities to calculate the percentage of large, medium, and small government entities that own USTs.

3. Assumptions and Methodology Used in the EIA

The analysis uses several key assumptions to estimate the costs and other impacts of this regulation:

• The baseline used to estimate incremental costs and economic impacts of the self-test rule is the cost of complying with the financial responsibility rule published on October 26, 1988. EPA assumes that local government entities will comply using the options available under the October 1988 rule in the absence of the alternative mechanisms. Local governments unable to use the financial mechanisms available under the October 1988 rule are assumed to close their USTs, in compliance with the regulations.

• Cost impacts were evaluated on an annualized basis. To develop annual costs for insurance and UST closure, EPA calculated the equivalent annual payment having the same "present value" as the cost estimates developed for the UST technical standards regulations, using a ten-year period and a real discount rate of 7 percent.

• The estimated number of USTs owned by local governments is based on a derived relationship between the annual revenues of local governments and the number of USTs owned.

—The 1985 "Summary of State Reports on Releases From Underground Storage Tanks" provides data on the percentage of releases occurring in places of different populations.

—EPA assumes that release incidents are not biased towards places of different size and that the distribution of release incidents is the same as the distribution of USTs among local government entities.

—The analysis assumes that there are about 62,000 local government USTs, as estimated in the financial responsibility rule published in October 1988.

• The analysis uses budget data obtained from the 1982 Census of Governments to develop a relationship between budget and population and then between budget and number of USTs. (EPA used population statistics and budgets from 1982 to develop relationships between UST ownership, population, and budget, because these data provided information consistent with the UST ownership data used in this report. Estimated ownership patterns were not updated to reflect 1987 data. First, the relationship between population and UST ownership was assumed to remain stable from 1982 to 1987. Second, the relationship between constant-dollar budgets and UST-ownership was also assumed to remain stable. Third, the estimates of total UST ownership are based on 1987 data.)

• All local governments using insurance or mandatory State assurance funds to meet financial responsibility requirements for corrective action and compensation of third parties in the baseline are assumed to continue to use those mechanisms to comply with the financial responsibility requirements, rather than using the mechanisms promulgated today.

• All other local government entities that qualify for financial responsibility using the new mechanisms are assumed to incur costs ranging from $75 (for the bond rating test) to $253 (for the guarantee) per government per year to develop and maintain the required records and reports.

• Because local governments that do not qualify for financial responsibility under the worksheet test are assumed to be unable to obtain insurance or otherwise demonstrate financial responsibility, the analysis assumes that they close their UST systems and purchase fuel from retail petroleum dealers.

EPA estimated the fraction of local government entities that will be able to demonstrate financial assurance under the promulgated rules by assuming that governments not able to obtain insurance and not required to use State mechanisms will use the least onerous method for which they qualify:

• Local governments able to obtain insurance under the baseline are assumed to do so, rather than use the mechanisms being promulgated today,

in order to minimize their exposure to potentially large UST-related costs.

• Local governments in States with mandatory assurance programs are assumed to use them rather than the mechanisms being promulgated today.

• Local governments with outstanding issues of investment grade bonds in amounts greater than $1 million (about 87 percent of all governments with investment grade ratings) are assumed to use the bond rating test. Analysis of data on Minnesota cities suggest that virtually all cities with populations of more than 10,000 have investment-rated general obligation bonds, and that virtually no cities with populations less than 2,000 have such bonds.

• Local governments not eligible to use the bond rating test are assumed to use the worksheet test, if they qualify. The Agency used the 1987 Census of Governments to estimate the fraction of governments with populations less than 200,000 or annual revenues less than $100 million (i.e., those that may not qualify to use the bond rating test) that qualify at the 10 percentile threshold.

• The Agency assumes that local governments with total fund balances greater than $4 million that do not qualify to use the worksheet test will establish a dedicated fund meeting the requirements. Data from the 1987 Census of Governments were used to estimate the percentage of governments having more than $4 million in funds that would not qualify under the worksheet test.

