

ILLINOIS POLLUTION CONTROL BOARD
April 6, 1989

IN THE MATTER OF:)
)
UST FINANCIAL ASSURANCE) R89-4
USEPA REGULATIONS (10/26/88))

PROPOSAL FOR PUBLIC COMMENT

PROPOSED ORDER OF THE BOARD (by J. Anderson):

Pursuant to Section 22.4(e) of the Environmental Protection Act (Act), the Board proposes to add to the UST underground storage tank regulations.

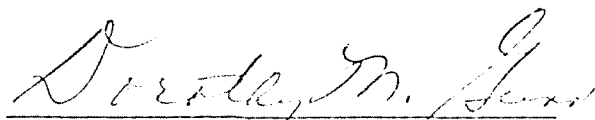
Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(e) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Section 22.4(e) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UST rules are found at 40 CFR 280. This rulemaking updates Illinois' UST rules to correspond with major federal amendments which appeared at 53 Fed. Reg. 43370, October 26, 1988.

This proposal supplements the February 2, 1989 proposal in R88-27, which appeared on March 3, 1989, at 13 Ill. Reg. 2650. This proposal assumes that R88-27 will be adopted prior to this proposal.

This Order is supported by a proposed Opinion adopted this same day. The Board will receive public comment on the proposal for a period of 45 days following publication in the Illinois Register. Because of its length, the text of the proposal will not be published in the Environmental Register, or appear in the Opinion volumes. The complete text of the proposed rules follows.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Order was adopted on the 6th day of April, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL
AND UNDERGROUND STORAGE TANK PROGRAMS

PART 731
UNDERGROUND STORAGE TANKS

Section	
731.101	Definitions and exemptions <u>(Repealed)</u>
731.102	Interim prohibitions <u>(Repealed)</u>
731.103	Notification Requirements <u>(Repealed)</u>

SUBPART H: FINANCIAL RESPONSIBILITY

<u>Section</u>	
<u>731.190</u>	<u>Applicability</u>
<u>731.191</u>	<u>Compliance Dates</u>
<u>731.192</u>	<u>Definitions</u>
<u>731.193</u>	<u>Amount and Scope of Required Financial Responsibility</u>
<u>731.194</u>	<u>Allowable Mechanisms and Combinations</u>
<u>731.195</u>	<u>Financial Test of Self-insurance</u>
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<u>731.197</u>	<u>Insurance or Risk Retention Group Coverage</u>
<u>731.198</u>	<u>Surety Bond</u>
<u>731.199</u>	<u>Letter of Credit</u>
<u>731.202</u>	<u>Trust Fund</u>
<u>731.203</u>	<u>Standby Trust Fund</u>
<u>731.204</u>	<u>Substitution of Mechanisms</u>
<u>731.205</u>	<u>Cancellation or Nonrenewal by Provider</u>
<u>731.206</u>	<u>Reporting</u>
<u>731.207</u>	<u>Recordkeeping</u>
<u>731.208</u>	<u>Drawing on Financial Assurance</u>
<u>731.209</u>	<u>Release from Financial Assurance Requirement</u>
<u>731.210</u>	<u>Bankruptcy or other Incapacity</u>
<u>731.211</u>	<u>Replenishment</u>
731.900	Incorporations by reference <u>(Repealed)</u>
731.901	Compliance Date <u>(Repealed)</u>
Appendix A	Notification Form

AUTHORITY: Implementing Section 22.4(e) and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1022.4(e) and 1027).

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. , effective ; amended in R89-4 at 13 Ill. Reg. , effective .

SUBPART H: FINANCIAL RESPONSIBILITY

Section 731.190 Applicability

- a) This Subpart applies to owners and operators of all petroleum UST

systems except as otherwise provided in this Section.

