

Part 5: Chapter 2 – Mississippi Commission on Environmental Quality Underground Storage Tanks Regulations Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (Adopted March 22, 1989; Amended August 25, 2011, Last Amended October 5, 2018)

TABLE OF CONTENTS

Rule 2.1 Program Scope and Interim Prohibition

- §280.10 Applicability.
- §280.11 Installation requirements for partially excluded UST systems.
- §280.12 Definitions.
- §280.13 Industry codes and recommended practices.

Rule 2.2 UST Systems: Design, Construction, Installation and Notification

- §280.20 Performance standards for new UST systems.
- §280.21 Upgrading of existing UST systems.
- §280.22 Notification requirements.

Rule 2.3 General Operating Requirements

- §280.30 Operation and maintenance of spill and overfill prevention.
- §280.31 Operation and maintenance of secondary containment.
- §280.32 Operation and maintenance of corrosion protection.
- §280.33 Compatibility.
- §280.34 Repairs and replacements.
- §280.35 Reporting and recordkeeping.
- §280.36 Delivery prohibition.
- §280.37 Operator training.

Rule 2.4 Leak Detection

- §280.40 General requirements for all UST systems.
- §280.41 Requirements for petroleum UST systems.
- §280.42 Requirements for hazardous substance UST systems.
- §280.43 Methods of leak detection for tanks.
- §280.44 Methods of leak detection for piping.
- §280.45 Leak detection recordkeeping.

Rule 2.5 Leak Reporting, Release Reporting, Investigation, and Confirmation

- §280.50 Reporting of leaks and suspected releases.
- §280.51 Investigation due to off-site impacts.
- §280.52 Release investigation and confirmation steps.
- §280.53 Reporting and cleanup of spills and overfills.

Rule 2.6 Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

- §280.60 General.
- §280.61 Initial response.
- §280.62 Initial abatement measures and site check.
- §280.63 Initial site characterization.
- §280.64 Free product removal.
- §280.65 Investigations for soil and ground-water cleanup.
- §280.66 Corrective action plan.
- §280.67 Public participation.

Rule 2.7 Out-of-Service UST Systems and Closure

- §280.70 Temporary closure.
- §280.71 Permanent closure and changes-in-service.
- §280.72 Assessing the site at closure or change-in-service.
- §280.73 Applicability to previously closed UST systems.
- §280.74 Closure records.

Rule 2.8 Financial Responsibility

- § 280.90 Applicability.
- § 280.91 Compliance dates.
- § 280.92 Definition of terms.
- § 280.93 Amount and scope of required financial responsibility.
- § 280.94 Allowable mechanisms and combinations of mechanisms.
- § 280.95 Financial test of self-insurance.
- § 280.96 Guarantee.
- § 280.97 Insurance and risk retention group coverage.
- § 280.98 Surety bond.
- § 280.99 Letter of credit.
- § 280.100 Use of state-required mechanism.
- § 280.101 State fund or other state assurance.
- § 280.102 Trust fund.
- § 280.103 Standby trust fund.
- § 280.104 Local government bond rating test.
- § 280.105 Local government financial test.
- § 280.106 Local government guarantee.
- § 280.107 Local government fund.
- § 280.108 Substitution of financial assurance mechanisms by owner or operator.
- § 280.109 Cancellation or nonrenewal by a provider of financial assurance.
- § 280.110 Reporting by owner or operator.
- § 280.111 Recordkeeping.
- § 280.112 Drawing on financial assurance mechanisms.
- § 280.113 Release from the requirements.

§ 280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

§ 280.115 Replenishment of guarantees, letters of credit, or surety bonds.

§ 280.116 Suspension of enforcement. [Reserved]

Rule 2.9 Lender Liability

§280.120 Definitions.

§280.121 Participation in management.

§280.122 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.

§280.-123 Operating an underground storage tank or underground storage tank system.

Rule 2.10 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

§280.130 Definitions.

§280.131 General requirements.

§280.132 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

Rule 2.1 Program Scope and Interim Prohibition.

§280.10 Applicability.

