Part II

Environmental Protection Agency

40 CFR Part 280
Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Final Rule
ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 290
[FR 41268-6]
SN: 2609-AC07
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 903(d) and (f) of the Resource Conservation and Recovery Act as amended by the Hazardous and Solid 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 by taking corrective action and compensating third parties for bodily injury and property damage caused by routine and nonroutine 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) 412-8810 in Virginia, or Sammy Ng in EPA's Office of Underground Storage Tanks at (703) 208-8882.
SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:
I. Authority
II. Background
A. Legislative and Regulatory Overview
1. RCRA Subtitle I
2. October 26, 1988 Rule
3. Discussion of the Financial Responsibility Requirements for Governments in the October 26, 1988 Rule
4. The Proposed Rule
B. Key Provisions in Today's Rule
C. Rationale for Agency's Approach
D. Description of the Regulated Community
III. Sector-by-Sector Analysis
A. Applicability
B. Definitions of Terms
1. Bond Rating Agency
2. Investment Grade Bonds
3. General Obligation Bonds
4. Revenue Bonds
5. Substantial Governmental Relationship
C. Amount and Scope
IV. New Mechanisms for Demonstrating Financial Responsibility
A. Description of Mechanisms
1. Bond Rating Test
2. Local Government Financial Test
3. Governmental Guarantee
4. Maintenance of a Fund Balance
5. Combination of Mechanisms
B. Reporting by Owner or Operator
C. Recordkeeping
D. Bankruptcy or Other Inability of the Owner or Operator
V. Economic Impact Analysis
A. Economic Impact Analysis
1. Compliance with Executive Order 12291
2. The Affected Community
3. Assumptions and Methodology
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VI. Supporting Documents
A. Authority
These regulations are issued under the authority of sections 902, 903, 905, 906, 907, and 909 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) (2 U.S.C. 6912, 6901, 6901a, 6901b, 6911c, 6911d, 6911e, 6911f, and 6911h).
B. 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, and provides the provisions of the financial responsibility regulations promulgated on October 26, 1988 and the scope of the new financial responsibility regulations being promulgated today.
1. RCRA Subtitle I
2. 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 as nonpetroleum regulated substances).
B. Key Provisions in Today's Rule
1. Bond Rating Test
2. Local Government Financial Test
3. Governmental Guarantee
4. Maintenance of a Fund Balance
5. Combination of Mechanisms
A. Applicability
B. Definitions of Terms
1. Bond Rating Agency
2. Investment Grade Bonds
3. General Obligation Bonds
4. Revenue Bonds
5. Substantial Governmental Relationship
C. Amount and Scope
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2. Local Government Financial Test
3. Governmental Guarantee
4. Maintenance of a Fund Balance
5. Combination of Mechanisms
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C. Recordkeeping
D. Bankruptcy or Other Inability of the Owner or Operator
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liability claims from sudden and
sudden-onset accidental releases from USTs, the rule requires operators
of USTs to be able to meet
requirements for 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 must provide an average monthly throughput at
10,000 gallons or less to maintain
financial assurance of at least $500,000 per occurrence. All owners or
operators of petroleum USTs at facilities engaged in petroleum production,
refining, or marketing with an average monthly throughput of
10,000 gallons or less to maintain financial assurance of at least $500,000 per occurrence. All owners or operators of petroleum USTs at facilities engaged in petroleum production, refining, or marketing must maintain an annual aggregate of $1 million or $2 million, depending on the number of USTs owned or operated.

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 owners and operators of USTs were 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, except 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 the Securities and Exchange Commission and public utilities reporting to specified agencies are eligible to use the financial test of self-insurance, guarantee, or letter of credit alone or in combination to cover the costs of taking corrective action and complying with the financial responsibility requirements as long as a mechanism or a combination of mechanisms is able to support the full amount of required assurance. The only consideration 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 to demonstrate financial responsibility to the implementing agency for three occurrences: (1) After a failure of a UST due to a release, (2) when a provider becomes incapable of providing assurance, or (3) when a provider revokes a mechanism and the operator or operator is unable to obtain alternate coverage. Owners or operators must also submit documentation of financial responsibility if required 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 contained provisions that require third-party providers of financial assurance (i.e., surety insurance companies, risk retention group, 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, 1988, EPA published an interim final rule that modified the required language of endorsements required for insurance policies as they relate to cancellation (54 FR 47777).

The States program approved objective for financial responsibility of owners and operators of petroleum UST systems was also promulgated October 26, 1988. This objective outlined 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 Businesses in the October 26, 1988 Rule

Although the final financial responsibility rule (rules 47322, October 26, 1988) exempts those businesses that own or operate USTs but do not own or operate USTs, the Agency's guidance 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 stability and to pay the costs associated with UST releases. After passing this financial solvency test, local government entities will be allowed to demonstrate their financial responsibility in a master 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 231 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 responsibility 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 to the Proposed Additional Financial Responsibility Mechanisms for Local Government Subject to Subtitle I of the Resource Conservation and Recovery Act."

One commentor proposed a new alternative mechanism that EPA issue regulations allowing implementing agencies to adjudicate funds from Federal or State-programmed funds to pay for the expenses associated with corrective action. 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 altering the definition of "property" 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 financial test and the financial responsibility required for businesses in the October 26, 1988 Rule.
incorporates several financial criteria designed to measure a local government entity's financial stability. Ensuring the worksheet will be a sufficient demonstration of financial responsibility.

(3) \textit{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 guarantee 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 city, or a county 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) \textit{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 payment 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.

(5) \textit{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 test to demonstrate financial responsibility. Local government 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 test includes several financial criteria designed to measure a local government entity's financial stability. Ensuring the worksheet will be a sufficient demonstration of financial responsibility.

One commenter questioned the language indicating that all local governments "may use" the new financial information. The language is consistent with the criteria as stated with the mechanisms by definition restrict 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 local government entities to demonstrate financial responsibility:

(1) \textit{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 Aa), or a Standard and Poor's bond rating of BBB or higher (i.e., AAA, AA, or Aa). Passing the bond rating test will be considered a sufficient demonstration of financial responsibility.

(2) \textit{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 test to demonstrate financial responsibility. Local government 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 test includes several financial criteria designed to measure a local government entity's financial stability. Ensuring the worksheet will be a sufficient demonstration of financial responsibility.

(3) \textit{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 guarantee 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 city, or a county 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) \textit{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 payment 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- mechanisms being promulgated today. For example, a local government entity may use the guarantee or funded balance financial mechanisms to satisfy the deductible amounts of insurance policies. Local government 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, guaranty of a governmental entity, 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 determine the need to use the guarantee mechanisms. Local governments are separate legal and financial entities from States and from each other. The situation wherein a governmental entity will validate 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 charted. 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 legal entities and are subject to separate charters and/or articles of incorporation; they operate independently and their financial statements are never consolidated with the statements of the nearly general purpose governments. To support this rule, EPA 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. \textit{Standard 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 government units and the 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. Third, the rule is promulgating several financial responsibility mechanisms and not just one. Fourth, 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 in effect in any governmental practices and is maintaining the same approach to reporting as prescribed in the regulations published in the October 1988 rulemaking for local governments. The financial responsibility mechanisms that could realistically be used by local governments are generally useless.

In the October 1988 rule, the Agency sets out two alternatives for corporations. Under Alternative I, a firm can self-insure if it meets four criteria: (1) Tangible net worth equal to at least 500,000, (2) annual filing of its financial statements with the Securities and Exchange Commission (SEC), the Rural Electrification Administration (REA), the Energy Information Administration (EIA), or Energy Department (which must have assigned a financial strength rating of AA or AAA), and (3) 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 not of at least $18 million, (2) tangible net worth not to at least six times its UST obligations, and (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 A, Aa, or Baa. In addition, a firm using Alternative II must also 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 size and nature from corporate entities and characteristics from corporations, which raise the question of the corporate self-test mechanism in the October 1988 rulemaking for local governments. For example, “general purpose” local governments (counties, municipalities, and special districts) maintain financial accounting systems that do not recognize assets in a fashion 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 “net working capital” is not applicable in this instance, because by definition, unworkable for many local governments. It could be argued, however, that government-owned utilities that provide financial data to the Rural Electrification Administration or the Energy Information Administration are required 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 Principles (GAAP) used by private entities. Most local governments do not 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 governmental 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 avoid their local obligations. Additionally, unlike some private corporations, 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 for 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 is developing this rule in the way that local governments show evidence of financial stability and prudent financial management.