• The Agency assumes that 90 percent of school districts unable to demonstrate financial responsibility will obtain guarantees from surrounding general purpose governments. This assumption is based on the assumption that education will be deemed to be of sufficient importance that the general purpose governments served by school districts will act to insure that the USTs remain in operation.

• The Agency also assumes that half of all other special districts unable to otherwise demonstrate financial responsibility will be able to obtain guarantees from the general purpose governments served by the districts.

• All other general purpose governments and districts not able to demonstrate financial responsibility are assumed to close their USTs and purchase fuel from retail petroleum stations.

Figure 1 shows the estimated fraction of local governments using each financial assurance mechanism under today's rule. It should be noted that the assumed availability of guarantees represents just one of many plausible outcomes. Other possible outcomes range from (1) all governments failing to obtain insurance or qualify using one of the self-test mechanisms will be able to continue to operate their USTs, either by obtaining guarantees or by transferring ownership of their USTs to the State or to local governments able to demonstrate financial responsibility, (2) some other fraction of all governments, without regard to purpose, will be able to obtain guarantees, or (3) no governments will be able to obtain guarantees. The EIA discusses the sensitivity of the results to alternative assumptions about the availability of guarantees.

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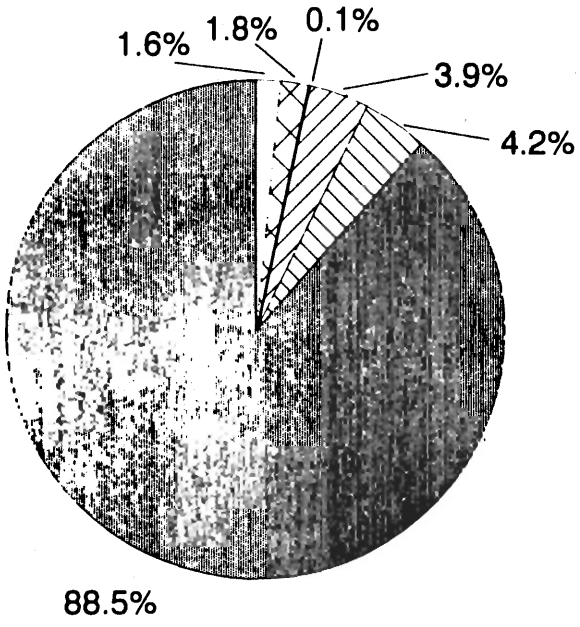
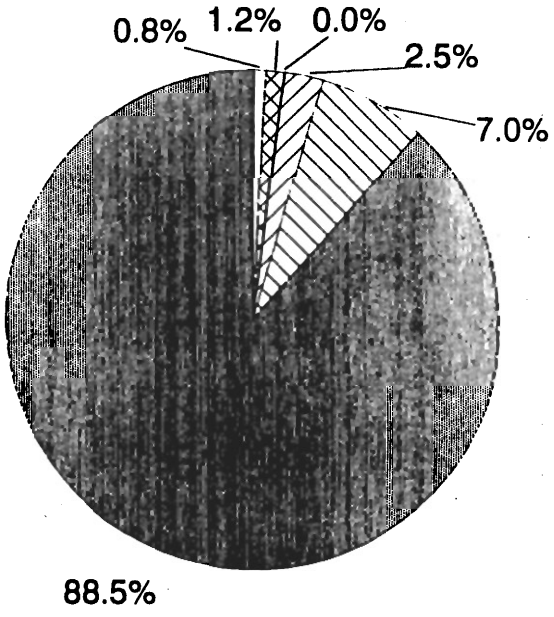
Figure 1

Estimated Use of Financial Assurance Mechanisms

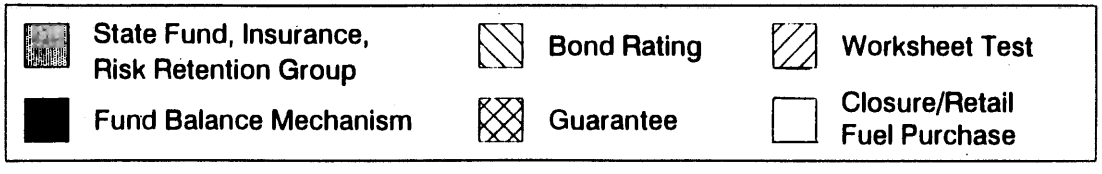
(Counties, Municipalities, Townships, School Districts, and Special Districts) [a]



Percentage of Governments



Percentage of USTs



[a] Percentages may not add up to 100 percent due to rounding.

