



Financial Responsibility for Storage Tanks

HOW TO REVIEW AN INSTRUMENT

Financial Assurance Working Group
Permitting and Compliance Assistance Program (PCAP)
Division of Waste Management
The Florida Department of Environmental Protection
Updated October 2019

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How to Review a Financial Assurance Instrument.

Presented by the Financial Assurance Working Group.

Please e-mail questions to us – see last slide.

The original presentation on January 10, 2019 during the Storage Tank Compliance Quarterly County Teleconference has been edited to respond to questions asked during that presentation and to include rule changes incorporated on October 13 & 17, 2019. (Most changed slides have an italicized introductory sentence in the notes section.)



How to Review a Storage Tank Financial Assurance Instrument

Objectives

1. What mechanism is being used?
 - Parts A – O of DEP Form 62-761.900(3)
 - Focus on two most used instruments
2. Does FA cover what needs to be covered?
 - Initial considerations • Government exemptions (USTs and ASTs)
 - Tanks/Facilities • Liability types • Liability amounts
3. Is form filled completely and correctly?
 - Website guidance • Completely • Correctly
4. Is supporting documentation included?
 - References and Requirements table

Notes:

FA = financial assurance ≈ FR = financial responsibility
mechanism = part ≈ instrument = document responsibility
UST = underground storage tank AST = aboveground storage tank

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[Slide 2] *Added two bullets to Objective 2. that have their own page later on (slide 5)*

So, how «do» we review a financial assurance instrument?

Here are four aspects of the process:

- Objective 1. Which mechanism is being used?
- Objective 2. Does FA cover what needs to be covered?
- Objective 3. Is the DEP form filled completely and correctly?
- Objective 4. Is all of the supporting documentation required by Rule (and federal code) included?

And then there will be a few miscellaneous details

A note on nomenclature:

“FR” is the requirement to have “FA” documentation. But the terms can be used fairly synonymously.

Think of FA “mechanisms” and “parts” as being the various parts of DEP Form 62-761.900(3) (basically, ‘the blank forms’) and FA “instruments” and “documents” as being the ‘legally binding’ completed and signed documents. But these terms can be used fairly synonymously.

UST = underground storage tank and AST = aboveground storage tank

Note: European quote marks (“«” and “»”) are used mainly to suggest emphasis when reading these notes.



What mechanism is being used? (businesses)

Businesses can use Parts A through G of Form 62-761.900(3) as the primary mechanism

- About 85% of businesses use Part D (Certificate of Insurance) aka COI
- About 12% use Part A (Financial Test – Self Insurance [Letter from CFO])
- About 3% use the other mechanisms
 - Guarantee (Part B), Insurance Endorsement (Part C), Performance Bond (Part E), Letter of Credit (Part F) and Trust Fund (Part G)

All forms parts are available as individual forms on our website:

- <https://floridadep.gov/waste/permitting-compliance-assistance/content/storage-tank-financial-responsibility>

Note: for navigation: the main FR pages have links to the other main pages near the bottom.

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[Slide 3]

Objective number 1: The mechanisms...

Here are some statistics derived from data in the STCM database ...

Although DEP and the EPA allow for the use of 14 primary mechanisms, 2 mechanisms are used by most Owners or Operators:

the Certificate of Insurance – aka COI – and

the Financial Test – aka Self Insurance – aka Letter from the CFO.

We will be referring to the Financial Responsibility website frequently, but you don't need to go there now.

By the way:

aka means 'also known as' and CFO means Chief Financial Officer



What mechanism is being used? (governments)

- Local and State Governments can use (nearly) any part of Form 62-761.900(3) as the primary mechanism (when required to demonstrate FR)
 - Most use a financial test (FT) or bond test
 - Self Insurance (Part A)
 - Bond Rating Test (Part I)
 - Financial Test (Part J)
 - Or insurance (the Certificate of Insurance – Part D – COI)
 - A few use a Guarantee (Parts L and N) or a Government Fund (Part O)
- Most state and federal government entities are exempt from UST FR.

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[Slide 4] *New AST rule does not exempt government ASTs.*

Government agencies own tanks too, and mostly use financial tests, the bond test or insurance. Local government entities have three types of tests to choose from, including the FT businesses use.

.....

Therefore, we will primarily look at the 'Certificate of Insurance' (COI – Part D) and the 'Financial Test – Self Insurance' (Part A) mechanisms during this presentation, with a few mentions of the corporate Guarantee (Part B) and Local Government Financial Test (Part J). There is more detailed guidance on every instrument on the "Form Part web page" for each mechanism.

Note that the AST rule [62-761.421(3)(c), F.A.C.] that went into effect on October 17, 2019 does not adopt 40 CFR 280.90(c) which exempts state and federal governments from UST FR; therefore state and federal government owned ASTs now require FR.



Does FA cover what needs to be covered? (Part 1)

Initial considerations:

- A. Is DEP form used appropriate for Owner/Operator?
- B. Is DEP form used current at time of being signed?
 - Before 1/11/2017 - wording
 - 1/11/2017 – 10/12/19 - “January 2017”
 - After 10/12/2019 - “October 2019”
- C. Insurance company ‘versions’ of COI (identical to DEP form)
- D. Letters of Credit on security paper ([website link](#))

Government exemptions to FR – or not

- USTs (yes) • ASTs (no) • Debts and liabilities of the state (?)