D. Description of the Regulated Entities

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 concerns 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, cities, villages, boroughs, and New England towns. Special purpose local government entities 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, transportation 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 comments seek 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 entered bankruptcy. There has been a similarly low rate of bankruptcy among special-purpose districts. Between 1972 and 1989, 26 utility special districts, two school districts, and six other special-purpose districts and hospitals filed for bankruptcy out of a total of more than 20,000 school districts and special-purpose districts.

Although bankruptcy is an extreme condition, the Agency believes this very low incidence ($0,003 bankrupt per year) reflects general stability of local government entities. In contrast, 56,427 (1.3 percent) of the 4,326,243 p-w-rate companies in operation filed bankruptcy petitions in 1982. This timer increased to 88,275 in 1987. Combined with the relatively low costs of UST financial responsibility, the relative stability of local governments is interpreted by EPA to indicates 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 instance, that did occur, local government entities were generally able to close up and 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 meet financial responsibility based on their intended financial conditions, rather than requiring the use of third-party mechanisms.

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 § 280.10(d), exempted from financial responsibility requirements State and Federal government entities whose data and liabilities are those of a State or the United States.

Although the October 1988 rule excluded State and Federal 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 such 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 the District of Columbia, the District of Columbia, and the District of Columbia. In Louisiana, county governments are specifically designated as "parish" governments, and the "parish" 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.
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 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 the 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 a 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 other county governments. EPA believes that such entities are better able to determine the strength of the government seeking the guarantee, and to measure how essential the services offered, than the Agency would be in developing a uniform national standard.

B. Definition of Terms

1. Bond Rating

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.” 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 Virginia show that municipalities may impose certain ratings or other standards for obligations eligible for investment by savings banks, trust companies, and insurance generally. For purposes of this rule, investment grade bond guarantees are considered to include bonds rated AAA, AA, A, and BBB by Moody’s, or AAA, AA, A, and BBB by Standard and Poor’s.

3. General Obligation Bonds

General obligation (G.O.) bonds, also known as “full faith and credit” bonds, are secured by the issuer’s 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, street, and municipal buildings. The bond issuer’s ability to generate revenues is evaluated by analyzing factors in four categories: socioeconomic, financial, debt, and administration.

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. 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.
by a county to an incorporated city located within or contiguous to 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 to provide an insurance policy or financial surety with the guarantor in whole or in part. Consideration is given to 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 response across jurisdictional boundaries, or purchase of non-UST-related services such as water or education.

One commentator asked three questions pertaining to activities that constitute a "substantial governmental relationship": (1) Whether a governmental guarantee is a guarantee 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 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. An administrative yet manageable set of Federal guidelines could be developed to ensure that all risk pools are properly identified as a Federal financial responsibility mechanism and therefore be subject to oversight to make these comparable to other financial responsibility mechanisms allowed.

The Agency notes that, under 40 CFR 280.100, financial responsibility mechanisms 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. Local governments 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 giving or operating one or more USTs at facilities with a monthly throughput of more than 10,000 gallons must demonstrate financial responsibility in the amount of $500,000 per occurrence. Governmental owners and operators giving or operating one or more USTs at facilities with a monthly throughput of more than 10,000 gallons must demonstrate financial responsibility in the amount of $500,000 per occurrence. Owners and operators of 100 or fewer USTs must demonstrate financial responsibility in the amount of $1 million, and owners and operators of more than 100 USTs must demonstrate financial responsibility in the amount aggregate amount of $2 million.

One commentator suggested incorporating a mechanism in the rule that would allow for reductions in the required level of assurance when tasks are replaced with intermittently safe tanks or upgraded to intermittently 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 suggestions for the reasons cited in the October 1988 final rule and the June 1990 proposed rule.

Another commentator indicated that disclosure of the amount of money that will be paid in the event of a loss by any assurance mechanism may adversely affect a local government's position in litigation or settlement negotiations. The commenter recommended deleting this provision from the final regulatory letter. The Agency believes that the commenter may have misunderstood the intent of the provision for the financial officer's letter. The amount assured, as cited in the financial officer's letter, is meant to be a minimum amount that must be paid in the event of a release, but neither the minimum amount that a local government must be able to pay if required by its insurance policies nor its third-party liabilities. EPA assumes that governments will use all defense and mechanisms to ensure that payments for third-party liabilities are both available and adequate. Conversely, the amount of financial assurance does not account for a local government's potential liability in the event of a release. Local governments are listed as for an excluding refusal from the release, regardless of the amount for which they are able to pay. Financial responsibility requirements, 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 liabilities 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 posting test, a worksheet test a governmental mechanisms, and maintenance of a funded balance. These additional mechanisms are described as governmental mechanisms, local government's that are owners and operators of USTs may use any of the financial responsibility mechanisms authorized under 40 CFR 280.84 (e), (f), insurance, Risk Retention Group (RRG) coverage, surety bonds, letters of credit, fully-funded trust funds, State-required mechanisms, a State fund, or other State (or governmental assumptions). The Background Document prepared in conjunction with the 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 "invested in" or "good" by Moody's or Standard & Poor's. Special Districts, such as school district or airport authorities, that do not have the authority to issue general obligation bonds, must have outstanding issues of revenue bonds for general obligation bonds that is not more than 5 years old. In both cases, the municipality's total outstanding obligation must be $1 million or more. The revenue obligations - investment grade bonds are those with a current Standard and Poor's bond rating of AAA, AA- or

0932 Federal Register / Vol. 58, No. 11 / Thursday, February 18, 1993 / Rules and Regulations
BBB, or a current Moody’s bond rating of Baa, in 2012. 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 rating agencies differ, the lowest rating must satisfy the criteria.

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, its local government owner or operator must obtain alternative coverage within 180 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 creditworthiness 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 ongoing review and reinsurer granted to the bond insurance companies under the insurance regulations 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 has determined that a local government’s general obligation bonds shall be 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 level 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 bankers and other third parties. Second, a 1998 agreement issued jointly by the Board of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Committee of the National Association of Supervisors of the Federal Reserve Banks, and the S
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interest in the soundness of the local governments. If a local government defaults on a payment, its bonds insurers must meet the payment. Consequently, bond insurers track the financial obligations of insured local governments and sometimes have cost-effectiveness that allow them to intervene to prevent local government defaults. For example, they may insist on more conservative fiscal policies to preserve the financial strength of a community, which in turn, lowers the costs of the bond insurance. Although the bond rating of insured bonds does not directly indicate a local government’s financial condition, it does demonstrate that the government has issued the insurance company its ability to meet its debt obligations, 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 serves as a simple method for demonstrating financial responsibility and will provide the Agency with the assurance it needs to determine if the project is well grounded on the regulated community.

Several commenters suggested that the Agency expand the bond rating test to include revenue bonds and other notes and bonds as well as general obligation bonds. The Agency has researched the criteria used to assign credit ratings in 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 of outstanding revenue bond issues not backed by any form of credit support.