Source: EPA, "Economic Impact and Regulatory Flexibility Analysis of Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks." EPA Office of Underground Storage Tanks, 1992.

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Table 2
Summary of Results of Economic Impact Analysis

	General Purpose Governments				Special Districts			
	Very Large	Large	Medium	Small	Very Large	Large	Medium	Small
Number of UST-Owning Governments	1,360	3,870	3,643	2,764	840	4,785	6,617	646
Response Under October 1988 Rule								
Number of Governments Demonstrating Financial Responsibility	1,259	3,452	3,249	2,447	778	4,269	5,902	568
Number of USTs Covered By Financial Responsibility	12,791	8,546	4,573	2,585	2,915	15,485	8,384	575
Number of USTs Closed	1,022	1,034	553	336	233	1,874	1,015	80
Annual Cost ($ millions)	2.2	1.6	1.0	0.4	0.7	2.7	1.8	0.0
Response Under This Rule								
Additional Governments Demonstrating Financial Responsibility	101	396	365	283	62	509	501	47
Additional USTs Remaining in Operation	1,022	977	517	298	230	1,856	715	47
Annual Cost Savings ($ millions)	1.0	0.7	0.5	0.1	0.4	1.2	0.7	0.0

Source: EPA, Economic Impact Analysis of Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks (December, 1992).

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4. Cost Impacts

The cost impacts of the rule are measured as the difference between the costs of complying with the October 1988 financial responsibility rule and with this rule. Table 2 shows the estimated change from the baseline by type and size of local government.

The annualized total costs of complying with the October 1988 financial responsibility rule are estimated to be about $10 million, whereas the costs of complying with this rule are about $5.9 million. The rule, therefore, is estimated to result in an annual net savings of approximately $4.5 million.[17] Most of the savings result from fewer mandatory closures under the rule than in the baseline, with additional savings earned from the difference between wholesale and retail prices for fuel.[18] EPA estimates that the average annualized savings per local government entity (irrespective of UST ownership) will be about $54, with an average saving of about $185 per UST-owning government. Most of the total savings will be realized in the first year, because the revised compliance schedule requires that local governments without financial assurance close their USTs within one year of promulgation of this rule. The Agency estimates that very large general purpose governments will save about $1.0 million and very large special districts will save approximately $445,000 under the rule. Very large UST-owning governments are expected to realize savings of more than $700 each, or about 0.001 percent of their typical annual budgets. The Agency expects that all very large entities estimated to close their USTs in the absence of the rule will be able to demonstrate financial responsibility through the alternative mechanisms promulgated under today's rule.

Small general purpose governments save more relative to their budgets for two reasons: (1) The costs of closure are a larger percentage of their budgets; and (2) those entities with USTs spend proportionately more on fuel than medium and large entities and, therefore, save proportionately more by reduced fuel costs.[19] In the absence of the rule, EPA estimates that 85 percent of small governments and 90 percent of small districts would be unable to demonstrate financial responsibility and would be forced to close their USTs; under the rule, only an estimated one percent of small general purpose governments and five percent of small special districts are estimated to be forced to close their USTs.

5. Environmental Impacts

The rule has potential environmental impacts as well as economic impacts. As a result of the rule, more local governments may be able to demonstrate financial responsibility through the alternative mechanisms and more tanks may remain in operation. All local government USTs, however, are subject to the requirements established by the UST technical standards rule, which is designed to minimize the human health and environmental risks from underground storage tank operations. In addition, the rule requires local governments to demonstrate the ability to respond to UST releases to minimize potential environmental damages. EPA believes, therefore, that any negative human health and environmental effects resulting from the rule will be minimal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires all Federal agencies to review the impact of their regulations to determine whether they will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a regulatory flexibility analysis. As discussed in the economic impact analysis, EPA has determined that this rule will provide a net benefit to small local governments by reducing their costs of compliance with the financial responsibility provisions of Subtitle I. For this reason, the Agency has concluded that a regulatory flexibility analysis is not necessary.