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[Slide 5] *New slide.*

The second objective: Does FA cover what needs to be covered?

You will need to discern if an owner or operator is using an appropriate instrument and if they, or a provider company on their behalf, completed the current DEP form part – the form that was current at the time of completion.

We created DEP form parts ‘that must be used’ (partially) so that inspectors could focus on data on the forms and not the wording of the forms themselves. Another reason was for them to effectively cover AST facilities. (The 40 CFR wording is explicitly for USTs.)

Instruments properly worded before January 11, 2017 that are ‘evergreen’ – i.e., functionally don’t expire – do not require any particular look – they might be on the ‘form’ made available on the DEP website at the time or be retyped. DEP form parts properly completed before October 13, 2019 will be on the “January 2017” form parts and newer documents need to be on the “October 2019” form parts.

Several insurance companies have re-created DEP’s COI (Part D) on their computer systems, but the two-paged form must remain a two-paged document with headers and footers intact and look just like the DEP form. They can move the actual facility list to an attachment and even move signatures to an attachment, but our form must not be changed.

Ah, exceptions: If you see a new letter of credit not on our form, send it to us for review unless they show an e-mail indicating we reviewed it already. See the Letter of Credit guidance on the single-form-part page for more information.

State and federal government owned or operated «USTs» do not require FR. State and federal government owned «ASTs» require FR starting October 17, 2019 [Rule 62-761.420(3)(c), F.A.C.].

There are UST tank owners who have claimed the state exemption who do not meet the adopted federal requirement of ‘having debts and liabilities being debts and liabilities of the state’. For example, colleges and universities in the State University System meet this requirement but others don’t. The ‘don’t meet requirement’ owner/operators need to promptly obtain FR or remove their tanks.

Government-owned facilities using a FT or Fund now have to demonstrate proof of FA within 180 days of the end of the fiscal year [Rule 62-761.420(8) and -762.421(8), F.A.C.] – Private companies have only 120 days (unchanged).



Does FA cover what needs to be covered? (Part 2)

Three parts of coverage:

- A. All tanks at facility
 - All facilities owned/operated
- B. All required liabilities
 - Corrective action
 - Compensating 3rd parties for bodily injury damage caused by (both)
 - Sudden accidental releases
 - Nonsudden accidental releases
- C. Liability amounts
 - Per occurrence
 - Annual aggregate

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[Slide 6]

More of: Does FA cover what needs to be covered?

Here are three parts, or aspects, of coverage:

- All tanks
- All liability types and
- Liability amounts

First (item A.), when reviewing the coverage aspects of an FA instrument, you need to determine if the facility being inspected, and all of its regulated tanks, are covered by FA. Although «all» of a company's facilities with regulated tanks need to have FA, there is probably no way to determine if they all are covered. But you can focus on «this» facility's tanks. We'll explore the four persons who might be the owner/operator later.

Second, you «can» determine if all required liabilities (item B.) are covered.



3 Types of Liability Coverage

Instrument should almost always include

... demonstrate financial responsibility for

taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases

in the amount of ...

1. corrective action
2. compensating third parties ...
3. accidental releases
 - This covers both “sudden” and “nonsudden” accidental releases

If an FA instrument does not cover it all, another instrument must cover the missing parts.

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[Slide 7] *revised fields on form, but not changed intent*

When the federal government set up storage tank FR regulations, they decided that three types of coverage would be required, namely

- Taking corrective action
- Compensating third parties for bodily injury and property damage caused by sudden accidental releases and
- Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases

Furthermore, they decided these three types of coverage could be covered by different policies or different types of FR.

In practice, all FR instruments cover all three types of coverage. Because our forms allow for the federally allowed separation, one of your jobs is to make sure all three types of coverage is included.

Also, make sure the word “and” is used when filling form blanks and not the phrase “and/or” or the word “or”. These are “fatal” errors, given that some courts, we understand, have allowed an insurer to designate which coverage of the “or” was covered «after» a claim was made.

Any missing piece or pieces of coverage most likely shows sloppy form filling and wasn’t intended. We’ve seen several insurance policies that cover ‘everything’, but the certificate and/or the C.F.R. is deficient. We’ve also seen financial tests filled ‘correctly’ that do not cover something when that wasn’t their intention. We’ve not yet seen an instance where coverage was intentionally split between instruments.

The bottom line: if an FA instrument does not cover it all, another instrument must cover the missing parts.

Note: C.F.R. (with periods) will represent the Certificate of Financial Responsibility (Form Part P) while CFR (with no periods) will represent the Code of Federal Regulations (almost always with title and part, e.g., 40 CFR 280)



Liability Amounts

AST & UST Quick Guide

ABOVEGROUND STORAGE TANKS (AST) REQUIRED AMOUNTS OF FINANCIAL RESPONSIBILITY

Facility's Total Tank System Capacity in Gallons	Per Occurrence Coverage	Annual Aggregate Coverage
>\$50 & ≤ 10,000	\$500,000	\$1 Million
> 10,000 & ≤ 30,000	\$1 Million	\$1 Million
> 30,000 & ≤ 250,000	\$1 Million	\$2 Million
> 250,000	\$3 Million	\$6 Million

UNDERGROUND STORAGE TANKS (UST) REQUIRED AMOUNTS OF FINANCIAL RESPONSIBILITY

UST Owner/Operator	Per Occurrence Coverage	Annual Aggregate Coverage
Group 1: Petroleum Marketers (including Producers and Refiners)	\$1 Million	\$1 Million for 100 or fewer Tanks OR \$2 Million for more than 100 Tanks
Group 2: Non-Marketers	\$500,000 if throughput is 10,000 gallons/month or less (annual average) OR \$1 Million if throughput is more than 10,000 gallons/ month (annual average)	\$1 Million for 100 or fewer Tanks OR \$2 Million for more than 100 Tanks

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[Slide 8]

The third part, or aspect, of coverage (item C. on Slide 6) is the Liability amounts, i.e., “Per Occurrence” and “Annual Aggregate” amounts.