- (a) The requirements of this part apply to all owners and operators of an UST system as defined in §280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this rule must meet the requirements of §280.11.
- (1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems installed prior to October 1, 2008 that store fuel solely for use by emergency power generators must meet the requirements of this part as follows:
 - (i) Airport hydrant fuel distribution systems and UST systems with field constructed tanks must meet the requirements in Rule 2.10.
 - (ii) UST systems installed prior to October 1, 2008 that store fuel solely for use by emergency power generators must meet the Rule 2.4 requirements on or before October 5, 2021.
 - (iii) UST systems that store fuel solely for use by emergency power generators installed after October 1, 2008 must meet all applicable requirements of this part at installation.

- (b) The following UST systems are excluded from the requirements of this part:
- (1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
 - (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.
 - (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
 - (4) Any UST system whose capacity is 110 gallons or less.
 - (5) Any UST system that contains a *de minimis* concentration of regulated substances.
 - (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.
- (c) *Deferrals*. Rules 2.2, 2.3, 2.4, 2.5 and 2.7 do not apply to any of the following types of UST systems:
- (1) Wastewater treatment tank systems that are not covered under paragraph (b)(2) of this section;
 - (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and
 - (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50.
 - (4) Aboveground storage tanks associated with:
 - (i) Airport hydrant fuel distribution systems regulated under Rule 2.10; and
 - (ii) UST systems with field-constructed tanks regulated under Rule 2.10;

§280.11 Installation requirements for partially excluded UST systems.

- (a) No person may install an UST system listed in §280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):
- (b) Will prevent leaks due to corrosion or structural failure for the operational life of the UST system:

- (1) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the leak or threatened leak of any stored substance; and
- (2) Is constructed of materials that are compatible with the stored substance.

§280.12 Definitions.

Aboveground release means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and above-ground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

Ancillary equipment means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, dispensers, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

Belowground release means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

Beneath the surface of the ground means beneath the ground surface or otherwise covered with earthen materials.

Cathodic protection is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

Cathodic protection tester means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Certificate of Operation (Receipt of UST Payment) means a document identifying an underground storage tank facility as being registered with the MDEQ and having paid all of the known tank regulatory fees for the time period indicated on the certificate. The Certificate of Operation will be issued annually upon payment of tank regulatory fees and is valid only for the fiscal year in which it was issued. The Certificate of Operation must be conspicuously displayed at the facility. The Certificate of Operation does not verify that all components of the UST system have been properly registered with the MDEQ as MDEQ is unable to make that determination until the time of an inspection.

Compatible means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the operational life of the tank system under conditions likely to be encountered by the UST system.

Connected piping means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

Consumptive use with respect to heating oil means consumed on the premises.

Containment sump means a liquid tight, secondary containment device installed underneath a dispenser, at the tank or along a piping system designed to prevent leaks from the dispenser, submersible pump, piping connectors, fittings or other UST system ancillary components from reaching the environment. Containment sumps may be single walled or secondarily contained.

Corrosion expert means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Delivery prohibition means prohibiting the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible for such delivery, deposit or acceptance.

Delivery prohibition tag means a tag, device, or mechanism on the tank's fill pipe that identifies an underground storage tank as ineligible for product delivery. The tag or device is easily visible to the product supplier and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible underground storage tank.

Dielectric material means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

Dispenser means a device located above ground that meters the amount of regulated substances transferred to a point of use outside of the UST system, such as a motor vehicle. This definition does not include the "hanging hardware" (breakaways, hoses, nozzles) associated with the dispenser.

Dispenser system means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

Electrical equipment means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

Excavation zone means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

Existing tank system means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. For purposes of determining whether or not secondary containment is required, an existing tank system means a tank system used to contain an accumulation of regulated substances for which installation has commenced before October 1, 2008. Installation is considered to have commenced if:

- (a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
 - (1) Either a continuous on-site physical construction or installation program has begun; or
 - (2) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

Expediently emptied means that any accumulation of regulated substances in a UST is removed within 24 hours or another time frame determined by the MDEQ to be reasonable.

Farm tank is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

Flow-through process tank is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Free product refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water.)