Nevertheless, EPA, as part of its on-going effort to be responsive to small entities affected by its regulations, has expanded its analysis of the economic effects associated with this rule. The additional findings support EPA's conclusions that local governments benefit from the mechanisms promulgated today. The analysis shows, in fact, that small local governments receive an even greater benefit as compared with their larger counterparts.

The Agency estimates that this rule will result in a net savings for local governments of $4.5 million per year. Most of the savings realized by local governments will be due to a significant decrease in the number of UST closures. In developing this rule, the Agency has sought to reduce the impacts on all governments regardless of size. The worksheet test, however, was specifically designed to recognize that even small local governments may be able to demonstrate the requisite financial strength needed to pay for an UST release. Based on an analysis presented in the EIA, approximately 89 percent of all small general purpose governments (including 98 percent of small counties, 91 percent of small municipalities, and 87 percent of small townships) will be able to demonstrate financial responsibility using the worksheet test.

The use of the governmental guarantee is also particularly suited to small local governments, such as school districts, which often have a substantial governmental relationship with a nearby city or county. EPA has estimated that approximately 59 percent of small school and special districts will be able to obtain guarantees.

Overall, the proportion of USTs owned by small local governments which will be unable to meet the financial responsibility requirement drops from about 12 percent to 2 percent as a result of the additional mechanisms promulgated today.

EPA is also considering adoption of another rule which would provide even more flexibility to small local governments. As described in the **Federal Register** on December 23, 1991 (56 FR 66369), an option considered but not yet proposed would extend the financial responsibility compliance date to 1998 for certain facilities that meet Federal economic criteria. This rule would be designed to benefit the small, possibly rural local governments which provide essential emergency or community services and which may be most in need of an additional extension. Despite these efforts, the Agency recognizes that some small local governments may still have difficulty complying with the financial responsibility and other requirements for underground storage tanks. Therefore, the Agency plans to conduct a study of the overall costs of these requirements and the potential impact of these costs on the ability of small

[17] The estimated costs for a municipal government using a state fund to demonstrate financial responsibility may not accurately reflect the true costs to society for providing state fund coverage. Most state funds impose a mandatory per-gallon fee on all petroleum products used in the state. Thus, all users of petroleum products in the state share in paying the costs associated with the state fund.

[18] The only entities that save under the rule are those that would have closed their USTs in the baseline and choose the self-test under the rule and those entities that use a third party mechanism in the baseline (other than insurance and state funds) and the less costly alternative mechanisms under the rule. Far more entities are in the former category than the latter.

[19] In general, small entities do not own USTs; the Agency estimates that fewer than 3,600 of the more than 50,000 small entities own USTs. EPA infers from this that those entities that do own USTs use them intensively, incurring fuel costs as high as seven percent of their annual budgets.

local governments to retain their USTs. The study would also look into the feasibility of alternative methods of providing fuel (for essential public services) without requiring the ownership of USTs by these governments. In addition, the study would assess the continued availability of State financial assistance and assurance funds and their effects on local governments that own USTs. EPA will use the findings from this study to help monitor the effects of the UST requirements on local governments and to help assess the need for any further Agency guidance or action.

It should be noted that UST closures do not necessarily result in a loss of availability of fuel. Local governments have several means of assuring a continuing fuel supply: Purchase of fuel from retail outlets, use of above-ground tanks (where fire codes permit), and "pooling" of fuel sources with neighboring governments (local or State) that are able to demonstrate financial responsibility. The concern expressed by local governments is the availability of fuel for emergency vehicles when retail stations may be closed. EPA understands that some local governments are participating in "card-lock" arrangements. Under a card-lock arrangement, participants are issued magnetic cards that can then unlock the fuel pump; fuel withdrawal is monitored and charged to the card owner. With this arrangement, no attendant is necessary, and there is 24-hour access to fuel. Some of these alternatives have the added benefit of removing the costs and liability of maintaining USTs from local governments.