Versions of these tables are available on the Financial Responsibility website. (See main page under “Coverage Amounts” or the Form Guidance (FAQs) page under “Tables to Calculate Amounts of FR Needed”)

The required liability amounts are determined by data, some of which we don’t have access to (e.g., throughput), although we can determine a set of minimum required amounts from data we do have.

Just as an example, you may know a particular facility’s AST capacity, but not the capacity at facilities covered by the instrument in another state. You can, however, discern what facility in Florida has the greatest AST capacity.

“Per Occurrence” and “Annual Aggregate” blanks on the DEP form will include single numbers that must be equal to or greater than the required amounts, which, if the Owner/Operator has both types of tanks, will be the larger of the AST-determined and the UST-determined ‘Per Occurrence’, and the larger of the AST-determined and the UST-determined ‘Annual Aggregate’. If they write a sentence or multiple numbers in each blank, that’s not good!

We’ve never seen it, but an owner/operator could use one instrument for part of the required coverage amounts and a second instrument for the rest. This option is actually written into the Certificate of Insurance [paragraph 2(b)].



Is it filled completely and correctly?

- Guidance on Website
 - and on website's form pages
- Examples
 - Certificate of Insurance (Part D)
 - Complete? • Correct?
 - Financial Test (Part A – Self Insurance)
 - Complete? • Correct?

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[Slide 9]

We looked at the first two objectives which were “What mechanism is used” and “Does it cover what it needs to cover.”

Here's the third objective: “Is the form part filled completely and correctly?” This is the main focus of this presentation. We'll look at two of the forms more closely in a few minutes...

But first, there is guidance on the website that will help us with “Is the form part filled completely and correctly?”



Website Guidance (main page)

Storage Tank Financial Responsibility

[Home](#) • [Divisions](#) • [Division of Waste Management](#) • [Permitting and Compliance Assistance Program](#) • [Storage Tank Financial Responsibility](#)

Permitting and Compliance Assistance Program Quick Links

[Permitting and Compliance Assistance Program \(PCAP\)](#)

[PCAP Contact List](#)

[Financial Assurance](#)

[Hazardous Waste Management](#)

[Solid Waste Section](#)

[Storage Tank Compliance](#)

[Waste Reduction](#)

[All Permitting and Compliance Assistance Program Content](#)

[Transition to New Form Parts](#) (effective October 13, 2019)

Storage Tank Financial Responsibility

Financial responsibility requirements exist to ensure that owners and operators of regulated petroleum storage tanks have the financial resources to pay for the cost of corrective action and compensating third parties for bodily injury and property damage that might result from a release from a petroleum storage tank system. A storage tank owner or operator must establish and maintain financial responsibility documentation; this can be accomplished by either working with a financial institution that provides required documentation or completing and passing a financial test (self-insurance). Regulations specify how much financial assurance is required and identify the financial mechanisms that can be used. Financial assurance is required for both Underground Storage Tanks (UST) and Aboveground Storage Tanks (AST).

The Florida Department of Environmental Protection (DEP) does not endorse any particular provider company nor does it attest to the accuracy of any information contained on any other website.

Financial Responsibility Links

For specific information about Storage Tank Financial Responsibility, please choose from these links. (Other pages have links near the bottom of the page.)

- [Coverage Amounts](#)
- [Forms \(Mechanisms\)](#)
- [Form Guidance \(FAQs\)](#)
- [Rules and Related Laws](#)

Other links:

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[Slide 10]

Here is a screen shot of the top of the main Tanks FR webpage. See the added red arrows? They point to links where you'll find form-filling guidance:

- "Transition to new form parts" has been revised for the new rules and forms
- "Coverage Amounts" (unchanged)
- The "Forms (Mechanisms)" page has links to the individual form parts where 'Specific Guidance' is available (which are revised as needed), and
- The "Form Guidance (FAQs)" page is regularly updated.

This presentation will refer you to some of these pages later.



Website Guidance (FAQs)

The FAQs include

3. Do Out-of-Service tanks require FR?

(yes)

9. What financial assurance (FA) documents need to be shown to inspectors?

(reference is given to the (R&R) table on page ii of [Form 62-761.900\(3\)](#))

11. What is "gap insurance" and "retroactive coverage"?

(retroactive coverage is required to remove any gap between policies)

13. Can I continue to use my existing "40 CFR wording" mechanisms?

(only if the period of coverage started before January 2017)

14. What are the Financial Test and related instruments "Period of Coverage" dates?

(short answers: fiscal year plus 120 days or +180 days for governments)

16. Why is "and/or" wording not allowed?

(just don't do it)

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[Slide 11] *updated*

Here are some of the FAQs on the website with mostly glib answers offered here. There were 6 FAQs when the website started and there are now 16, so please visit the FAQs occasionally. Have a look-see today!

