



Summary of Massachusetts Financial Responsibility Requirements for Underground Storage Tank (UST) Systems

Why is Financial Responsibility important?

Many Underground Storage Tank (UST) Systems have released petroleum and hazardous materials into the environment through spills, overfills, and failures of tanks and their piping systems. When these releases contaminate soil and groundwater, they can be very expensive to assess and clean up, and can damage neighboring properties as well as the property on which the UST System is located.

When the U.S. Congress amended Subtitle I of the U.S. Resource Conservation and Recovery Act in 1986, it directed the U.S. Environmental Protection Agency (EPA) to develop financial responsibility regulations for owners and operators of USTs storing petroleum. The Massachusetts Department of Fire Services incorporated the federal Financial Responsibility requirements into the Massachusetts UST Regulation in 1992. After the Massachusetts Legislature transferred the UST Program to MassDEP, the agency revised the Massachusetts UST Regulation in January 2015, and extended financial responsibility requirements to owners and operators of tanks holding hazardous materials as well as petroleum.

What UST systems have to have Financial Responsibility?

Owners or operators of all UST Systems that are covered by the Massachusetts Underground Storage Tank Regulations must demonstrate that they have Financial Responsibility. However, the following types of tanks are exempt from this requirement:

- UST systems containing radioactive material that is regulated under the U.S. Atomic Energy Act of 1954 (42 U.S.C. §2011 et. al.);
- UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the U.S. Nuclear Regulatory Commission under 10 CFR part § 50, app. A;
- UST systems containing low level radioactive waste or its mixture with hazardous waste regulated by the U.S. Nuclear Regulatory Commission and the MA Department of Public Health;
- UST systems that are part of a storm water or wastewater treatment facility not regulated under section 402 or 307(b) of the federal Clean Water Act or the Massachusetts Clean Water Act (M.G.L. c. 21 §§ 26-53);
- Tanks storing heating oil used on the premises where it is stored (consumptive use tanks);
- Farm and residential tanks of 1,100 gallons or less capacity holding motor fuel used for noncommercial purposes;
- Emergency spill and overfill tanks; and
- UST systems owned by state or federal government agencies.

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How much Financial Responsibility does each owner or operator need to have?

Two kinds of Financial Responsibility are required for each UST System:

1. For each occurrence of a release of regulated substance into the environment:
 - An owner or operator of an UST system(s) handling an average of 10,000 gallons of regulated substance per month or less (based on their annual throughput for the previous calendar year) must have at least \$500,000.
 - An owner or operator of UST systems handling an average of more than 10,000 gallons of regulated substance per month (based on the annual throughput for the previous calendar year) must have at least \$1 million.
2. For annual aggregate cleanup and third party damage expenses related to a release of regulated substance into the environment:
 - An owner or operator of 1-100 tanks must have at least \$1 million to cover annual aggregate expenses.
 - An owner or operator of 101 tanks or more must have at least \$2 million to cover annual aggregate expenses.

What options are available for meeting the Financial Responsibility requirements?

This guidance describes the options that are available for meeting the Financial Responsibility requirements in a series of charts, found at:

<https://www.mass.gov/media/1526391>

- Chart 1 describes the mechanisms that are available to UST system owners and operators to meet the Financial Responsibility requirements.
- Charts 2 and 3 provide eligibility details for two specific mechanisms, the Financial Test of Self-Insurance and the Guarantee, respectively.
- Chart 4 describes additional mechanisms available to local governments that own and operate UST systems; these mechanisms cannot be used by UST system owners and operators that are not local governments.

This guidance also provides the following in appendices, found at:

<https://www.mass.gov/media/971561>

- Appendix 1 is a template for the Certification of Financial Responsibility (described below).
- Appendix 2 is a worksheet that must be used by UST system owners and operators that are not local governments to demonstrate that they are eligible to use the “Financial Test of Self-Insurance.”
- Appendix 3 is a worksheet that must be used by local governments to calculate their “Financial Index” that is the basis for determining eligibility for the Local Government Financial Test mechanism (for local governments that use this option).

Please note that only local government UST system owners and operators can use the Financial Responsibility mechanisms described in Chart 4. Local government UST system owners and operators may also use any of the Financial Responsibility

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mechanisms described in Charts 1-3 except the UST Petroleum Product Cleanup Fund, also known as the “21J Fund” (see Chart 1).