One commenter contended that EPA's rationale for not developing a regulatory flexibility analysis for the proposed rule is flawed, arguing that because the proposed rule simply amends the financial responsibility requirement, which initially imposed a burden on the regulated community, the benefits of the proposed rule cannot be accurately assessed in isolation of these requirements. As discussed above, the Agency has used this rule to provide additional flexibility to local governments, and particularly small local governments.

EPA does not, however, consider a baseline of no financial responsibility requirement to be a reasonable baseline for analyzing this rule. After review with regard to the 1988 financial responsibility rule, the Agency determined that although most local governments have adequate stability and financial strength to respond to an UST release, not all local governments have the resources to meet their UST-related obligations. Given these concerns, EPA believes that exempting all local governments from the financial responsibility requirement would not be consistent with statutory intent.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0066. An Information Collection Request document has been prepared by EPA (ICR No. 1359.04) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, D.C. 20460 or by calling (202) 260–2740. The information collection requirements were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and assigned OMB control number 2050–0066. The Agency estimated the total annual burden on the regulated community of local governments to be 28,518 hours. The Agency estimated the burden on local government entities for reading the requirements to be 24,188 hours, the reporting or disclosure burden to be 218 hours, and the total recordkeeping burden to be 4,112 hours. The average burden for reading the requirements was estimated to be one hour. The average burden for reporting or disclosure was estimated to be two hours, while only 0.45 percent of all local government UST owners and operators were expected to be required to report each year. The average annual burden to maintain records of the alternative mechanisms was estimated to be 0.17 hours. These burden estimates included all aspects of the collection effort and included time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Jonathan Gledhill."

VI. Supporting Documents

In addition to supporting material found in the rulemaking docket, EPA has prepared the following supporting documents to support this rule:

EPA, "Background Document in Support of Financial Self-Test for Local Governments Subject to the Financial Responsibility Requirements of Subtitle I of the Resource Conservation and Recovery Act," U.S. Environmental Protection Agency, Office of Underground Storage Tanks (November, 1992).

EPA, "Economic Impact Analysis of Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks," EPA Office of Underground Storage Tanks (November, 1992).

EPA, "Response to Comments on the June 18, 1990 Proposed Rule to Provide Additional Mechanisms for Local Government Entities to Demonstrate Financial Responsibility for Underground Storage Tanks," EPA Office of Underground Storage Tanks (November, 1992).

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Hazardous substances, Insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Dated: January 15, 1993.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 280 of title 40 of the Code of Federal Regulations is amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991e, 6991f, and 6991h.

2. Section 280.92 is amended by removing the paragraph designations (a) through (o) and adding in alphabetical order three definitions reading as follows:

§ 280.92 Definition of terms.

* * * * *

Chief Financial Officer, in the case of local government owners and operators, means the individual with the overall authority and responsibility for the

collection, disbursement, and use of funds by the local government.

* * * * *

Local government shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

* * * * *

Substantial governmental relationship means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

* * * * *

3. § 280.94 is amended by revising paragraphs (a) and (b) to read as follows:

§ 280.94 Allowable mechanisms and combinations of mechanisms.

(a) Subject to the limitations of paragraphs (b) and (c) of this section,

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in §§ 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more underground storage tanks, and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in §§ 280.104 through 280.107 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee under § 280.96 or surety bond under § 280.98 to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

* * * * *

4. The following sections are redesignated according to the following table:

Old section no.	New section no.
§ 280.104	§ 280.108.
§ 280.105	§ 280.109.
§ 280.106	§ 280.110.
§ 280.107	§ 280.111.
§ 280.108	§ 280.112.
§ 280.109	§ 280.113.
§ 280.110	§ 280.114.
§ 280.111	§ 280.115.
§ 280.112	§ 280.116.