Gathering lines means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Guidelines for the Permanent Closure of Petroleum Underground Storage Tank Systems means the Mississippi Department of Environmental Quality document containing the established procedures for conducting permanent closure of petroleum underground storage tank systems

Hazardous substance UST system means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response,

Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Heating oil means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Hydraulic lift tank means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

Interstitial monitoring means a method of monitoring the interstitial space of a secondarily contained UST system for a leak of regulated substances or ingress of external fluids (groundwater or other fluids not intended as monitoring fluids).

Interstitial space means the opening formed between the primary (inner) and secondary (outer) wall of a UST system with double-walled construction or the opening formed between the wall of a containment sump and the UST system component that it contains.

Leak means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST system or resulting from the operation of the UST system. A leak may or may not result in a release to the environment. A leak from a single-walled UST system will normally result in a release to the environment. A leak from the primary containment of a secondarily contained UST system may or may not result in a release to the environment depending upon the integrity of the secondary containment.

Leak detection means determining if a leak of a regulated substance has occurred from the UST system.

Life safety/critical function UST means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground and is used to maintain operation of critical function equipment for the preservation of human life.

Liquid trap means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

MDEQ means the Mississippi Department of Environmental Quality.

Maintenance means the normal operational upkeep to prevent an underground storage tank system from leaking or releasing product.

Motor fuel means petroleum, petroleum-based substances, biofuels or any petroleum/biofuel blend that is typically used in the operation of a motor engine. This definition includes all biofuels, including 100% biodiesel or ethanol.

New tank system means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System.") This term applies to underground tanks, piping, dispensers, and submersible pumps.

- (a) *Underground tank* - A new tank is one that is installed where there previously was no tank. The tank may be one that has never been used before or may be one that has been previously used but recertified by the manufacturer.
- (b) *Pipe* - A new pipe is one that is installed where there previously was no pipe. It may be an entirely new piping run from the tank to the dispensers or it may be a new section of pipe added to an existing pipe. The new piping cannot have been previously used.
- (c) *Dispensers* - A new dispenser is one that is installed where there previously was no dispenser. The dispenser may be one that has never been used before or may be one that has been previously used.
- (d) *Submersible pump* - A new submersible pump is one that is installed where there previously was no submersible pump. The submersible pump may be one that has never been used before or may be one that has been previously used.

Noncommercial purposes with respect to motor fuel means not for resale.

On the premises where stored with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

Operational life refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Rule 2.7.

Operator means any person in control of, or having responsibility for, the daily operation of the UST system.

Overflow release is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

Owner means:

- (a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

Person means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

Petroleum UST system means an underground storage tank system that contains petroleum, biofuel, or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Pipe or Piping means a hollow cylinder or tubular conduit that is constructed of non-earthen materials that routinely contains and conveys regulated substances from the underground storage tank to the dispenser or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that routinely contain and convey regulated substances. This definition does not include vent, vapor recovery, fill lines or tank risers.

Pipeline facilities (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Register means:

- (a) In the case of equipment, to submit written notification to MDEQ on a "State of Mississippi Notification of Underground Storage Tank System" form for any installation, replacement, change in operational status of an underground storage tank, pipe, dispenser or submersible pump; and
- (b) In the case of ownership/operation, to submit written notification to MDEQ on a "State of Mississippi Notification of Underground Storage Tank System" form or a "State of Mississippi Underground Storage Tank System Change in Ownership" form when any person becomes the owner/operator of a new or existing underground storage tank system

Regulated substance means:

- (a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C);
- (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and
- (c) Any substance defined as a "motor fuel".

The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Release means a leak from an UST system or resulting from the operation of the UST system that reaches the environment.

Release detection means determining whether a leak of a regulated substance that has occurred from the UST system has reached the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it

Repair means to restore to proper operating condition a tank or UST system component that has caused a leak of product from the UST system or has failed to function properly. As it applies to the integrity of underground storage tanks, piping, and other UST system components, repair means any activity intended to restore a UST system to proper operational condition that does not meet the definition of replace.

Replace - This term applies to underground tanks, piping, dispensers, and submersible pumps. Replaced equipment is considered a new UST system or new UST system components and therefore subject to the same requirements of a new UST system.