Local governments are:

- (1) Cities, municipalities and towns, separately chartered and operated special districts (including, but not limited to local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution in the Commonwealth; and
- (2) Special districts and independent school districts established by cities, municipalities or towns, and other general purpose governments to provide essential services.

When does an UST System owner or operator need Financial Responsibility?

Financial Responsibility that meets the requirements described above needs to be established when a regulated substance is introduced into the UST system. The owner must include information about their Financial Responsibility mechanism when the UST system is registered in the MassDEP UST Data Management System. If an UST system’s Financial Responsibility mechanism changes (e.g., from one type to another or coverage amounts are changed), the UST system’s registration in the MassDEP UST Data Management System must be updated within 30 days of the change.

The amount of annual aggregate coverage must be reviewed whenever additional tanks are acquired or installed. If the acquisition or installation of additional tanks brings the number of tanks for which Financial Responsibility must be provided to more than 100, the owner or operator must obtain annual aggregate coverage of \$2 million within 60 days of the UST system’s installation. The owner or operator must also update the UST system’s registration in the MassDEP Data Management System with the new financial assurance data within 30 days of obtaining the new Financial Responsibility mechanism.

What records do UST system owners and operators need to keep to document that they have obtained adequate financial responsibility for their UST systems?

The recordkeeping requirements vary according to the Financial Responsibility mechanism that an UST system owner or operator is using to meet the Financial Responsibility requirements, as described in Charts 1 and 4.

In addition to the recordkeeping requirements for each mechanism, the UST system owner or operator must keep an up-to-date “Certification of Financial Responsibility” on file. This Certification lists all of the mechanisms that are currently being used to meet the required Financial Responsibility coverage and the dollar amount of coverage that each mechanism provides. The Certification is required by the U.S. Environmental Protection Agency’s Underground Storage Tank Regulation [40 CFR 280.111(11)]. The Massachusetts UST Regulation [310 CMR 80.59(3)] requires that specific language be used for this Certification. Appendix 1 contains a template for this Certification.

Please note that the Certification of Financial Responsibility is different from any Certificate of Insurance that would be provided by a qualified insurer or risk retention group documenting coverage by a specific policy or an endorsement to an existing policy that an UST owner or operator may purchase to comply with all or part of the Financial Responsibility requirements. The Certificate of Insurance states that the insurance company will pay for specified damages, injuries or losses, but does not describe any other mechanisms that the owner or operator is using to fully comply with the Financial Responsibility requirements (which need to be listed on the Certification of Financial Responsibility).

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A new Certification of Financial Responsibility must be prepared each time a mechanism is changed or replaced. When MassDEP staff inspects an UST system, they will verify Financial Responsibility records, and the Certification must be provided to MassDEP inspectors within seven days of receiving a request for it.

What Financial Responsibility records must be submitted to MassDEP?

Charts 1 and 4 describe the submittal requirements for each Financial Responsibility mechanism.

For more information:

- MassDEP's Underground Storage Tank Regulation:
<https://www.mass.gov/regulations/310-CMR-8000-underground-storage-tank-ust-systems>
The Financial Responsibility section of the regulation (310 CMR 80.51 *et. seq.*) includes the specific language that is required for certain mechanisms and demonstrations, as well as helpful work sheets to ensure that all of the requirements for the Financial Test of Self-Insurance (including requiring calculations) are met. These worksheets can also be found in Chart 4 of this package.
- If your UST System relies on the Massachusetts Petroleum Product Cleanup Fund (established by M.G.L. c. 21J and operated by the Massachusetts Department of Revenue) to meet all or part of your Financial Responsibility obligations, you can find the status of your System's Certificate of Compliance at: <https://wfb.dor.state.ma.us/UST.Public/WebPages/Public/Login.aspx>
- EPA Financial Responsibility Reference Manual:
<https://www.epa.gov/ust/financial-responsibility-underground-storage-tanks-reference-manual>
Please note that while this "Reference Manual" is based on the federal UST financial responsibility requirements, it provides useful information and insight for understanding and reviewing state-specific financial responsibility mechanisms.
- If you have questions about Financial Responsibility or other UST requirements, contact the MassDEP UST Hotline by email at DEP.UST@mass.gov or by telephone at 617-556-1035, extension 2.

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