EPA has determined that revenue bond financing is currently the only source of revenue for most special districts and that the ratings on revenue bonds issued by special districts are primarily an adequate representation of their financial soundness. 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 dependent on the success of the underlying its associated revenue
bonds. Ratings on revenue bonds are, therefore, appropriate measures of special-use financial capacity. (This is not the case for a general purpose government that issues revenue-type bonds, such as a city, because the revenue stream supporting a specific revenue bond is not an integral part of the overall tax base supporting the local government.) In addition, EPA determined that there has been a low incidence of default of investment-grade 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 1993. 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 bmde 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 legal management practices of that type of government as a whole, and because revenue bonds are necessary 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 do 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 commentators assert 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 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 debt comparable in size to the bond rating mechanism. The commenters assert that many local governments are not able to demonstrate such capability may use the bond rating mechanism to demonstrate financial responsibility. Based on the analysis conducted for the proposed rule, the Agency estimates that approximately 67 percent of general obligation bonds were issued for aggregate amounts greater than $1 million. One commentator observed that the bond rating test should be used by local governments only if a governmental unit is large enough to warrant the costs of obtaining a bond rating. EPA's conclusion that a governmental unit will no longer qualify for the bond ruling test if it reduces its debt to below $1 billion. The committee suggested that the cost of obtaining a bond rating be made more important than the amount of debt. Another commentator 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 governmental 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 inappropriate to require $1 million in outstanding debt as part of the bond rating mechanism. The requirement ensures that the bond rating test is used to demonstrate financial responsibility. 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 to existing, 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 part of one alternative of the bond balance mechanism. Because bond rating information is easily obtainable, the use of bond ratings as a substitute mechanism will impose minimal administrative burden in demonstrating a local government's financial ability. Many local governments, however, do not currently have sufficient bond ratings and budgets. As of July, 1993 Moody's had ratings for a total of 7,853 state and local government entities that were "investment grade" and were not insured. Because some local governmental entities may have multiple issues of general obligation bonds, the number of local governments with rated bonds may be larger. Although a Standard & Poor's rated additional entities, there is a substantial overlap among the entities that have ratings. As of July 1993, there are more than 35,000 local government entities in the United States, of which an estimated 25,000 own U.S. T bond issues. 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 Tests ($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 ($280.103). This local government financial test, or "worksheet test," was developed for local governments that do not use the bond rating mechanism. It is the only test that has less than $1 million in outstanding long-term debt. As described in the preamble to the proposed rule, however, local government entities that have applicable 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 is outstanding revenue bonds of those local government entities that are legally restricted from issuing general obligation bonds. As adopted 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 rating local governments according to their rank on the index, the test establishes cut-off points. 

- Standards Ratings, Moody's Investors Service, Public Finance Department, Jerry to Linda (614) 248-5000.
point that, in the Agency's opinion, excludes that portion of local governmental entities that might not be able to meet their financial obligations in the event of a USST 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 materials. The Agency has also sought to isolate the fraction of governmental entities that are in poor financial condition from those other governmental agencies, in general, with sufficient resources and flexibility to respond to an USST 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 Financiability 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 revenue,
  - Total funds to total expenses,
  - Total revenues to total expenses,
  - Debt service to population,
  - Total revenues to population,
  - Total funds to population,
  - Total funds to total revenue,
  - Total funds to population, and
  - Local revenue to current expenditures.

- Each of the nine ratios was deemed to the national distribution of that ratio to calculate a t-score, which is a measure of how far above or below the national average the municipality's ratio lies.

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

- Government with a total score that put them below the threshold could use the test as a mechanism for demonstrating financial responsibility for USST 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

The Agency received several comments on its proposed final regulations for local governments. The comments focused on (1) the exclusion of local governments with less than their investment grade debt; (2) the exclusion of the term "Self-insurance" from the worksheet test; and (3) updating the worksheet test using 1987 Census of Governments data.

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 little data on how investors assess potential investment, a different judgment from the financial responsibility to respond to an USST release. The commenter stated that allowing use of the worksheet test would recognize these realities without underestimating the purpose of the test.

2) Use of the Term "Self-insurance".

One commenter stated that new law might prohibit the otherwise eligible government entities from using the worksheet test. The commenter argued that the New York law authorizes specific programs for self-insurance and that, because they have not been specially authorized for this purpose, theworksheet 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 delegate references to self-insurance. The modification clarifies that the use of the worksheet test mechanism is to demonstrate compliance with the financial responsibility regulations, and not to require self-insurance.

3) Updating the Worksheet Test to Use 1987 Data.

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 1982 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, which may differ in size of new debt issues, could mean that the reality of what makes a local government financially sound 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. It is 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.

The following table from the Worksheet Test. One commenter urged the Agency to delete Factor 5, "Local government's ability of local governments to respond to an USST release. The commenter argued that a significant proportion of
the funds that local governments receive from State is not tied to specific purposes or programs. As a result, the local government seems appropriate. 

EPA believes that, because local governments do not control and cannot assure the continuation of State or Federal funding, local governments rely on a high dependence on non-local sources and are less secure of the ability to respond to UST releases, whether the States are dedicated to specific programs or not. The Agency notes that 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 status 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 alternative ratio representative of "local coverage".

3) Lowering the Threshold Level. One commenter recommended that the threshold value 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 pass the ability to meet financial obligations through taxation 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 some 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 are nowhere as actual as the, likely to occur. The commenter concluded that these factors suggested that a 15 percent maximum would be too stringent, but that a maximum cutoff of 10 percent would be more appropriate for the ability of the financial strength of local government. The Agency notes that costs associated with clean-up 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 generate financial responsibility because of the more limited total resources of small local governments. As an even more limited analysis, however, EPA believes that real local governments are more likely to pass the worksheet test if they are actually owned, rather than leased. Consequently, the Agency believes its overall approach used to set the threshold is appropriate. Two commenters pointed out that the difference between the 15 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 data, standard deviations, and weights for each ratio, as well as a recalibration of the threshold level. Based on its re-examination of the updated information, the Agency has determined that a threshold level that allows 10 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.

4) Appropriateness of the Worksheet Test for Non-General Purpose Local Governments. Two commenters stated that the financial test, such as the worksheet, designed to measure the financial strength of general purpose governments, is inadequate for special purpose organizations such as airports, bridge and toll road authorities, and publicly owned utilities. Unlike general purpose governments, on commenter argued, these so-called "proprietary" government entities conform to generally accepted accounting procedures and the small overall accounting systems employed in the private sector, rather than the required accrual accounting terms and criteria appropriate to measure the success of a commercial organization. Because the corporate test is similarly inappropriate for these special-purpose entities, the commenters requested that the Agency develop an alternative financial test for proprietary governments. The commenter suggested that the corporate test (e.g., CFI 280-95, based on the accrual method) might be modified to take into account the inherently stable nature of their financial stability of publicly-owned utilities.

The Agency recognizes that specific data requirements provide more precise districts from using the worksheet test. In limited cases, however, some special districts (e.g., school districts) that serve a specified population may have the information necessary to complete the worksheet test (e.g., they can measure their population). EPA believes that the new mechanisms, particularly with the inclusion of revenues 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.

As described above, the Agency has updated the worksheet test using the 1987 Census of Governments, including updated data, standard deviations, and weights for each ratio, as well as a recalibration of the threshold level. Based on its re-examination of the updated information, the Agency has determined that a threshold level that allows 10 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.

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Update of Worksheet Test Using 1987 Census of Governments. The Agency's basic feature has 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 76 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 use of statistical analyses performed, including the factor analysis.

The factor analysis identified a total of 15 factors that distinguish between the counties, municipalities, and townships. 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) income per capita, (3) funds per capita, (4) funds per capita, (5) local governmental entities, and (6) local governmental entities. 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 smaller local governmental 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 used seven 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—economy 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—current 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 analysis of both the 1962 and 1967 Census of Governmental data. That is, however, one change to the worksheet test ratios as a result of the updated factor analysis. Factor 3, "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 1967 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 prunable test results provide 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 expense. 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 that ratios on funds alone, without adequate safeguards, would provide as good an indication of the ability of local-governmental entities to provide financial assurance for an UST release.