A selected few:

- Out-of-Service Tanks
- The documents an inspector should look for
- Gap insurance
- Mechanisms with federal code wording
- Financial Test periods of coverage
- Use of "and/or"

By the way, do you still get asked about ACORD Forms?



Use of “and/or”

Here is an example of improper use of “and/or” and “or”. These are never acceptable when filling a blank on these financial assurance forms.

Certification:

1. Insurer hereby certifies that it has issued to the Insured the liability insurance identified above to provide financial assurance for taking corrective action and/or compensating third parties for bodily injury and property damage caused by
[Insert “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by”]
sudden accidental releases or nonsudden accidental releases in accordance with and subject to the limits of
[Insert “accidental releases” or “sudden accidental releases” or “nonsudden accidental releases” or leave blank if only corrective action is covered]

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[Slide 12] *Revised form appearance, but no change in requirements*

Speaking of “and/or”, here is an example of improper use of both “and/or” and “or”. These are never acceptable when filling a blank on these financial assurance forms. The first blank should have used “and”, and the second blank should have just used “accidental releases”.

This really is important!



Website Guidance (Part P)

Part of the guidance for Part P (the C.F.R.) on the form web page:

Certification of Financial Responsibility Specific Guidance

- "Owner or Operator" name must
 - match the name on mechanism(s)
 - be a legal entity (company listed in Sunbiz.org, government agency or sole proprietor)
 - be one or more of the following: facility owner, tank owner, facility operator or tank operator.
- "Name of Provider (issuing institution)" means the legal entity of the company providing the insurance, bond or guarantee, etc.
 - Enter "self" if the owner or operator is providing a Financial Test or is using only a Fund or Bond Test.
 - If using a Guarantee, enter the Guarantor's name.
- Complete the boxed section (Standby Trust Fund, etc.) when a bond, letter of credit or Guarantee (Form Parts B, K, L or N) is used.
 - Note: a Guarantee will be the primary mechanism and the supporting (if required) test or fund information will go in the boxed section.

[remainder of web page's guidance removed on this slide]

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[Slide 13] *Revised*

Here is an example of form guidance on the FR website: this is for Part P, the C.F.R. Although the guidance is written with the intention to assist the Owner/Operator who completes the form, it is also there to help inspectors know what to look for.

For example, the top bulleted item:

- Owner or Operator (O/O) name [on the C.F.R.] must (1) match the O/O name on mechanism(s), (2) must be a legal entity (company listed in Sunbiz.org, a government agency or the sole proprietor), and (3) must be one or more of the following: facility owner, tank owner, facility operator or tank operator. (The O/O does not have to be identified on the tank registration, but usually is.)
 - If a 'legal entity' meets the requirements of items (1) and (2), and otherwise completes the form properly, we'll accept the certification that the O/O is one of the four 'persons' (item 3) - we'll just believe them.

This slide ends with a sub-bullet:

- Note: a Guarantee will be the primary mechanism and the supporting test or fund information will go in the boxed section.

A sole proprietor, by the way, is a person using their own name and not using a company name. We do not know of any Tanks FR being provided by a sole proprietor.



Certificate of Insurance (Part D) Is it complete?

- Are all blanks filled and attachments present?
- Insurance company name must match policy
 - legal entity name
 - not trademark, fictitious name or abbreviated
- Back to slide 6: All required liabilities included?
 - Corrective Action
 - 3rd Party Liability
 - Accidental Releases

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[Slide 14]

Now to the Insurance Certificate. Is it complete?

- All blanks are to be filled except
 - Un-needed facility list blanks. If “See attachment” is included, all the facility blanks will go un-filled and the accompanying list should be found.
 - (Probably) “Endorsement Number”
 - (Very unlikely) the “accidental releases” blank (because only corrective action is covered) and
 - (Possibly) the claims-made policy checkmark blank.
 - The unchecked “Authority to amend ...” items.
- Make sure all three types of liability are included (here or by other instrument coverage)



Certificate of Insurance (Part D) Is it complete? [continued]

- Signature section:
 - Does the 'authority to amend policy' substantiation appear accurate?
 - COI must have a witness and witness date.
- Additional required documentation
(from the References and Requirements table)
 - Form Part P (the C.F.R.)
 - Signed policy with all amendments and endorsements

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[Slide 15] *The signature section changed with the new Rule, but not the requirements.*

Signature section

- At least one of the 5 items needs to be checked in the 'authority to amend policy' section
- the witness date must be shortly before or any time after the policy issuance date.

I'll show you the References and Requirements table later on – in slides 29 and 30.



Certificate of Insurance (Part D)

Is it correct?

- **Insurer**
 - Institution name, policy # and effective dates must match policy
 - Insurer must be licensed to do business in Florida
- **“Insured” must be legal name of ‘owner or operator’**
 - Same Owner or Operator identified on C.F.R.
 - must be the policy holder or an ‘additional named insured’
- **Back to slide 6:**
 - All facilities and tanks
 - All required liabilities (Cor. Act., 3rd party ...)
 - Liability Amounts

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[Slide 16]

Is it correct?