- (a) Underground tank - Replace means to remove an existing tank and install another tank in its place. The replacement tank may be one that has never been used or one that has been used but recertified by the manufacturer.
- (b) Pipe - Replace means to remove an existing pipe and install another pipe in its place. In order to be considered a piping replacement, 50 percent or more of the piping, excluding connectors, needed to transfer the regulated substance from a single tank to the most distant dispenser or end use device must be removed and replaced. Connectors include any flexible connectors, risers or other transitional components such as fittings. The replacement piping must be new from the factory and cannot have been previously used. For tanks with multiple piping runs, this definition applies independently to each piping run.
- (c) Dispenser - Replace means to remove an existing dispenser and install another dispenser in its place and the equipment used to connect the dispenser to the piping is also replaced. The equipment necessary to connect the dispensers may include check valves, shear valves, risers, flexible connectors or other transitional components that are beneath the dispenser and connect the dispenser to the piping. The replacement dispensers may be new or may have been used before.
- (d) Submersible pump - Replace means to remove an existing submersible pump and install another submersible pump in its place and the equipment used to connect the submersible pump is also replaced. The equipment needed to connect the submersible pump may include ball valves, check valves, flexible connectors unions, tees, ells or other pipe fittings and transitional components that connect the submersible pump to the piping. The replacement submersible pump may be new or may have been used before.

Residential tank is a tank located on property used primarily for dwelling purposes.

SARA means the Superfund Amendments and Reauthorization Act of 1986.

Secondary containment means an impervious layer or barrier (liquid tight) that extends around the primary (inner) tank or pipe that is designed, constructed and installed to contain any leak from any part of the tank or piping that routinely contains regulated substances. Examples of secondarily contained systems include double-walled or jacketed tanks, double-walled or jacketed piping and/or containment sumps that may be installed at the top of the tanks, under dispensers or at piping transitions. Secondary containment must be designed, constructed and installed to:

- (a) Prevent the release of regulated substances to the environment for the operational life of the secondary containment system;
- (b) Prevent the ingress of water or other external fluids into the interstitial space for the operational life of the secondary containment system;
- (c) Allow for monitoring of the interstitial space to detect any leak from the primary tank system and ingress of external fluids;
- (d) Be checked for evidence of a leak and ingress of external fluids at least once every 30 days in accordance with §280.43(g) and §280.44(c); and
- (e) Be compatible with the substances stored and external soil/fluids for the operational life of the secondary containment system.

Septic tank is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

Storm water or wastewater collection system means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

Submersible pump (also referred to as a "submerged turbine pump") means a device installed within a tank designed to transfer product from the tank to the dispenser in a pressurized piping system. The term submersible pump includes the submersible motor, extractor assembly and the pump head (housing) assembly.

Supplier means any person who delivers or deposits motor fuels into an underground storage tank. This term may include oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

Surface impoundment is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Tank is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

Under-dispenser containment or *UDC* means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater

Underground area means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

Underground release means any belowground release.

Underground storage tank or *UST* means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

- (a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Tank used for storing heating oil for consumptive use on the premises where stored;
- (c) Septic tank;
- (d) Pipeline facility (including gathering lines):
 - (1) Which is regulated under chapter 61 of Title 49, or
 - (2) Which is an intrastate pipeline facility regulated under state laws as provided in chapter 601 of Title 49, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- (e) Surface impoundment, pit, pond, or lagoon;
- (f) Storm water or wastewater collection system;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (i) Storage tank situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

Upgrade means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the leak of product.

UST compliance manager means any person or persons identified by the owner/operator who has primary responsibility for the proper management, operation and maintenance of the tank system at a UST facility. The UST compliance manager is also responsible for the implementation of all applicable MDEQ requirements necessary to achieve and maintain compliance with the UST system including monitoring, testing, reporting and record keeping. A UST compliance manager can also be known as a Class A/B operator.

UST operations clerk means any person or persons identified by the owner/operator who has primary responsibility for the initial response to any alarms or other indications of emergencies presented by a spill, leak or release from a UST system. The UST operations clerk is typically on-site at the facility and monitors the dispensing of product. A UST operations clerk can also be known as a Class C operator.

UST system or Tank system means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Wastewater treatment tank means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

§280.13 Industry codes and recommended practices.