These factors serve to achieve the Agency's goal of identifying and eliminating those local-governmental entities that have overall financial characteristics that are in the bottom fraction of all local-governmental entities, and that, 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 "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:

\[
\text{z} = \frac{\text{ratio} - \text{mean}}{\text{standard deviation}}
\]

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 tests, the Agency then examined different threshold levels to determine a cut-off for selecting those local-governmental entities that have financial 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-governmental entities 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 with respect to the threshold in the lower range (i.e., 1 to 3 percent of the gross revenues of all 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 $1 million release.

For purposes of the evaluation, EPA assumed that the relevant 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 $17,076; the first year's payment consists of $1,000 (interest) and $16,526 (principal repayment).

To evaluate whether a debt of $1 million could be serviced, the Agency considered the post-release performance on the above ratios used to develop the index. The Agency paid specific attention to two financial characteristics (financed revenues and financial regulations) used to evaluate prospective debtors' debt service capability and accumulated funds. The Agency felt that it is important to consider the potential debtor's debt service capability because excessive debt would require excessive funds for debt servicing, which could result in a negative cash flow (expenditures greater than revenues) for week debits. 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 in the margin of the cut-off threshold being evaluated can demonstrate that it can service such a debt and use a "cushion" of accumulated funds for emergencies, the Agency believes 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 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.

Effects on Local Governments

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

- Total expenses were increased by $17,450 total incremental debt service;
- Current expenses were increased by $17,450 total incremental debt service;
- Total debt was increased by $192,451 (less amount of $1 million minus first-year principal payment);
- Total funds were reduced by $17,450 total incremental debt service; and
- Debt service was increased by $17,450 total incremental debt service.

In addition, the evaluation was made as if the release had been incurred in 1978 and reflected in end-of-year balance sheet data, with no adjustments made by the local government to redirect funds 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 4.645 (the index value exceeded by 10 percent of the median post-release fund balance of the marginal local governments, EPA examined the 883 local governments scoring between 4.645 and 9.943 (the index value exceeded by 94 percent of all local governments). The reminder of this discussion presents results of the "post-release" ratio for each of five different threshold levels: – 4.645, – 4.937, – 3.990, – 3.242, and – 2.586. Details of the results are provided in the Background Document supporting this Regional" report.

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 about 2.754 of the 20,189 general purpose local governments serving fewer than 2,550 persons are believed to own USTS, the release costs were imposed on all local governments. Consequently, the average impacts shown exaggerate the actual impacts likely to occur. (Nevertheless, an individual government experiencing all UST release may experience the full effects assumed in estimating the average impacts.) Also, the results assume that no local government makes 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, evaluation of impacts is likely to show increasing performance and ability to accommodate the costs of UST release with increasing threshold values.

Evaluation of Threshold – 4.645

The marginal local governments meeting a threshold of 4.645 (those between the 50th and 56th percentiles on the index test) have an average post-release fund balance of about $73,052,000 and a median post-release fund balance of about $49,000.13 About 72 percent of the marginal local governments have a negative fund balance with a median ratio of total funds per capita equal to – 56. The median debt service per capita is $187. 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 – 4.937

With an increase to threshold of 4.937 (corresponding to the 10 percent value), the average post-release fund balance of the marginal local governments is $1,073,200 and the median post-release fund balance increases to $34,400. The percentage of local governments with negative cash balance increases to about 50 percent. The median ratio of total funds per capita improves marginally to – 25. The median actual debt service per capita decreases to $113. The median ratio of locally derived revenue to total revenues increases to 49 percent, whereas the median ratio of total revenues to total expenses increases slightly to about 48 percent.

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 post-release fund balance decreases slightly to about $38,000. The percentage of local governments with negative fund balances increases slightly, to about 58 percent, while the median ratio of funds per capita increases slightly to about 32. The median ratio of debt service per capita decreases to $127. The median ratio of local revenues to total expenses decreases slightly to 47 percent, whereas the median of total revenues to total expenses decreases slightly to 48 percent.

Evaluation of Threshold – 3.242

At a threshold of 3.242 (corresponding to the 20 percentile value), the average post-release fund balance is $7,968,000 and the median post-release fund balance decreases to about $20,000. The percentage of local governments with negative fund balances decreases to 53 percent, while the median fund balance per capita increases, with a median ratio of debt service per capita decreases to $110. The median ratio of local revenues to total expenses increases to 32 percent, whereas the ratio of total revenues to total expenses remains steady at 48 percent.

Evaluation of Threshold – 2.586

At a threshold of 2.586 (corresponding to the 25 percentile value), the average post-release fund balance is $16,651,000 and the median post-release fund balance improves to about $15,000. The percentage of local governments with negative fund balances decreases to 32 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 "coherence" of their expenses, including an increase in the median number of local revenues to total revenues to 57 percent and the median ratio of total revenues to total expenses to about 54 percent.

Evaluating Improved Households.

EPA has not considered the impacts of tank release on individual households due to the inability of local governments to demonstrate financial responsibility. To date, EPA has not established the financial impacts to local governments (by population) at the 5 percentile threshold scores.
approximately 1.211 million, or 389 households, EPA's analysis of UST ownership patterns suggests that approximately 2 of the 3 USTs, based on an average price of closure of $7,000, the residents would incur a $10.80 per household. 10

The present value of closure costs are estimated to range from $18.00 to $25.60 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 $18.81 per household. Costs range from $14.37 to $34.11 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 $18.81 per household. Costs 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 $18.81 per household. Costs 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 25 percentile, the costs to governments required to close their USTs are estimated to $18.81 per household. Costs range from $17.04 to $70.18 per household for residents served by median governments owning one to three USTs, respectively. These estimates do not take into account the costs per household, because they use the total estimated aggregate cost over a ten-year period. Consequently, these results represent the average of the entire cost associated with closing USTs.

In today's role, EPA is providing for the one of a mechanism for governmental entities. This mechanism, although not strictly a "self-help" mechanism, provides for local government entities with a financial responsibility 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 meet the tests of a financial responsibility mechanism.
to perform corrective action or satisfy third-party claims, the guarantee will be used by the implementing agency will direct the payment of corrective action costs or third-party claims.

EPA believes that the guarantees necessary to secure the implementation of the Clean Air Act are not an unreasonable burden on a municipality. For example, a municipality would be able to obtain a guarantee from the State of New York that if the State failed to meet a particular standard, the guarantee would be used to satisfy the resulting liability. EPA believes that this guarantee is necessary to secure the implementation of the Clean Air Act.

EPA agrees with the comments and has allowed for use of a governmental guarantee with or without a stand-by trust fund.

One commentator noted that a State Attorney General is not necessarily the best guarantor of a State's financial obligations. Another commentator suggested that the Agency's decision not to require a State Attorney General's certificate in the case of this rule would not be sufficient to secure the guarantee. EPA believes that this guarantee is necessary to secure the implementation of the Clean Air Act.

EPA agrees with the Agency that the need for a guarantee should not be used to justify a governmental guarantee with or without a stand-by trust fund.

The Agency is not requiring certification of the State Attorney General. Local governments have strictly defined and enforced limitations on their ability to enter into contracts. These limitations are codified in State laws and constitutional and state by State. The Agency believes that these restrictions imposed on local governments 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 burdens on the part of local governments, EPA intends to keep the rule as proposed. EPA encourages governments to use the guarantee to seek clarification of their authority or other assurances from the Agency. EPA has concluded that allowing local governments to use the fund balance sheet to secure the guarantee should not be used to justify a governmental guarantee with or without a stand-by trust fund.

EPA has decided that allowing local governments to use the guarantee to secure the fund balance sheet to satisfy third-party guarantors is not necessary to secure the implementation of the Clean Air Act. The Agency has, therefore, modified the proposed rule to allow the full-fledged funded security to serve as the basis for a governmental guarantee.