[read]



Certificate of Insurance (Part D) Is it correct? [continued]

- Signature section:
 - Is at least one of the 'authority to amend policy' options checked?
 - Is witness date shortly before the policy period start (or any time after)?
 - If this is not 'perfect', the value of the insurance policy might be compromised.
 - Like choice of law and venue
- Additional required documentation
 - The policy itself: is policy an environmental policy (or does it include an environmental endorsement)?
 - Does the C.F.R. match the insurance certificate?
 - Same owner/operator and coverage details

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[Slide 17]

Is the Signature section legally binding?

If the certification is 'fake', that is, if it wasn't actually signed after the information in the COI was entered, then the policy might not be 'automatically' corrected for discrepancies, and the person whose signature is used might not be held accountable.

On the Insurance form pages' "Form Specific Guidance" is an "Insurance Checklist" PDF. This is based on one created by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). The primary purpose of this checklist is for O/Os to self-check their documentation. There is a boxed section which we do not expect inspectors to check. These items are "hereby amended" if the answer to question number 3 - concerning insurance company representative's authority to amend the policy being substantiated - is "Yes".

If the facility is otherwise in compliance with regulations and there is a good quality insurance policy evident, but the COI or C.F.R. is deficient, the owner/operator should get these fixed. We've heard management say that if not fixed, enforcement should be started due to their not meeting all FR regulations, but the moment the COI and C.F.R. are corrected, the enforcement should end.

Confirm that Part P and the insurance policy with all amendments and endorsements are present and the top half of the COI page 1 data matches the policy.



Insurance Certificate (example of unacceptable document 1)

Insurer or Risk Retention Group:
HDI Global Insurance Company, (herein referred to as "Insurer")
[Name of Insurer or Risk Retention Group]
161 N Clark St., Chicago, IL 60606
[Business address of Insurer or Risk Retention Group]
"Insurer" is a(n) insurer
[Enter "insurer" or "risk retention group"]
Insured: [redacted] long name; an LLC
[Name of owner or operator]
1311 Bay Industrial Drive, Suite 100 Gibbston, FL 33534
[Business address of owner or operator]
Policy Number: PLD110609 PLD110609 Endorsement Number: 1
[If applicable]
Period of Coverage: 10/1/2017 - 10/1/2018 Policy Effective Date: 10/1/2017

HDI GLOBAL INSURANCE COMPANY
COMMERCIAL GENERAL LIABILITY COVERAGE FORM DECLARATIONS
POLICY NUMBER: GLD1101-09 PRIOR POLICY NUMBER: GLD1101-08
This policy is CLAIMS-MADE if this box is checked: ☐
PLEASE READ POLICY CAREFULLY.
NAMED INSURED AND MAILING ADDRESS: [redacted] short name; Corporation not an LLC
PRODUCER AND MAILING ADDRESS:
Marsh USA Inc.
445 South Street, Suite 210

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[Slide 18]

Here are a couple of slides showing an unacceptable Insurance Certificate (Part D).

- Above the orange zig-zag line is a part of the COI.
- Below the zig-zag line is a part of the accompanying insurance policy declarations page.
 - The insured's names are partially redacted; and yellow ovals and red writing are added to highlight differences.
- Note the Insured name (one ending with "LLC" and one with "Corporation") and policy numbers are different on the two documents.

As the entire policy was not included (itself a deficiency), we could not determine if the "LLC" was an additional named insured on the policy. After all required supporting documentation was reviewed, the "LLC" was seen to be an additional named insured, so the «name» difference turned out to be acceptable.



Insurance Certificate (example of unacceptable document 2)

Certification:

1. "Insurer" hereby certifies that it has issued to the Insured the liability insurance identified above to provide financial assurance for compensating third parties for bodily injury and property damage caused by [Insert "corrective action" and/or "compensating third parties for bodily injury and property damage"] accidental release in accordance with and subject to the limits [Insert "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"]

Ins. Cert.: "corrective action" is not covered

The mechanism(s) demonstrate(s) financial responsibility for compensating third parties for bodily injury and property damage caused by Sudden accidental release for UST and/or AST in the amount of: and property damage

Per Occurrence: \$1,000,000.00 Annual Aggregate: \$1,000,000.00

according to the CFR: "corrective action" is not covered, and only "sudden accidental release" is covered

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[Slide 19]

Here is another part of the unacceptable COI.

- A piece of the COI is above the orange zig-zag line
- And the corresponding part of the accompanying C.F.R. (Part P) is below the zig-zag.
 - Again, red writing is added to highlight differences.
- Liability coverage is differently deficient on the two documents.

The policy, when provided, proved to cover all three types of liability.



Insurance Certificate (example of acceptable document)



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[Slide 20]

In addition, but not shown, the deficient insurance certificate was signed by someone other than the signer of the policy (and not the president), and no embossed (or electronic) seal could be seen on the document copy.

The corrected COI did have an embossed seal. Look carefully: the left image shows an enlargement of the embossed seal on a copy of the original. [Top of seal is to the left. “S E A L” is the largest type in the center of the seal]. A close reading determined this is from HDI Global Insurance Company, the issuer of the policy and COI. Therefore, because there was an embossed seal, the signature on the Certificate was deemed acceptable.