- b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in Section 731.191.
- c) State and federal government entities whose debts and liabilities are the debts and liabilities of the State or the United States are exempt from the requirements of this Subpart.
- d) The requirements of this Subpart do not apply to owners and operators of any UST system described in Section 731.110 (b) or (c).
- e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in Section 731.191.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.191 Compliance Dates

Owners of petroleum underground storage tanks are required to comply with the requirements of this Subpart by the following dates:

- a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration or the Rural Electrification Administration: Immediately.
- b) All petroleum marketing firms owning 100 through 999 USTs: October 26, 1989.
- c) All petroleum marketing firms owning 13 through 99 USTs at more than one facility: April 26, 1990.
- d) All petroleum UST owners not described in subsections (a), (b) or (c), including units of local government: October 26, 1990.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.192 Definitions

When used in this Subpart, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Bodily injury" means bodily injury, sickness or disease sustained by

a person, including death resulting from any of these at any time. However, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

BOARD NOTE: Derived from 40 CFR 280.92, as adopted at 53 Fed. Reg. 43370, October 26, 1988, modified to insert the Insurance Services Office definition.

"Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

"Director of the Implementing Agency". See Section 731.114.

"Environmental damage" means the injurious presence in or upon land, the atmosphere or any watercourse or body of water of solid, liquid, gaseous or thermal contaminants, irritants or pollutants.

BOARD NOTE: This term is used in the definition of "pollution incident".

"Financial reporting year" means:

The latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

A 10-K report submitted to the Securities Exchange Commission;

An annual report of tangible net worth submitted to Dun and Bradstreet; or

Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

By USEPA or the State to require corrective action or to recover the costs of corrective action;

By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

BOARD NOTE: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate persons, refers to the person that is obtaining or has obtained financial assurance.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Pollution incident" means emission, discharge, release or escape of pollutants into or upon land, the atmosphere or any watercourse or body of water, provided that such emission, discharge, release or escape results in "environmental damage". The entirety of any such emission, discharge, release or escape shall be deemed to be one "pollution incident". "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes materials to be recycled, reconditioned or reclaimed. The term "pollution incident" includes an "accidental release" or an "occurrence".

BOARD NOTE: This definition is used in the definition of "property damage."

"Property damage" means

Physical injury to, destruction of or contamination of tangible property, including all resulting loss of use of that property; or

Loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use or rendered inaccessible because of a "pollution incident".

This term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage do not include corrective action associated with releases from tanks which are covered by the policy.

BOARD NOTE: Derived from 40 CFR 280.92, as adopted at 53 Fed. Reg.

43370, October 26, 1988, modified to insert the Insurance Services Office definition.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in Section 731.195 through 731.203, including a guarantor, insurer, risk retention group, surety or issuer of a letter of credit.

"Substantial business relationship" means that one business entity has an ownership interest in another.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Unit of local government" is as defined in the Illinois Constitution, Art. VII, Section 1.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.193 Amount and Scope of Required Financial Responsibility

a) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility 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 in at least the following per-occurrence amounts:

1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1 million.

2) For all other owners or operators of petroleum underground storage tanks: \$500,000.

b) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility 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 in at least the following annual aggregate amounts:

1) For owners or operators of 1 to 100 petroleum underground storage tanks: \$1 million; and

2) For owners or operators of 101 or more petroleum underground storage tanks: \$2 million.

- c) For the purposes of subsections (b) and (f) only, a "petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.
- d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
 - 1) Taking corrective action;
 - 2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
 - 3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsection (a) and (b).
- e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
- f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
- g) The amounts of assurance required under this Section exclude legal defense costs.
- h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.194 Allowable Mechanisms and Combinations

- a) Subject to the limitations of subsections (b) and (c), an owner or operator may use any one or combination of the mechanisms listed in Sections 731.195 through 731.203 to demonstrate financial responsibility under this Subpart for one or more underground storage tanks.
- c) An owner or operator may use self-insurance in combination with guarantee only if, for the purpose of meeting the requirements of the financial test under this Subpart, the financial statements of the

owner or operator are not consolidated with the financial statements of the guarantor.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.195 Financial Test of Self-insurance