Government Guarantee With Standby Trust

The first alternative-governmental guarantees parallel the corporate guarantee, in that it must include a pledge to fund a standby trust in the event of failure by the third-party guarantor. In addition, the guarantee must be a guarantee with or without a stand-by trust fund.

The Agency does not believe that a State Attorney General is necessary to secure the implementation of the Clean Air Act. Local governments have strictly defined and enforced limitations on their ability to enter into contracts. These limitations are codified in State laws and constitutions and vary by State. The Agency believes that these restrictions imposed on local governments 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 burdens on the part of local governments, EPA intends to keep the rule as proposed. EPA encourages governments to use the guarantee to seek clarification of their authority or other assurances from the Agency. EPA has concluded that allowing local governments to use the fund balance sheet to secure the guarantee should not be used to justify a governmental guarantee with or without a stand-by trust fund.

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Banking Agreement

The Agency believes that the guarantees necessary to secure the implementation of the Clean Air Act are not an unreasonable burden on a municipality. For example, a municipality would be able to obtain a guarantee from the State of New York that if the State failed to meet a particular standard, the guarantee would be used to satisfy the resulting liability. EPA believes that this guarantee is necessary to secure the implementation of the Clean Air Act.
recognizes in this rule that local government trusts already have greater financial stability than private corporations, it has 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 difficulties in providing governmental and private organizations, specifically the municipalities, 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 actions as they are incurred, instead of requiring the guarantor to fund the standby trust fully in advance of anticipated expenditure.

Comments 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 ($20,107)

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 (no such amount needed to have 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 or established by local government entities, including provisions for constructive compensation funds.

The fund balances must be held as cash or investment accounts that will be available in the event of an UST release and not be irrevocably dedicated to use for UST response or for responses to catastrophic events, including UST releases. As discussed below, the Agency is providing three alternatives that may be useful in establishing the fund.

Federal Register / Vol. 58, No. 31 / Thursday, February 18, 1993 / Rules and Regulations 9041

Based on an analysis of Census data on Minnesota municipalities, the Agency believes that the fund balance mechanism is unlikely to be used widely by general purpose governments, because few would use an alternative mechanism to the bond rating and worksheet tests have adequate funds. The fund balance mechanism may be 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 an insurance financial responsibility option should increase the flexibility provided owners and operators in demonstrating financial responsibility. 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 option, the local government would establish a separate fund, dedicated to payment of UST corrective 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 ($20,000, 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.,fdb relief, hurricane relief, water, or other environmental cleanup) as evidence of UST financial responsibility. In the proposed role, EPA required that a fund balance be set aside to cover both emergency costs and other emergency costs incurred by local governments be funded in the amount of $20,000 to serve as a mechanism for demonstrating financial responsibility. Numerous commenters explained that the fund balance mechanism may be a viable option for a state and local emergency response fund. Based on these findings, EPA has added a limited form of a combined emergency response fund to $20,000. 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 no state matching money. A combined fund balance of $20,000 would equal or exceed five times the aggregate financial insurance level for most local government entities, based on the number of USTs owned and operated. This requirement is equivalent to the requirement for the corporate self-insure that firms must have tangible net worth equal to at least 20 times their aggregate financial insurance level. The fund balance must be established in 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 or trust accounts, such as pollution funds and workers' compensation funds, while requiring private companies to establish third-party trusts 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 to financial statements), which are the subject of a separate rule. The Agency is including this option to allow municipalities flexibility in determining the appropriate fund balance, while ensuring that adequate funds
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 required to demonstrate a liability 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 respond 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 now can be used to respond to releases currently meet the $10 million requirement, and (3) a fund balance level of $10 million would be inflexible for most transit systems. Some commenters argued that a larger 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 reserves to manage commingled 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 initially 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 those 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 government entities 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 paying a bond referendum. The Agency is considering that the Tax Reform Act of 1986 might remove the nexus that entities for investing the proceeds of tax exempt bond issues. Thus, the Agency recognizes the possibility that a municipality may not have bonding authority or be able to obtain it, unless necessary for actual payment of debt.

Commenters support the option of allowing use of existing bonds. 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 fund balance as a financial assurance mechanism. The Agency reiterates that it has provided multiple financial responsibility mechanisms to increase the ability of local governments to meet the financial responsibility requirement and seeks 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 charters or, for a publicly-owned electric utility, 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 certification to that entity is issued by the State certification to that entity is issued by the local government. 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 would be incidental and essential to the operation of the fund or trust, it would appear that, in general, the board of directors of a municipality to which the legal authority to establish an UST trust fund. Because the specific authorities of municipalities may vary from State to State, however, and because within a State, the definition and the extent may be appropriate for the board of a municipality to retain 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 Jersey 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 appears 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 costs 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 the cost 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 favored that the investment options typically available to local governments offer minimal higher returns. However, deposits larger than $100,000 would be an acceptable alternative. Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental). Insurance Corporation, exposing a commingled fund to the risk of failure unless alternative assurance was obtained (e.g., from an agency or State governmental).

n the timing of cash needs from an operational fund and from a trust fund are so widely divergent that a prudent manager would be well advised to consider a different mix of investment instruments for the two funds, and consequently would establish separate funds. Because of the substantial stability gains that are available through commingling funds, such as insurance and asset management considerations, EPA has concluded that 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 only as if they so choose. A guaranty or dedicated fund balance may be used to demonstrate financial responsibility for amounts not assured by other mechanisms.

a. Reporting by Owner or Operator

Each government demonstrating financial assurance using the mechanisms promulgated today must notify the implementing agency at the time specified in 5280.118.

b. 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. If the periphery action is required, the 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 of the governments that are not uniformly required to submit data to third-party, however, local governments using the worksheet test must maintain a copy of the underlying financial statement data for use in 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 is required to retain copies of the guaranties or certificates of the State or other issuing governmental unit.

b. 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 rating, 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 eligibility to use the worksheet test,

(2) A copy of the completed worksheet,

(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 eligibility to use the guarantee,

(2) An originally signed and dated guarantee contract, showing the addresses of all tanks for which financial assurance is provided, 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 paragraph (f). If any of these requirements are met,

(4) For guarantees other than States, a copy of the documentation supporting...
the bond rating or worksheet test, because (a) copy the title of the document read aloud from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (b) a copy of the completed worksheets and underlying financial statements, (c) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (d) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (e) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (f) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (g) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (h) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (i) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (j) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (k) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (l) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (m) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (n) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (o) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (p) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (q) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (r) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (s) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (t) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (u) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (v) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (w) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (x) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (y) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating, (z) a copy of the original and signed and dated transmission from Moody's or Standard & Poor's to the government officials giving the answer, the type of bond and the bond rating.

Such evidence must be on file in the agency for at least 5 years.

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) Copies of the authorization that clarifies the details of the fund to the designated purpose:

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

(b) A copy of the authorization that clarifies the details of the fund to the designated purpose:

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

(2) Copies of the authorization that clarifies the details of the fund to the designated purpose:

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

(b) A copy of the authorization that clarifies the details of the fund to the designated purpose:

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(2) Copies of the authorization that clarifies the details of the fund to the designated purpose:

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

(b) A copy of the authorization that clarifies the details of the fund to the designated purpose:

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

(2) Copies of the authorization that clarifies the details of the fund to the designated purpose:

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

(b) A copy of the authorization that clarifies the details of the fund to the designated purpose:

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

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Federal Register / Vol. 58, No. 31 / Thursday, February 16, 1993 / Rules and Regulations