The image on the right shows a different insurance certificate (different company) which had the side of a pencil rubbed lightly over the embossed seal before scanning, making it a little easier to read [Evergreen National Indemnity Company].

Many or even most scanned embossed seals (without pencil highlighting) are entirely invisible. As you will likely be reviewing a copy of Parts C or D, you may not be able to tell if the original has an embossed seal. The owner/operator could lightly run the side of a pencil lead over the original seal before making copies, to make it show up. But most Storage Tank insurance certificates I’ve seen use other methods to demonstrate the signer’s authority.

[Technical note: the blue background was created by ‘selecting’ (clicking on) the PDF document before ‘snagging’ the screen print.]



Insurance Signature Block

From our website:

- Electronic signatures (for both insurer rep and witness) that follow requirements of ESIGN Act and UETA (and industry best practice standards) are acceptable.
- Verify date of witness signature is reasonable (either after the start of the period of coverage or shortly before it started).

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[Slide 21]

We discovered in 2018 that some insurance agents were copy & pasting a previously completed COI form's signature section into a new COI. We knew this first because an inspector noticed the notary date was over a year before the policy issuance date. You might guess this does not meet UETA requirements.



Special for Insurance

We are in the process of updating the list of insurance companies accessible through FIRST:

- Eventually, only complete insurance company names will be listed.
- Duplicates and no-longer-eligibles are being removed from the drop-down list. (About 3/4ths of the names are being removed.)
- Lloyd's Syndicates will have more than one 'usable' name.
- If Certificate or Endorsement has a company not listed on FIRST that appears to be eligible, call us to add it to the list.

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[Slide 22]

Just so you know, we are straightening out the list of Insurers in FIRST.

Currently, Edgar Echevarria has the rights to enter new Insurers into the STCM database, but contact any of us to verify and add 'new' eligible companies.



Financial Test (Part A) (guidance 1)

Financial Test Specific Guidance

- Directions include [Insert "financial test of self insurance" and/or "guarantee"].
 - Insert "financial test of self insurance" when no guarantee [form Part B] is used.
 - Insert "guarantee" when form Part B is completed and all facilities belong to subsidiary(ies).
 - Insert "financial test of self insurance and guarantee" when form Part B is completed but some facilities are owned/operated directly by the guarantor.

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[Slide 23]

Now to the Financial Test (Part A) or “FT” or Self Insurance.

First, we want to communicate the significant difference between “Insurance” and “Self Insurance”. With insurance, a third party – the insurance company – agrees to pay for things according to a contract (the policy); they won’t pay for anything outside the scope of the contract, so the details of that contract are important to us regulators. When using self insurance (that is, passing a financial test), a company demonstrates they are big enough or strong enough to pay for tank mishaps; and they are on the hook for ‘everything’ (no questions asked).

Now back to the outline. Is the FT complete?

Page 1 of the financial test is functionally ‘just like’ page 1 of the insurance certificate, as far as inspecting it goes, except that the third blank asks for «[Insert "financial test of self insurance" and/or "guarantee"]». Here is the guidance regarding the three options to fill this particular blank from the “Financial Test – Self Insurance” webpage (where the form part is available as a fillable separate PDF).



Financial Test (Part A – Part B) Should Part B also be used?

Whoever's data is used in the FT determines 'everything'.

- If "Local Branch, Inc." (tank owner) wants to use a FT, then their data must be used throughout Part A.
 - If they want to use Alternative I, then they have to have filed with SEC or Dun and Bradstreet (etc.) in their branch name.
 - If Alternative I lines 9-12 would all be 'no', then Alt. II must be used (and if Alt. II line 19 is 'no', a Special Report is required).
- If "Local Branch, Inc." (tank owner) wants to reference their parent's filing with SEC, then a Guarantee must be used.
 - The parent company's data will be used in the test.
 - The parent's officers will complete (sign) the FT and Guar.
 - A SBTF in the name of "Local Branch, Inc." is required.

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[Slide 24]

Should the Guarantee – Part B – also be completed?

[read it]



Financial Test (Part A) (guidance 2)

A _____ is also used by this firm to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (§§ 264.143 and 265.143)	\$ _____
Post-Closure Care (§§ 264.145 and 265.145)	\$ _____
Liability Coverage (§§ 264.147 and 265.147)	\$ _____
Corrective Action (§ 264.101(b))	\$ _____
Plugging and Abandonment (§ 144.63)	\$ _____
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

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[Slide 25]

The top of page 2 of the FT (Part A) has an EPA Regulations section. Most storage tank owners don't have other EPA-regulated enterprises, like hazardous waste landfills and underground injection control systems, and can leave the top blank empty along with all the dollar amounts.

If they need to complete the EPA Regulations section, make sure they included the "Total" amount on line 2 of whichever Alternative they use.

Note: the lines without 40 CFR references are intended for "state programs" estimates or amounts.



Financial Test (Part A) (guidance: Alt. I)

Alternative I

- Lines 7 and 8 must both be "YES": confirm "YES" is accurately determined
- Lines 9 – 12: at least one must be "YES"

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[Slide 26]

Is the financial test data correct?

Basically, the CFO – the chief financial officer – certifies the data is correct. In some cases a CPA must confirm this. However, if anything looks suspicious or you're curious (e.g., I don't expect LLCs to report to the SEC), you should confirm the Owner/Operator is reporting to the SEC (etc.).