- a) An owner or operator, or guarantor, may satisfy the requirements of Section 731.193 by passing a financial test as specified in this Section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.
- b) Financial Test
 - 1) The owner or operator, or guarantor, shall have a tangible net worth of at least ten times:
 - A) The total of the applicable aggregate amount required by Section 731.193, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility for UST systems to USEPA pursuant to 40 CFR 280, to the Fire Marshal pursuant to this Part or to implementing agencies of UST programs in other states authorized by USEPA pursuant to 40 CFR 281;
 - B) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates and amount of liability coverage for which a financial test is used to demonstrate financial responsibility for hazardous waste facilities to USEPA pursuant to 40 CFR 264 or 265, to the Agency pursuant to 35 Ill. Adm. Code 724 or 725 or to other state agencies authorized by USEPA to administer hazardous waste programs pursuant to 40 CFR 271.
 - C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility for underground injection wells to USEPA pursuant to 40 CFR 144, to the Agency pursuant to 35 Ill. Adm. Code 704, to the Department of Mines and Minerals pursuant to 62 Ill. Adm. Code 240 or to other state agencies authorized to administer underground injection control programs pursuant to 40 CFR 145.
 - 2) The owner or operator, or guarantor, shall have a tangible net worth of at least \$10 million.
 - 3) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in subsection (d).
 - 4) The owner or operator, or guarantor, shall either:

- A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration; or
 - B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- 5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion or a "going concern" qualification.
- c) RCRA Financial Test
- 1) The owner or operator, or guarantor shall meet the financial test requirements of 35 Ill. Adm. Code 724.247(f)(1) substituting the appropriate amounts specified in Section 731.193(b)(1) and (b)(2) for the "amount of liability coverage" each time specified in the Section.
 - 2) The fiscal year-end financial statements of the owner or operator, or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
 - 3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
 - 4) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in subsection (d).
 - 5) If the financial statements of the owner or operator, or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:
 - A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, with the amounts in such financial statements; and
 - B) In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.
- d) The Board incorporates by reference 40 CFR 280.95(d) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. To demonstrate that it meets the

financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, shall 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 provided by 40 CFR 280.95(d), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

- e) If an owner or operator using the test to provide financial assurance finds that the owner or operator no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
- f) The Fire Marshal may require reports of financial condition at any time from the owner or operator, or guarantor. If the Fire Marshal finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of subsection (b) or (c) and (d), the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.
- g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that the owner or operator no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Fire Marshal that the owner or operator no longer meets the requirements of the financial test, the owner or operator shall notify the Fire Marshal of such failure within 10 days.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.196 Guarantee

- a) An owner or operator may satisfy the requirements of Section 731.193 by obtaining a guarantee that conforms to the requirements of this Section. The guarantor shall have an ownership interest in the owner or operator.
- b) Within 120 days after the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of Section 731.195 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Section 731.195(d) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Fire Marshal notifies the guarantor that the guarantor no longer meets the requirements of the financial test of Section 731.195(b) or (c) and (d), the guarantor shall notify the

owner or operator within 10 days of receiving such notification from the Fire Marshal. In both cases, 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 shall obtain alternative coverage as specified in Section 731.210(c).

c) The Board incorporates by reference 40 CFR 280.96(c) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. The guarantee must be worded as provided in 40 CFR 280.96(c), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

d) An owner or operator who uses a guarantee to satisfy the requirements of Section 731.193 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instruction from the Fire Marshal under Section 731.208. This standby trust fund must meet the requirements specified in Section 731.203.

e) Additional requirements for guarantors.

1) The guarantor shall have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 (Ill. Rev. Stat. 1987, ch. 32, par. 5.05 or Section 105.05 of the General Not-for-profit Corporation Act of 1986 (Ill. Rev. Stat. 1987, ch. 32, par. 105.05.