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>
<thead>
<tr>
<th>Category</th>
<th>Number of enti-</th>
<th>Number/ more than</th>
<th>Total USTs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very large govern-</td>
<td>1,300</td>
<td>138</td>
<td>1,438</td>
</tr>
<tr>
<td>Large governments</td>
<td>4,251</td>
<td>3,870</td>
<td>9,121</td>
</tr>
<tr>
<td>Medium governments</td>
<td>7,026</td>
<td>3,942</td>
<td>11,968</td>
</tr>
<tr>
<td>Small special purpose</td>
<td>26,585</td>
<td>2,951</td>
<td>33,536</td>
</tr>
<tr>
<td>districts</td>
<td>802</td>
<td>840</td>
<td>1,642</td>
</tr>
<tr>
<td>Very large special</td>
<td>4,900</td>
<td>4,785</td>
<td>17,385</td>
</tr>
<tr>
<td>Special purpose</td>
<td>23,118</td>
<td>6,117</td>
<td>29,235</td>
</tr>
<tr>
<td>districts</td>
<td>26,480</td>
<td>646</td>
<td>654</td>
</tr>
<tr>
<td>Source: EPA Analysis</td>
<td>83,704</td>
<td>24,523</td>
<td>82,000</td>
</tr>
</tbody>
</table>

EPA estimates that 1,360 very large general purpose local governments own approximately 13,800 USTs, 4,350 large general purpose governments own approximately 5,360 USTs, 9,120 medium general purpose governments own approximately 1,100 USTs, and more than 26,000 small general 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 4,800 large districts own about 17,000 USTs, about 12,500 medium districts own roughly 4,400 USTs, and more than 26,500 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 revenue-
- 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 audits, 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 based on the obtained data was 

- For the purpose of this rule, the phrase "the number of USTs owned" means that they close their UST systems and purchase fuel from retail petroleum.

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

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

- The analysis assumes that there are about 62,000 local government USTs, estimated in the 1982 Census of Governments, for which financial responsibility rule published in October 1988.

- The analysis uses budget data obtained from the 1982 Census of Governments to estimate the relationship between budget and population and then between budget and number of USTs. EPA used population statistics and budget from 1962 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 budget 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 have financial responsibility requirements for corrective action and compensation of third parties. In the baselines are assumed to continue to use these 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 guaranteed) 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.

- EPA estimated the fraction of local government entities that will be able to demonstrate financial responsibility under the promulgated rules by assuming that governments not able to obtain insurance and not required to use State mechanisms to those that choose the least onerous method for which they qualify.
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 amounts of investment grade bonds in amounts greater than $1 million (about 77 percent of all governments with investment grade bonds) are assumed to use the bond rating test. Analysis of data on Minnesota cities suggests that virtually all cities with populations of more than 10,000 have investors-read 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 1997 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 90th 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 1997 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 ensure these guarantees 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 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 equivalently using one of the self-test mechanisms 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) the governments will be able to obtain guarantees. The EIA discusses the sensitivity of the results to alternative assumptions about the availability of guarantees.
Figure 1
Estimated Use of Financial Assurance Mechanisms
(Counties, Municipalities, Townships, School Districts, and Special Districts)\textsuperscript{a}

\begin{itemize}
\item 38.5% Percentage of Governments
\item 88.5% Percentage of USTs
\end{itemize}

\begin{itemize}
\item 1.6% State Fund, Insurance, Risk Retention Group
\item 1.8% Bond Rating
\item 0.1% Worksheet Test
\item 3.9% Fund Balance Mechanism
\item 4.2% Guarantee
\item 0.8% Closure/Retail
\item 1.2% Fuel Purchase
\item 3.0% 2.6%
\item 7.0%
\end{itemize}

\textsuperscript{a} Percentages may not add up to 100 percent due to rounding.


<table>
<thead>
<tr>
<th>Table 2 Summary of Results of Economic Impact Analysis</th>
<th>General Indirect Government</th>
<th>Social Directs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of UST-Owning Governments</td>
<td>Very Large</td>
<td>Large</td>
</tr>
<tr>
<td>Response Under OMB's 1988 Rule</td>
<td>1,259</td>
<td>3,424</td>
</tr>
<tr>
<td>Number of USTs Covered</td>
<td>1,022</td>
<td>1,034</td>
</tr>
<tr>
<td>Annual Cost ($ millions)</td>
<td>2.2</td>
<td>1.6</td>
</tr>
</tbody>
</table>

| Response Under OSHA's 1992 Rule                         | 101        | 396   | 268   | 82    | 569        | 501   | 47     |
| Demonstrating Financial Responsibility by Financial Responsibility | 1,022    | 977   | 517   | 298   | 1,065      | 715   | 47     |
| Number of USTs Remaining in Operation                   | 1.0        | 0.7   | 0.5   | 0.4   | 0.7        | 1.2   | 0.7    | 0.0   |


| Total Cost Savings ($ millions)                          | 1.0        | 0.7   | 0.5   | 0.4   | 1.2        | 0.7   | 0.0    | 0.0   |
Federal Register / Vol. 58, No. 31 / Thursday, February 18, 1993 / Rules and Regulations

4. Cost Impacts

The cost impacts of the rule are measured in terms of the costs of complying with the October 1992 financial responsibility rule and with this rule. Table 2 shows the estimated changes from the baseline by type and size of local government. The actualized total costs of complying with this rule and thus this financial responsibility rule are estimated to be about $126 million, whereas the costs of complying with this rule alone are estimated to be $101 million. The rule, therefore, is estimated to result in an annual net savings of approximately $24.5 million.11 Neither 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.12 EPA estimates that the average annualized savings per local government entity (irrespective of UST ownership) will be about $54, with an average savings of about $185 per UST-owning government. Most of the total savings will be realized in the first year, because the revised compliance schedule required 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 0.003 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 alternate 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.13 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 saved to close their USTs.15

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 tasks 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 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 requirements of Subtitle I. For this reason, the Agency has concluded that a regulatory flexibility analysis is not necessary.

Nevertheless, EPA, as part of its ongoing 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 conclusion that local governments benefit from the mechanisms proposed 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 net savings for local governments of $4.8 million per year. Instead of the savings realized by local governments will be due to a significant decrease in new UST closures. In developing this rule, the Agency has sought to reduce the impacts on all governments regardless of size. This 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 EPA, approximately 89 percent of all small general purpose governments (including 98 percent of all 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 practices ensures that a substantial number of small local governments, such as school districts, which often serve a substantial governmental relationship with a nearby city or county. EPA has estimated that an additional 9 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 able 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 (50 FR 6366), an option considered but not yet proposed would extend the financial responsibility compliance dates from about 12 percent to 2 percent as a result of the additional mechanisms promulgated today.
local governments to retain their USTs. The study would also look into the feasibility of alternative methods of providing fuel (for essential public service operations) without requiring the ownership of USTs by these governments. In addition, the study would assess the continued availability of State financial assistance and insurance 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 closings 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 localities. EPA does not, however, consider a baseline of zero financial responsibility requirement to be a reasonable baseline for analyzing this rule. After review with the 104th Congress, the financial responsibility rule, the Agency determined that small 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 determined 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 2950-0065. An Information Collection Request document has been prepared by EPA (OCR No. 1359.04) and a copy may be obtained from Sandy Ferner, Information Policy Branch, EPA, 401 M Street, SW. (PM-221Y), Washington, D.C. 20460 or by calling (202) 285-2740. 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 2950-0065. 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 24,488 hours, the burden for recording and reviewing the documents to be 218 hours, and the burden for other recordkeeping to be 6,412 hours. The average burden for reading the requirements was estimated to be one hour. The average burden for recording or reviewing 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 verifying 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-221Y, U.S. Environmental Protection Agency, 401 M Street, SW., 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 Golinski."
collection, disfruement, and use of funds by the local government.

* Local government shall have the meaning given to this term by applicable state law and local ordinances.

The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local improvement districts, drainage districts, school districts, 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 of the parties intransit depositories, contiguous ground-water aquifers, or other relationship other than monetary compensation that provides a motivation for the guarantee to provide a guarantee.