Do they pass the test?

We can start with the guidance on the form's webpage (shown here, in part).

If using Alternative I, Lines 7 and 8 must both be "YES": check the math to confirm the answers. (For Line 7: Is line 6 greater than \$10 million? Etc.)

Lines 9 to 12 – at least one must be "Yes", so up to three of those lines can be "No" and they still pass. Four "No"s and they cannot use Alternative I.



Financial Test (Part A) (guidance: Alt. II)

Alternative II

- Lines 8 and 9 must be "YES". Confirm the "YES" is accurately determined.
- If Line 10 is "NO" then complete Line 11.
 - When required, Line 11 must be "YES"
 - Confirm the "YES" is accurately determined.
- Complete either Lines 12 - 15 **or** Lines 16 - 18.
 - Lines 12 - 15
 - Check math on Line 14
 - Line 15 must be "Yes"
 - Lines 16 - 18
 - If rated by both firms, both sets of criteria must be met and both ratings shown.
 - (See "Bond Ratings" below)
- If Line 19 is answered "NO," a Special Report must be included.

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[Slide 27]

Alternative II is more complicated, but you can handle it! Again, this slide is from the guidance on the form's webpage.

Jumping down to the bottom... If line 19 is "No", a letter from an independent CPA is a required attachment. The special report, often called an "Agreed Upon Procedures Report", should be clear that the data on lines 4 to 18 are appropriately derived from the latest completed fiscal year's audited financial statements. If this CPA report pre-dates the CFO letter (the signed FT form), it will have to actually identify the CFO letter's dollar amounts (lines 4 to 18). This 'special report' is not the CPA letter included with the Comprehensive Annual Financial Report (CAFR) which will always predate the CFO letter.



Financial Test (Part A) (guidance 3)

Financial Test Specific Guidance (continued)

- Check the math!
- The Chief Financial Officer (CFO) may have a title different from "CFO", such as Comptroller, Vice President of Finance, Treasurer, etc., but the CFO title is unlikely to include the word "assistant". Other individuals may have the authority to sign, but they will be able to produce documentation demonstrating their authorization.

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[Slide 28]

The Specific Guidance includes suggestions on what sort of title the CFO will or won't have. There are times when someone (like an "Assistant ..." or "Deputy ...") has the authority to sign, but they will need to supply documentation to demonstrate this authorization if you ask.



Is supporting documentation included?

References and Requirements

Form Part	Type of FR	Other parts of Form 62-761.900(3) required	Other Documents needed
A	FT: Self-Insurance – Letter From Chief Financial Officer	P (C.F.R.)	+/- special report by ICPA
B	Guarantee	A (FT), H (SBTF) and P	-
C, D	Insurance: C: endorsement or D: certificate	P	signed policy w/ all amendments and endorsements
E	Surety Bond	H (SBTF) and P	Power of Attorney
F	Letter of Credit	H (SBTF) and P	-
G	Funded Trust	P	Certification of acknowledgement, Schedules A and B
H	Standby Trust Fund (SBTF)	B (Guarantee), E (Bond), F (LC), or K or L (Gov. Guarantee), and P	Certification of acknowledgement, Schedules A and B

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[Slide 29] *This slide changed slightly with Rule changes*
Objective number 4. Is supporting documentation included?

Here is a simplified version of the “References and Requirements” table on page ii of Form 62-761.900(3). The table is also available from the FAQs webpage.

See Parts C and D - insurance? See that Part P and a signed policy are required? Even if they say the policy is proprietary (it may well be), they still have to show it to you. There is an FAQ about this. Do honor the policy’s proprietary nature and never show it to anybody who is not a regulator with the need to see it.

Now look at the requirements for Part A - the Financial Test: the special report is only required when Alternative II line 19 is “No”.

Every type of Tanks FR must be accompanied by a C.F.R. – Part P – Certification of Financial Responsibility. Every time an instrument changes, the C.F.R. must be updated.



Is supporting documentation included?

[continued]

References and Requirements

(continued)

Form Part	Type of FR	Other parts of Form 62-761.900(3) required	Other Documents needed
I	FT: Local Governments – Bond Rating Test	P	Bond rating published by S&P or Moody's
J	FT: Local Governments – Financial Test	p	-
K, M	Guarantee: by a State – (K: w/ SBTF, M: w/o SBTF)	+/- H (SBTF) and P	-
L, N	Guarantee: Local Gov. – (L: w/ SBTF, N: w/o SBTF)	I, J or O (FT/Fund) and +/- H (SBTF) and P	-
O	Local Governments – Fund	P	2 or 3 items approximating: ordinance, CAFR, and +/- bonding authority

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[Slide 30] *New resource for Part J mentioned*

This slide has the second half of the R&R table.

Two asides:

- Part J (Local Government Financial Test) includes an involved worksheet. The webpage where the individual form part (where the fillable Part J PDF is found) under “Specific Guidance” provides a link to a Microsoft Excel worksheet that will do all the calculations for you.
- Part O (Local Governments Fund) needs the supporting documentation identified in 40 CFR 280.111(b)(9) [It is rather ‘involved’]. The details are on page 97 of the 119 paged PDF of the adopted Code of Federal Regulations available on our website. Or you can read the requirements under the “Specific Guidance” section on the Local Government Fund web page (where the fillable Part O PDF is found).