5. Newly designated §§ 280.109, 280.110, 280.111, 280.112, 280.114, and 280.115 are revised to read as follows:

§ 280.109 Cancellation or nonrenewal by a provider of financial assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with § 280.107(b).

§ 280.110 Reporting by owner or operator.

(a) An owner or operator must submit the appropriate forms listed in § 280.111(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under § 280.53 or § 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by § 280.95(g) and § 280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under § 280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in § 280.111(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050–0066).

§ 280.111 Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under § 208.113. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.100 or § 280.102 or §§ 280.104 through 280.107 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under § 280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under § 280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under § 280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under § 280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under § 280.101(d).

(9) An owner or operator using a local government fund under § 280.107 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under § 280.107(a)(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under § 280.107(a)(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under § 280.107(a)(3)(i)), or attestation by the State Attorney General as specified under § 280.107(a)(3)(ii).

(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11)(i) An owner or operator using an assurance mechanism specified in §§ 280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of subpart H of 40 CFR part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 CFR part 280 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

(ii) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050–0066.)

§ 280.112 Drawing on financial assurance mechanisms.

(a) Except as specified in paragraph (d) of this section, the Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to subparts E or F of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2) (i) or (ii) of this section are satisfied.

(b) The Director of the implementing agency may draw on a standby trust fund when:

(1) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 CFR part 280, subpart F; or

(2) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground

storage tank should be paid in the amount of $[_____].
[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary)
Date
[Signatures]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary)
Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under § 280.106(e), the local government guarantee without standby trust, shall make payments as directed by the Director under the circumstances described in § 280.112 (a), (b), and (c).

* * * * *

§ 280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in § 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in § 280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

§ 280.115 Replenishment of guarantees, letters of credit, or surety bonds.

(a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

6. New § 280.104 is added to read as follows:

§ 280.104 Local government bond rating test.

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of § 280.93 by having a currently outstanding issue or issues of general obligation bonds of $1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of § 280.93 by having a currently outstanding issue or issues of revenue bonds of $1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, A, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or

operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date	Maturity date	Outstanding amount	Bond rating	Rating agency
				[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR Part 280.104(d) as such regulations were constituted on the date shown immediately below.

[Date] _____
[Signature] _____
[Name] _____
[Title] _____

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert : "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date	Maturity date	Outstanding amount	Bond rating	Rating agency
				[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of $1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR Part 280.104(e) as such regulations were constituted on the date shown immediately below.

[Date] _____
[Signature] _____
[Name] _____
[Title] _____

(f) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Director finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of § 280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

7. New § 280.105 is added to read as follows:

§ 280.105 Local government financial test.

(a) A local government owner or operator may satisfy the requirements of § 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of paragraphs (b)(2) and (b)(3) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(i) *Total revenues:* Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(ii) *Total expenditures:* Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(iii) *Local revenues:* Consists of total revenues (as defined in paragraph (b)(1)(i) of this section) minus the sum of all transfers from other governmental entities, including all monies received from Federal, state, or local government sources.

(iv) *Debt service:* Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) *Total funds:* Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(vi) *Population* consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in paragraph (c) of this section.

(c) To demonstrate that it meets the financial test under paragraph (b) of this section, the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter From Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280.22 or the corresponding state requirements.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

Worksheet for Municipal Financial Test

Part I: Basic Information

1. Total Revenues

a. Revenues (dollars) _____
Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)_____

c. Total Revenues (dollars)_____

2. Total Expenditures

a. Expenditures (dollars) _____
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)_____

c. Total Expenditures (dollars)_____

3. Local Revenues

a. Total Revenues (from 1c) (dollars) _____

b. Subtract total intergovernmental transfers (dollars)_____

c. Local Revenues (dollars)_____

4. Debt Service

a. Interest and fiscal charges (dollars)_____

b. Add debt retirement (dollars)_____

c. Total Debt Service (dollars)_____

5. Total Funds (Dollars)_____

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons)_____

Part II: Application of Test

7. Total Revenues to Population

a. Total Revenues (from 1c)_____

b. Population (from 6)_____

c. Divide 7a by 7b _____

d. Subtract 417_____

e. Divide by 5,212_____
f. Multiply by 4.095_____

8. Total Expenses to Population

a. Total Expenses (from 2c)_____
b. Population (from 6)_____
c. Divide 8a by 8b _____
d. Subtract 524 _____
e. Divide by 5,401_____
f. Multiply by 4.095_____