* * *

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

§ 280.04 Allowable mechanisms and combinations of mechanisms.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, an owner or operator, including a local government owner or operator, may use one or any combination of the mechanisms listed in §280.05 through 280.120 to demonstrate financial responsibility under this subpart for one or more underground storage tanks and

(b) An owner or operator may use a guarantee under §280.08 to establish financial responsibility only if the Attorney General of the state of which the underground storage tank is located has [have] issued an order 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:

<table>
<thead>
<tr>
<th>Old section no.</th>
<th>New section no.</th>
</tr>
</thead>
<tbody>
<tr>
<td>§280.104</td>
<td>§280.108</td>
</tr>
<tr>
<td>§280.106</td>
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</tr>
<tr>
<td>§280.119</td>
<td>§280.121</td>
</tr>
</tbody>
</table>

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.

(b) 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 notice of termination, as evidenced by the return receipt.

(c) 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 notice of termination, as evidenced by the return receipt.

(d) 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 notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

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

(ii) The effective date of termination; and

(iii) 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 reports specified in this section in §§ 280.110(b) documenting current evidence of financial responsibility to the Director of the implementing agency.

(b) Within 30 days after the owner or operator receives a notice of nonrenewal or cancellation from an underground storage tank shall be reported under §280.53 or §280.61.

(c) 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.C., 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 this subpart;

(iv) Other incapacity of a provider of financial assurance as described in §280.113(b) and

(v) All 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 2500-0996.)

§ 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 on site must be made available upon request of the implementing agency.
(d) An owner or operator must maintain the following types of evidence of financial responsibility: 

(1) An owner or operator using an insurance mechanism specified in §280.95 through 280.101 that is to be used to purchase a copy of the instrument worded as specified.

(2) An owner or operator using a financial test to guarantee, or a local government guarantee supported by the local government to which the financial test must maintain a copy of the chief financial officer's letter worded as specified 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 used to support any bond issue under §280.104(d)(5) 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 a local government guarantee supported by a surety bond, or letter of credit must maintain a copy of the surety bond or letter of credit used to support the guarantee.

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

(7) An owner or operator using a local government guarantee used to support any bond issue under §280.104(d)(5) must maintain a copy of the local government bond issue used to support the guarantee.

(8) An owner or operator covered by a state fund or other state assurance mechanism must maintain on file a copy of any evidence of financial responsibility required by the state under §280.104(d)(5).

(9) An owner or operator whose 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 authorizing the fund, and

(ii) End-year 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 bonding during the year, and the closing balance in the fund.

(3) If the fund is established under §280.107(a)(3) using incremental funding backed by bonding authority, each owner or operator must maintain documentation of the required bonding authority, including either the results of a voter referendum (under §280.107(a)(3)(ii)), 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 guarantee's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) An owner or operator using an insurance mechanism specified in §280.95 through 280.107 must maintain a 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 286.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 CFR part 286 is (are) as follows:

[Pre 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 liability injury and property damage caused by either "sudden 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]

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

The information requirements in this section are 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 owner, operator, or institution issuing a letter of credit to petition the amount of funds specified by the Director, up to the limits of funds provided by the financial assurance mechanism, into the standby trust (if:

(i) The owner or operator fails to establish alternative 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 no other 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

(ii) The conditions of paragraph (b)(1)(i) or (ii)(i) of this section are met)

(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 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 286, 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 in 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 is a claim of injury to property caused by an accidental release arising from operating [owner's or operator's] underground...
storage tank should be paid in the amounts set forth below.

Owner or Operator

Attn: Owner or Operator (Notary)

Date

or (a) 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 those costs in the order in which the Director receives certifications under paragraph (d)(2)(ii) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under §280.11(b)(5)(i), the local government guarantee without standby trust, shall make payments as directed by the Director under the circumstances described in §280.11(d)(6)(ii) 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 the owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certifying mail of such commencement and submit the appropriate forms listed in §280.113(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 §280.112.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 ('Bankruptcy'), U.S. Code, naming a local government or other person named in paragraph (b) of this section 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 §280.113(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 provider of financial assurance as debtor, such provider must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §280.116.

(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 other 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 insured 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 acquired, the owner or operator shall be 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 insurance 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 contractor or guaranteed party uses guaranteed funds to provide the assurance funds which were drawn upon, replenishment shall occur by the date of disbursement from among the mechanisms.

6. Now §280.114 is added to read as follows:

§280.114 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, or Baas, or a Standard & Poor's rating of AAA, AA, or BBB. Where a local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the local government's rating must be the highest rating of either Moody's and Standard & Poor's or the rating of Standard & Poor's for the lowest rating of any general obligation 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.

(b) A local government owning or operating 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, Aa, or Baas, or a Standard & Poor's rating of AAA, AA, 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.

(c) The local government owner or operator or guaranty must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's. If a local government owner or operator or guaranty is not rated by Moody's or Standard & Poor's, the local government owner or operator or guaranty must maintain a copy of its bond rating published within the last 12 months.
The total outstanding obligation of liened assets, excluding refinanced bond issues, exceeds the minimum amount of $1 million. All outstanding general obligation bond issues held by this government that have been issued by Moody’s or Standard & Poor’s are rated 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 42 CFR Part 220 (42 CFR 220.104) as such regulations were constituted on the date shown immediately below.

[Signature]

[Date]

The total outstanding obligation of liened assets, excluding refinanced bond issues, exceeds the minimum amount of $1 million. All outstanding general obligation bond issues held by this government that have been issued by Moody’s or Standard & Poor’s are rated 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 42 CFR Part 220 (42 CFR 220.104) as such regulations were constituted on the date shown immediately below.

[Signature]

[Date]

The total outstanding obligation of liened assets, excluding refinanced bond issues, exceeds the minimum amount of $1 million. All outstanding general obligation bond issues held by this government that have been issued by Moody’s or Standard & Poor’s are rated 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 42 CFR Part 220 (42 CFR 220.104) as such regulations were constituted on the date shown immediately below.

[Signature]

[Date]

The total outstanding obligation of liened assets, excluding refinanced bond issues, exceeds the minimum amount of $1 million. All outstanding general obligation bond issues held by this government that have been issued by Moody’s or Standard & Poor’s are rated 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 42 CFR Part 220 (42 CFR 220.104) as such regulations were constituted on the date shown immediately below.

[Signature]

[Date]
(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 full fiscal year:

(b)(2) Total Revenues: Consists of the sum of cash and all revenues recognized from the sale of goods and services, incurring fees and special revenues, required insurance, revenue from investments, intergovernmental transfers, and investments and unincurred debt. For purposes of this text, the calculation of total revenues shall exclude all transfers made under the direct control of the local government using the financial tests (interfund transfers), liquidation of investments, and accumulations of debt.

(b)(3) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environment and protection, cultural and recreation, community development, economic development, international, education, employment and welfare programs, public funds, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental entities including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers made under the direct control of the local government using the financial test (interfund transfers).

(b)(4) Local Revenues: Consists of total revenues as defined in paragraph (b)(3) of this section minus the sum of all transfers from other governmental entities, including all monies received from Federal, state, or local governmental sources.

(b)(5) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all annual fully funded retirement obligations, includes interest and principal payments on all general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes paid-in kind property and property transfers.

(b)(6) Total funds: Consists of the sum of cash and all revenues recognized from the sale of goods and services, incurring fees and special revenues, required insurance, revenue from investments, intergovernmental transfers, and investments and unincurred debt. For purposes of this test, the calculation of total fund levels shall exclude all transfers made under the direct control of the local government using the financial tests (interfund transfers), liquidation of investments, and accumulations of debt.

(c) 2. Total Expenditures:

(d) 3. Local Revenues: Consists of the sum of total 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 entities including enterprise, debt service, capital projects, and special revenues, excluding transfers made under the direct control of the local government using the financial tests (interfund transfers).

(e) 4. Debt Service: Consists of all interest and principal payments on all long-term credit obligations and all annual fully funded retirement obligations, includes interest and principal payments on all general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes paid-in kind property and property transfers.