2) The guarantor shall execute the guarantee in Illinois. The guarantee shall be accompanied by a letter signed by the guarantor which states that:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee is governed by Illinois law; and,

C) The name and address of the guarantor's registered agent for service of process.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.197 Insurance or Risk Retention Group Coverage

a) An owner or operator may satisfy the requirements of Section 731.193 by obtaining liability insurance that conforms to the requirements of this Section from a qualified insurer or risk retention group. Such insurance must be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

b) The Board incorporates by reference 40 CFR 280.97(b) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no

future editions or amendments. Each insurance policy must be amended by an endorsement worded as specified in 40 CFR 280.97(b)(1), or evidenced by a certificate of insurance worded as specified in 40 CFR 280.97(b)(2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

- c) Each insurance policy must be issued by an insurer or a risk retention group which is licensed by the Illinois Department of Insurance.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.198 Surety Bond

- a) An owner or operator may satisfy the requirements of Section 731.193 by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond shall be licensed by the Illinois Department of Insurance.
- b) The Board incorporates by reference 40 CFR 280.98(b), as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. The surety bond must be worded as provided in 40 CFR 280.98(b), except that instructions in brackets must be replaced with the relevant information and the brackets deleted.
- c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
- d) The owner or operator who uses a surety bond to satisfy the requirements of Section 731.193 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Fire Marshal under Section 731.208. This standby trust fund must meet the requirements specified in Section 731.203.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.199 Letter of Credit

- a) An owner or operator may satisfy the requirements of Section 731.193 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section. The issuing institution shall be an entity with authority to issue letters of credit and whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies.
- b) The Board incorporates by reference 40 CFR 280.99(b) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. The letter of credit must be worded as provided in 40 CFR 280.99(b), except that instructions in brackets

are to be replaced with the relevant information and the brackets deleted.

- c) An owner or operator who uses a letter of credit to satisfy the requirements of Section 731.193 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Fire Marshal shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Fire Marshal under Section 731.208. This standby trust fund must meet the requirements specified in Section 731.203.
- d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.202 Trust Fund

- a) An owner or operator may satisfy the requirements of Section 731.193 by establishing a trust fund that conforms to the requirements of this Section. The trustee shall be an entity which has authority to act as trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Foreign Corporations as Fiduciaries Act. (Ill. Rev. Stat. 1987, ch. 17, par 2801 et seq.)
- b) The wording of the trust agreement must be identical to the wording specified in Section 731.203(b)(1), and must be accompanied by a formal certification of acknowledgement as specified in Section 731.203(b)(2). In addition, the owner or operator and trustee shall agree that Illinois law governs the trust.
- c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.
- d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Fire Marshal for release of the excess.
- e) If other financial assurance as specified in this Subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Fire Marshal for release of the excess.

- f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the Fire Marshal shall instruct the trustee to release to the owner or operator such funds as the Fire Marshal specifies in writing.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.203 Standby Trust Fund

- a) An owner or operator using any one of the mechanisms authorized by Sections 731.196, 731.198 or 731.199 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Foreign Corporations as Fiduciaries Act. (Ill. Rev. Stat. 1987, ch. 17, par 2801 et seq.)
- b) The Board incorporates by reference 40 CFR 280.103(b) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. The standby trust agreement must be worded as provided in 40 CFR 280.103(b), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. In addition, the owner or operator and trustee shall agree that Illinois law governs the trust.
- c) The Fire Marshal shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Fire Marshal determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
- d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this Subpart.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.204 Substitution of Mechanisms

- a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this Subpart, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of Section 731.193.
- b) After obtaining alternate financial assurance as specified in this Subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.205 Cancellation or Nonrenewal by Provider

- 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.
- 1) Termination of a guarantee, a surety bond or a letter of credit must not occur until 120 days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt; or
 - 2) Termination of insurance or risk retention group coverage must not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in Section 731.206, the owner or operator shall obtain alternate coverage as specified in this Section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the Fire Marshal of such failure and submit:
- 1) The name and address of the provider of financial assurance;
 - 2) The effective date of termination; and
 - 3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with Section 731.207(b).