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)_____
b. Total Revenues (from 1c)_____
c. Divide 9a by 9b _____
d. Subtract .695_____
e. Divide by .205_____
f. Multiply by 2.840 _____

10. Debt Service to Population

a. Debt Service (from 4d) _____
b. Population (from 6)_____
c. Divide 10a by 10b _____
d. Subtract 51 _____
e. Divide by 1,038_____
f. Multiply by −1.866_____

11. Debt Service to Total Revenues

a. Debt Service (from 4d)_____
b. Total Revenues (from 1c)_____
c. Divide 11a by 11b _____
d. Subtract .068 _____
e. Divide by .259 _____
f. Multiply by −3.533 _____

12. Total Revenues to Total Expenses

a. Total Revenues (from 1c)_____
b. Total Expenses (from 2c)_____
c. Divide 12a by 12b_____
d. Subtract .910 _____
e. Divide by .899 _____
f. Multiply by 3.458 _____

13. Funds Balance to Total Revenues

a. Total Funds (from 5) _____
b. Total Revenues (from 1c)_____
c. Divide 13a by 13b _____
d. Subtract .891 _____
e. Divide by 9.156_____
f. Multiply by 3.270 _____

14. Funds Balance to Total Expenses

a. Total Funds (from 5)_____
b. Total Expenses (from 2c)_____
c. Divide 14a by 14b_____
d. Subtract .866 _____
e. Divide by 6.409 _____
f. Multiply by 3.270 _____

15. Total Funds to Population _____

a. Total Funds (from 5) _____
b. Population (from 6)_____
c. Divide 15a by 15b _____
d. Subtract 270 _____
e. Divide by 4,548 _____
f. Multiply by 1.866 _____

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937_____

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 40 CFR Part 280.105(c) as such regulations were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator. If the Director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of § 280.105 (b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Director of the implementing agency that it no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

8. New § 280.106 is added to read as follows:

§ 280.106 Local government guarantee.

(a) A local government owner or operator may satisfy the requirements of § 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be either the state in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) demonstrate that it meets the bond rating test requirement of § 280.104 and deliver a copy of the chief financial officer's letter as contained in § 280.104(c) to the local government owner or operator; or

(2) demonstrate that it meets the worksheet test requirements of § 280.105 and deliver a copy of the chief financial officer's letter as contained in § 280.105(c) to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of § 280.107(a), § 280.107(b), or § 280.107(c) and deliver a copy of the chief financial officer's letter as contained in § 280.107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under any of §§ 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in § 280.114(c).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Director of the implementing agency, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Director of the implementing agency for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a state, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR

Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

_____

If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR Part 280.104, the local government financial test requirements of 40 CFR Part 280.105, or the local government fund under 40 CFR Part 280.107(a), 280.107(b), or 280.107(c)].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR Part 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR Part 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR Part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail,

notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR Part 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR Part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

_____

(e) If the guarantor is a state, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR Part 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR Part 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

_____

If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR part 280.104, the local government financial test requirements of 40 part CFR 280.105, the local government fund under 40 CFR part 280.107(a), 280.107(b), or 280.107(c).

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR Part 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR Part 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

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9. New § 280.107 is added to read as follows:

§ 280.107 Local government fund.

A local government owner or operator may satisfy the requirements of § 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (b), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used

in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under § 280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for ten times the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): _____

[If fund balance is incrementally funded as specified in § 280.107(c), insert:

Amount added to fund in the most recently completed fiscal year: _____

Number of years remaining in the pay-in period: _____]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 280.107(d) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

[FR Doc. 93–2824 Filed 2–17–93; 8:45 am]

BILLING CODE 6560–50–P