

**§ 280.105**

**40 CFR Ch. I (7–1–12 Edition)**

demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert : “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitu-

tional provisions to issue general obligation debt.

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

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

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

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

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

[Date] \_\_\_\_\_  
 [Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_

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

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

[58 FR 9053, Feb. 18, 1993]

**§ 280.105 Local government financial test.**

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

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

(i) *Total revenues*: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted),

and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

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

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

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

(v) *Total funds*: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding em-

ployee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

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

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

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

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

LETTER FROM CHIEF FINANCIAL OFFICER

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

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

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this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280.22 or the corresponding state requirements.]

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

**WORKSHEET FOR MUNICIPAL FINANCIAL TEST***Part I: Basic Information***1. Total Revenues****a. Revenues (dollars)** \_\_\_\_\_

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

**b. Subtract interfund transfers (dollars)** \_\_\_\_\_**c. Total Revenues (dollars)** \_\_\_\_\_**2. Total Expenditures****a. Expenditures (dollars)** \_\_\_\_\_

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

**b. Subtract interfund transfers (dollars)** \_\_\_\_\_**c. Total Expenditures (dollars)** \_\_\_\_\_**3. Local Revenues****a. Total Revenues (from 1c) (dollars)** \_\_\_\_\_**b. Subtract total intergovernmental transfers (dollars)** \_\_\_\_\_**c. Local Revenues (dollars)** \_\_\_\_\_**4. Debt Service****a. Interest and fiscal charges (dollars)** \_\_\_\_\_**b. Add debt retirement (dollars)** \_\_\_\_\_**c. Total Debt Service (dollars)** \_\_\_\_\_**5. Total Funds (Dollars)** \_\_\_\_\_

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

**6. Population (Persons)** \_\_\_\_\_*Part II: Application of Test***7. Total Revenues to Population****a. Total Revenues (from 1c)** \_\_\_\_\_**b. Population (from 6)** \_\_\_\_\_**c. Divide 7a by 7b** \_\_\_\_\_**d. Subtract 417** \_\_\_\_\_**e. Divide by 5,212** \_\_\_\_\_**f. Multiply by 4.095** \_\_\_\_\_**8. Total Expenses to Population****a. Total Expenses (from 2c)** \_\_\_\_\_**b. Population (from 6)** \_\_\_\_\_**c. Divide 8a by 8b** \_\_\_\_\_**d. Subtract 524** \_\_\_\_\_**e. Divide by 5,401** \_\_\_\_\_**f. Multiply by 4.095** \_\_\_\_\_**9. Local Revenues to Total Revenues****a. Local Revenues (from 3c)** \_\_\_\_\_**b. Total Revenues (from 1c)** \_\_\_\_\_**c. Divide 9a by 9b** \_\_\_\_\_**d. Subtract .695** \_\_\_\_\_**e. Divide by .205** \_\_\_\_\_**f. Multiply by 2.840** \_\_\_\_\_**10. Debt Service to Population****a. Debt Service (from 4d)** \_\_\_\_\_**b. Population (from 6)** \_\_\_\_\_**c. Divide 10a by 10b** \_\_\_\_\_**d. Subtract 51** \_\_\_\_\_**e. Divide by 1,038** \_\_\_\_\_**f. Multiply by -1.866** \_\_\_\_\_**11. Debt Service to Total Revenues****a. Debt Service (from 4d)** \_\_\_\_\_**b. Total Revenues (from 1c)** \_\_\_\_\_**c. Divide 11a by 11b** \_\_\_\_\_**d. Subtract .068** \_\_\_\_\_**e. Divide by .259** \_\_\_\_\_**f. Multiply by -3.533** \_\_\_\_\_**12. Total Revenues to Total Expenses****a. Total Revenues (from 1c)** \_\_\_\_\_**b. Total Expenses (from 2c)** \_\_\_\_\_**c. Divide 12a by 12b** \_\_\_\_\_**d. Subtract .910** \_\_\_\_\_**e. Divide by .899** \_\_\_\_\_**f. Multiply by 3.458** \_\_\_\_\_**13. Funds Balance to Total Revenues****a. Total Funds (from 5)** \_\_\_\_\_**b. Total Revenues (from 1c)** \_\_\_\_\_**c. Divide 13a by 13b** \_\_\_\_\_**d. Subtract .891** \_\_\_\_\_**e. Divide by 9.156** \_\_\_\_\_**f. Multiply by 3.270** \_\_\_\_\_

## Environmental Protection Agency

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### 14. Funds Balance to Total Expenses

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

### 15. Total Funds to Population \_\_\_\_\_

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

### 16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 \_\_\_\_\_

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

[Date]

[Signature]

[Name]

[Title]

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

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

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

notify the Director of such failure within 10 days.

[58 FR 9054, Feb. 18, 1993]

### § 280.106 Local government guarantee.

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

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

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

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

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

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

(1) If, in the default or incapacity of the owner or operator, the guarantor