(Source: Added at 13 Ill. Reg. , effective)

Section 731.206 Reporting

- a) An owner or operator shall submit the appropriate forms listed in Section 731.207(b) documenting current evidence of financial responsibility to the Fire Marshal:
- 1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under Section 731.153 or 731.161;
 - 2) 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:
 - A) Commencement of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C., naming a provider of financial assurance as a debtor,
 - B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

- C) Failure of a guarantor to meet the requirements of the financial test,
- D) Other incapacity of a provider of financial assurance; or
- 3) As required by Section 731.195(g) and 731.205(b).
- b) An owner or operator shall certify compliance with the financial responsibility requirements of this Part as specified in the new tank notification form when notifying the Fire Marshal of the installation of a new underground storage tank under Section 731.122.
- c) The Fire Marshal may require an owner or operator to submit evidence of financial assurance as described in Section 731.207(b) or other information relevant to compliance with this Subpart at any time.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.207 Recordkeeping

- a) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Subpart for an underground storage tank until release from the requirements of this Subpart under Section 731.209. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the Fire Marshal.
- b) An owner or operator shall maintain the following types of evidence of financial responsibility:
 - 1) An owner or operator using an assurance mechanism specified in Section 731.195 through 731.200 or 731.202 shall maintain a copy of the instrument worded as specified.
 - 2) An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements 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 shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
 - 4) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

- 6) The Board incorporates by reference 40 CFR 280.107(b)(6) as adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. An owner or operator using an assurance mechanism specified in Section 731.195 through 731.202 shall maintain an updated copy of a certification of financial responsibility worded as provided in 40 CFR 280.107(b)(6), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The owner or operator shall update this certification whenever a financial assurance mechanism used to demonstrate financial responsibility changes.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.208 Drawing on Financial Assurance

- a) The Fire Marshal shall require the guarantor, surety or institution issuing a letter of credit to place the amount of funds stipulated by the Fire marshal up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:
- 1) Both:
 - A) The owner or operator fails to establish alternate 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
 - B) The Fire Marshal determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified ESDA pursuant to Subpart E or F of a release from an underground storage tank covered by the mechanism; or
 - 2) The conditions of subsections (b)(1) or (b)(2)(A) or (B) are satisfied.
- b) The Fire Marshal shall draw on a standby trust fund when:
- 1) The Fire Marshal makes a final determination that a release has occurred and immediate or 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 Subpart F; or
 - 2) The Fire Marshal has received either:
 - A) Certification from the owner or operator and third-party liability claimant and from attorneys representing the owner or operator and the third-party liability claimant that a third-party liability claim should be paid. The Board incorporates by reference 40 CFR 280.108(b)(2)(i) as

adopted at 53 Fed. Reg. 43370, October 26, 1988. This Section incorporates no future editions or amendments. The certification must be worded as provided in 40 CFR 280.108(b)(2)(i), except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. Or,

- B) 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 Fire Marshal determines that the owner or operator has not satisfied the judgment.

- C) If the Fire Marshal determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment must be corrective action costs necessary to protect human health and the environment. The Fire Marshal shall pay third-party liability claims in the order in which the Fire Marshal receives certifications under subsection (b)(2)(A), and valid court orders under subsection (b)(2)(B).

(Source: Added at 13 Ill. Reg. , effective)

Section 731.209 Release from Financial Assurance Requirement

An owner or operator is no longer required to maintain financial responsibility under this Subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Subpart G.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.210 Bankruptcy or other Incapacity

- a) Within 10 days after commencement of a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy), naming an owner or operator as debtor, the owner or operator shall notify the Fire Marshal by certified mail of such commencement and submit the appropriate forms listed in Section 731.207(b) documenting current financial responsibility.

- b) Within 10 days after commencement of a voluntary or involuntary proceeding under 11 U.S.C (Bankruptcy), naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in Section 731.196.

- c) 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 or letter of credit. The owner or operator shall 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, the owner or operator shall notify the Fire Marshal.

(Source: Added at 13 Ill. Reg. , effective)

Section 731.211 Replenishment

- a) If at any time after a standby trust is funded upon the instruction of the Fire Marshal with funds drawn from a guarantee, letter of credit or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by 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 assurance 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 to be provided by Section 731.193. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment must occur by the earliest anniversary date among the mechanisms.

(Source: Added at 13 Ill. Reg. , effective)