Miscellany

Things we do not expect of Inspectors

- Be an expert on insurance policies
- Be an expert on financial statements

We do expect

- Due diligence

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[Slide 31]

Ah, the 'Miscellany' slides.

There are some things we do not ask of inspectors. The members of the Financial Assurance Working Group here in Tallahassee are not experts on insurance and financial statements and we do not expect you to be. When the DEP-required mechanisms are properly completed, we mostly trust that details are properly included.

For example, we do not ask inspectors to determine if an insurance policy has a deductible because a properly signed Florida DEP insurance certificate should cover deductibles regardless of what the actual policy includes. (See Certification paragraph 2.b.)

The EPA has compiled a series of memos – UST Technical Compendium: Financial Responsibility – that identify exclusions that do not meet 'current period of coverage' requirements, such as voluntary tank removal and voluntary tank site investigation exclusions, self-insured retentions (SIRs), and loading and unloading exclusions. We reference this on the individual insurance form part web pages and on the General Guidance (FAQ) webpage under "Reference Manuals". On one hand we don't want inspectors looking for these problems; on the other hand, if you see them, the policy can be deemed deficient. However, a properly signed COI should cause the problems to be amended.

The expertise we claim is that we 'understand' the forms (better now than two years ago), and are fairly good at recognizing problems. We hope that with experience, training presentations like this, and occasional (or frequent) specific questions to us, you will also be "experts on the DEP form parts."

Due diligence in reviewing documents that demonstrate FR is expected, and we hope this presentation helps you to figure out what this 'due diligence' looks like.



Recordkeeping

A few references on Recordkeeping

- 62-761.710(2)(h)
 - Insurance (Parts C or D): maintain in permanent form
 - if no contamination
 - All other FR types: maintain for duration of effective period
- 62-761.710(5) – Recommend *all* FR records be maintained
- 40 CFR 280.111(a)
 - Evidence of all FA mechanisms: permanent record

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[Slide 32] *New slide*

Now, what can you require an owner or operator (“O/O”) to show you?

- Obviously, the current FA mechanism(s) and all required supporting documentation.
- If they have only used insurance (Parts C or D and historical equivalents), you can look at the entire history of insurance certificates (or endorsements) for that O/O.
 - Therefore, you can determine if coverage has been (and require it to be) continuous for that O/O from when their responsibility started.
 - If an insurance policy explicitly covers (or a former policy covered) events back 10 or 15 years, coverage is continuous for that period. (This may be what some call ‘gap insurance’. Retroactive insurance coverage does not need to meet EPA requirements, so could include, e.g., a first dollar Self Insured Retention.)
- If they use anything else (including “Self Insurance” which is actually a financial test),
 - You might only be able to see the current mechanism(s) being used
 - Plus any previously used insurance certificates or endorsements
 - Plus ‘evidence’ of previously used non-insurance mechanisms
 - We think this might just be copies of their old C.F.R.s or a list on a database of mechanisms with their periods of coverage.
 - This does not pose a problem as terminated bonds, letters or credit and trust funds have no continuing value whatsoever, and financial tests ‘expire’ every year.
 - There is not an issue associated with newly discovered old petroleum releases as these non-insurance mechanisms (if properly completed) functionally cover all such occurrences.

[FYI: AST equivalent Rules are 62-762.711(2)(j) and 62-762.711(4), F.A.C.]



External Links to Verify Info

Major government agency databases

- [Sunbiz](#) – legal business name
- [Insurance Regulation](#) – insurance company
- [Financial Services](#) – insurance agent
- [FDIC](#) – bank name and trust powers
- [Circular 570](#) – bond company and liability limit
- [SEC](#) – reported financial statements

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[Slide 33] *Links updated as needed.*

We regularly use these links when we check financial assurance documents.

Links to these and other websites are found on relevant form part web pages.



Recap

Make sure

- DEP Form Parts are used (if issued after 1/11/2017)
 - "October 2019" forms if issued after 10/13/2019
 - Part used is appropriate for the owner or operator
- All coverage is included (no "and/or" language)
 - Corrective action • Compensating 3rd parties • Accidental releases
- Supporting documentation is present
- Properly filled out forms
 - Facility list on (with) instrument (with FDEP FacID)
 - note: no list with C.F.R. any more
 - Tanks listed or counted
 - Legal names of companies used
- **Properly signed documents**

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[[Slide 34] *Details changed with Rule revisions*

Recap: [read it]



Questions?

- You can always e-mail or talk with members of the Financial Assurance Working Group
- Information is on our website –
[Division of Waste Management](#) to [PCAP](#) to [Financial Assurance](#) to [Storage Tank Financial Responsibility](#)
- Please let us know if written guidance is confusing, missing or is otherwise not helpful!
- We are
Tor.Bejnar@FloridaDEP.gov 850-245-8743
(South and SW Districts)
Edgar.Echevarria@FloridaDEP.gov 850-245-8793
(NE and SE Dists.) (Disponible para ayuda en español.)
Susan.F.Eldredge@FloridaDEP.gov 850-245-8740
(Central and NW Districts)



(Last slide of presentation)

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[last slide]

Now it is time for questions.

Note: the pictures on first and last page are from the DEP website page editing "Media browser".