

*This brochure is effective  
October 13, 2018.*

# DEMONSTRATING FINANCIAL RESPONSIBILITY

## MANAGING YOUR UNDERGROUND STORAGE TANK



Owners and operators of regulated underground storage tanks (USTs) on tribal lands must comply with the federal UST regulation.

This compliance assistance brochure highlights tips for demonstrating financial responsibility.

**Note:** This document is a resource to promote compliance and does not replace the federal UST regulation.

This brochure is one in a series of EPA compliance assistance brochures designed to help owners and operators in Indian country comply with the federal UST regulation.

Other brochures focus on implementation, compatibility, spill buckets, overfill protection, recordkeeping and notification, insurance, and tank and piping release detection.

<https://www.epa.gov/ust/best-management-practices-usts-indian-country>



Office of Underground Storage Tanks  
[www.epa.gov/ust](http://www.epa.gov/ust)  
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Compliance Assistance In  
Indian Country

## FINANCIAL RESPONSIBILITY

**Financial responsibility** (FR) means you must ensure money will be available to clean up leaks and pay others for bodily injury or property damage caused by releases from regulated petroleum underground storage tanks (UST) that you own or operate. You must maintain FR until your USTs are permanently closed or cleanup (if required) is completed.

### How much coverage do you need?

The amount of coverage you need depends on the:

- ☞ Type of business you operate;
- ☞ Amount of throughput of your tank; and
- ☞ Number of tanks you have.

Type Of UST Owner And Operator	Per Occurrence Coverage	Aggregate Coverage
Petroleum producers, refiners, or marketers	\$1 million	\$1 million for 100 or fewer tanks or
Nonmarketers	\$500,000 - monthly throughput 10,000 gallons or less \$1 million - monthly throughput is more than 10,000 gallons	\$2 million for more than 100 tanks

### How can you demonstrate FR?

**Tribal governments may:**

*Use a bond rating test*

- ☞ Self insure to demonstrate FR by passing the criteria described at [40 CFR 280.104](#).

*Use a financial test*

- ☞ Self insure to demonstrate FR by passing the criteria described at [40 CFR 280.105](#).

By using the mechanisms above, you are expected to be able to pay for corrective action and third-party compensation obligations.

*Obtain governmental guarantee*

- ☞ Obtain a guarantee from the local tribal government or another government with which you have a substantial relationship, using the requirements described at [40 CFR 280.106](#).

The guarantee must pass the same tests required for bond rating, financial, and dedicated fund FR mechanisms.

A standby trust fund may need to be established when using a guarantee. Money not used is returned to the funding source.

*Use a dedicated fund*

- ☞ Tribal governments may administer a dedicated fund if they meet the eligibility requirements described at [40 CFR 280.107](#).

**Tribal and Private owners and operators may:**

*Obtain insurance coverage via a policy that:*

- ☞ Excludes legal defense costs from the required amount of coverage;
- ☞ Provides first dollar coverage;
- ☞ Provides a six month extended reporting period for claims-made policies;
- ☞ Includes an endorsement or certificate stating coverage amount, purpose, and other conditions that become part of the policy.

*Rely on a state fund*

- ☞ Go to <https://www.epa.gov/ust/underground-storage-tank-ust-contacts> and contact the state to determine if there is a fund and whether you can use it.

*Use a financial test*

- ☞ Self insure to demonstrate FR by passing the criteria for one of the financial tests described at [40 CFR 280.95](#).

*Obtain a corporate guarantee*

- ☞ Obtain a guarantee from a business with which you have a substantial relationship described at [40 CFR 280.96](#). The guarantee provider must pass the same financial test required for self-insurance.

*Obtain a letter of credit*

- ☞ Obtain a letter of credit from a financial institution that guarantees payment for cleaning up a release or paying third parties.

*Obtain a surety bond*

- ☞ Obtain a surety bond guarantee to pay for clean up or pay for third party damages.

A standby trust fund must be established when

using a corporate guarantee, letter of credit, or surety bond to show your FR. Money not used is returned to the funding source.

### Can you combine mechanisms?

Yes. You can use several methods to show FR. However, you cannot combine a financial test of self-insurance and a corporate guarantee if the owner or operator and guarantor financial statements are combined.

### Do you need a separate FR document for each facility?

No. However, you will need to show that your coverage is for all regulated USTs at all your facilities.

### Do you need to submit FR documents?

Yes. You need to submit FR documents:

- ☞ Within 30 days after finding a release; or
- ☞ For failing to obtain required alternate coverage; or
- ☞ As required by the implementing agency.

### What records should you keep?

- ☞ Maintain an updated copy of a certification of FR signed by the owner or operator and a witness or notary. Required language for endorsements and certifications can be found on pages 10 - 11 in EPA's *Dollars And Sense* at [www.epa.gov/oust/pubs/dolsens.pdf](http://www.epa.gov/oust/pubs/dolsens.pdf). Keep one of these documents as part of your policy.
- ☞ Keep records of all FR documents on-site or make them available upon request. A list of the required documents can be found at [40 CFR 280.111](#).

For a summary of UST owners' and operators' financial responsibilities under federal UST regulations, see EPA's [Dollars And Sense: Financial Responsibility Requirements for Underground Storage Tanks](#) or order free copies by calling (800) 490-9198.