(f) 5. Total funds: Consists of the sum of cash and all revenues recognized from the sale of goods and services, incurring fees and special revenues, required insurance, revenue from investments, intergovernmental transfers, and investments and unincurred debt. For purposes of this test, the calculation of total fund levels shall exclude all transfers made under the direct control of the local government using the financial tests (interfund transfers), liquidation of investments, and accumulations of debt.
[Name]

(Title)

(2) A local government owner or operator using the local government’s best efforts to provide financial assurance finds that it no longer meets the requirements of the financial test based on the ten- and fifteen-year financial statements, the owner or operator must obtain alternative coverage within 90 days of the end of the year for which financial statements have been prepared.

42 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 alternative coverage within 90 days following notification of such a finding.

43 If the local government owner or operator fails to obtain alternative assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the ten- and fifteen-year financial statements, or within 10 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.

44 A new $280.106 is added to read as follows:

§280.106 Local government guarantees.

(a) A local government owner or operator may satisfy the requirements of §280.103 by obtaining a guarantee that conforms to the requirements of this section. The guarantee must either be the state in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantee must:

(1) demonstrate that it meets the bond rating test requirements 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.

(3) demonstrate that it meets the local government fund requirements of §280.105(a), §280.105(b), or §280.105(c) and deliver a copy of the chief financial officer’s letter as contained in §280.105(a) to the local government owner or operator.

(4) If the guarantee is a state, the local government guarantee will be considered sufficient for the ten- and fifteen-year financial statements of the local government owner or operator.

Recitals

(1) Guarantee is in state.

(2) Local government owner or operator owns or operates any of the following government storage tanks 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. For each tank, indicate the tank’s number and the tank’s number and the type of storage tank covered by this guarantee).

(3) Local government owner or operator.

(4) Date

[List the date on which the guarantee was signed and the name of the guaranteeing local government.]

(Date)

(Signature)
(3) Guarantor guaranteed to implementing agency in writing 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 [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 [implementing agency] shall fund a standby trust fund to be used in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.

(4) [Local government owner or operator] agrees to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" or "unforeseeable"] accidental releases arising from the operations of the above-identified tank, or to pay for any amount agreed to be paid in settlement of a claim arising from such injury or damage, by the guarantor, upon written instructions from the [implementing agency], shall fund a standby trust fund in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.

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

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

Effective as soon as earlier than 120 days after receipt of such notice by [local government owner or operator], as approved by the implementating agency.

If the guarantor's obligation does not apply to any of the following:
(a) Any obligations 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 [local government owner or operator] arising from, and in the course of, employment by [local government owner or operator];
(c) Bodily injury or property damage arising from the ordinary and customary use, or, or immediate use of any aircraft, motor vehicle or watercraft;
(d) Property damage to any property owned, rented, leased, to the [local government owner or operator], custody, or control of, or occupied by [local government owner or operator] or the use or operation of any property by [local government owner or operator];
(e) Property damage or property damage for which [local government owner or operator] is obligated to pay by reason of the occurrence of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 290.

(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].

If the guarantor shall fail or refuse to fulfill the terms of the guarantee, the [implementing agency] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.

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 [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 [implementing agency] shall fund a standby trust fund to be used in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.

In the event that [local government 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" or "unforeseeable"] accidental releases arising from the operations of the above-identified tank, or to pay for any amount agreed to be paid in settlement of a claim arising from such injury or damage, by the guarantor, upon written instructions from the [implementing agency], shall fund a standby trust fund in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.

If [local government 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" or "unforeseeable"] accidental releases arising from the operations of the above-identified tank, or to pay for any amount agreed to be paid in settlement of a claim arising from such injury or damage, the guarantor, upon written instructions from the [implementing agency], shall fund a standby trust fund in accordance with the provisions of 40 CFR part 208.122, in an amount not to exceed the coverage limits specified above.
Local Government Guarantee Without Mandatorily Trustee Notice

Guarantees made this [date] by [name of lender] to [name of local government owner or operator] under the following terms and conditions: [insert terms and conditions here].

Recitals

1. [Name of local government owner or operator] grants to [name of lender] the right to the extent specified in the [name of lender]’s mortgage or other lien on the [name of property or facility] to ensure the performance of the Guarantor’s obligations.

[Signature of lender or operator]

[Signature of witness or notary]

[Name or entity signing]

[Name or entity signing]

[Name or entity signing]

[Name or entity signing]

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[Name or entity signing]
If the guarantor is a local government, the local government guarantee without standby trust must be 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

Guarantors made this [date] by [name of guarantor], a local government (hereinafter referred to as the "guarantor") formed and organized under the laws of [name of state], of which the [name of implementing agency] and to any and all third parties (hereinafter referred to as "guarantor") hereby certify that this guarantor is in compliance with all of local government owner or operator.

Receives

(1) Guarantor agrees to meet or exceed each one: the local government bond rating test requirements of 40 CFR Part 280.104, the local government financial test requirements of 40 CFR Part 280.125, and the local government fund under 40 CFR Part 280.107(c), 280.107(d), or 280.107(g). (2) Local government owner or operator (new or operator or operator) or 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(s) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered, identify the tank identification number provided in the notice of instrument] for the corresponding state requirements as of the date of this guarantee (see appendix A thereof).

The guarantor states that it will provide the required number of tanks of the designated type at each facility and the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] accidental release.

Coverage is for different tanks at locations, including the type of coverage applicable to each tank or location arising from operating the above-identified underground storage tanks 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 obligee:

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 the guarantor has failed to perform corrective action for releases arising out of the operation of the above-identified tanks] in accordance with [40 CFR Part 280. Subpart F, the guarantor shall make funds available to pay for corrective action in an amount not to exceed the coverage limits specified above.

If [insert: owner or operator] fails to satisfy a judgment in favor of a party either directly or indirectly, arising from the operation of the above-identified tanks] in a release claim, the guarantor agrees to pay the amount agreed to in settlement of a claim arising from or alleged to arise from such release, up to the amount per occurrence and [insert: dollar amount] annual aggregate.

Guarantor agrees to meet or exceed the requirements of the financial responsibility mechanisms specified in paragraph (1), guarantor shall meet within 10 days of such failure, by certified mail, notice to [local government owner or operator], or as evidenced by the receipt receipt.

(5) Guarantor agrees to notify [insert: owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy). The notification of 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 [insert: 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 federal financial responsibility requirements of 40 CFR Part 280. Subpart H for the above-identified tanks] except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective not earlier than 120 days after receipt of such notice by [insert: 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.

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

(a) Any obligation of [local government owner or operator] to its share-holders' compensation disability benefits, or unemployment compensation law or other similar law.

(b) BODILY INJURY to an employee of [insert: local government owner or operator] or to the 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 [40 CFR, part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage.

(c) The fund is dedicated to state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for local government emergency, 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 the full amount of coverage required under [40 CFR, part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage.

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

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

10. Local Government fund. A local government owner or operator may negotiate with any other fund or use in normal operations. A dedicated fund will be considered eligible. If it meets one of the following requirements:

(a) The fund is dedicated to state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for local government emergency, 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 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 that provide the remaining coverage.

(b) The fund is dedicated to state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for local government emergency, 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 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 that provide the remaining coverage.
In combination with other mechanisms(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-and-one-half the amount in the fund.

(2) 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 the formula:

\[ \text{TF} - CF \]

When TF is the total required financial assistance 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. 

(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.

(3) 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, if 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 residential releases" and/or "sudden accidental releases"] in the amount of $ [insert: dollar amount per occurrence and insert: dollar amount] accruing aggregate arising from [open parenthesis] underlying storage tank[s].

Underground storage tanks is/are the following facilities we own and operate in the following localities:

[insert list of facilities and locations.]

I certify that 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. 

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 mechanism(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 issued by local government owner or operator is 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." "A payment is made to the fund once every year for seven years until the fund is fully-funded and [insert: 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."

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last 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(a), as such regulations were constituted on the date shown immediately below.

[Signature] [Name] [Title]

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