The following industry codes and recommended practices may be utilized to comply with the requirements of Rule 2.2, 2.3, 2.4 and 2.7. Other codes and recommended practices may also be utilized provided they have been determined by the MDEQ to be no less protective of human health and the environment than those listed below.

API 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles"

API 1604, "Closure of Underground Petroleum Storage Tanks"

API 1615, "Installation of Underground Petroleum Storage Systems"

API 1621, "Bulk Liquid Stock Control at Retail Outlets"

API 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"

API 1627, "Storing and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations"

API 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"

API 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals"

ASTM E1430, "Standard Guide for Using Release Detection Devices with Underground Storage Tanks"

ASTM E1 526, "Standard Practice for Evaluating the Performance of Release Detection Systems for Underground Storage Tank Systems"

Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annual Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"

FPTPIT-95-2, "Remanufacturing of Fiberglass Reinforced Underground Storage Tanks"

KWA "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera"

NACE SP-0169, "Control of External Corrosion Protection on Underground Storage Tank Systems by Cathodic Protection"

NACE RP-0177, "Mitigation of Alternating Current and Lightning Effects on Metallic Structures and Corrosion Control Systems"

NACE RP-0178, "Design, Fabrication, and Surface Finish of Metal Tanks and Vessels to be Lined for Chemical Immersion Service"

NACE RP-0184, "Repair of Lining Systems"

NACE SP-0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"

NACE RP-0288, "Inspection of Linings on Steel and Concrete"

NACE TM-0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems"

NACE TM-0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems"

NFPA 30, "Flammable and Combustible Liquids Code"

NFPA 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"

NFPA 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"

NFPA 385 "Standard for Tank Vehicles for Flammable and Combustible Liquids"

PEI RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"

PEI RP500, "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment"

PEI RP900, "Recommended Practices for the Inspection and Maintenance of UST Systems"

PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"

STI "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks"

STI F841, "Standard for Dual Wall Underground Steel Storage Tanks"

STI F894, "ACT-100 Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"

STI F961, "ACT-100-U Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"

STI R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks"

STI R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems"

STI R922, "Specification for Permatank"

STI R972, "Recommended Practice for the Addition of Supplemental Anodes for STI-P3® USTs"

UL 58, "Steel Underground Tanks for Flammable and Combustible Liquids"

UL 79, "Power-Operated Pumps for Petroleum Dispensing Products"

UL 87, "Power-Operated Dispensing Devices for Petroleum Products"

UL 971, "Non-Metallic Underground Piping for Flammable Liquids"

UL 1316, "Glass Fiber Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols and Alcohol-Gasoline Mixtures"

UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks"

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 2.2 UST Systems: Design, Construction, Installation and Notification.

§280.20 Performance standards for new UST systems.

In order to prevent leaks due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

- (a) *Tanks*. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below and all new or replacement tanks installed on or after October 1, 2008, must have secondary containment in accordance with §280.20(a)(4):
- (1) The tank is constructed of fiberglass-reinforced plastic; or
 - (2) The tank is constructed of steel and cathodically protected in the following manner:
 - (i) The tank is coated with a suitable dielectric material;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed to allow determination of current operating status as required in §280.32(c);
 - (iv) Cathodic protection systems are operated and maintained in accordance with §280.32; and
 - (v) The cathodic protection systems meet the MDEQ “Guidance for the Evaluation of Underground Storage Tank Cathodic Protection Systems” document or similar guidance as approved by MDEQ or
 - (3) The tank is of composite construction (steel clad with fiberglass-reinforced plastic or other polymeric materials); or
 - (4) The tank is of secondary containment construction. Secondarily contained tanks shall comply with the following:
 - (i) Prevent the release of regulated substances to the environment for the operational life of the tank;
 - (ii) Prevent the ingress of water or other external fluids into the interstitial space for the operational life of the tank;
 - (iii) Allow for monitoring of the interstitial space to detect any leak from the primary tank and ingress of external fluids;
 - (iv) Be checked for evidence of a leak and ingress of external fluids at least once every 30 days in accordance with §280.43(g) and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ; and
 - (v) Be compatible with the substances stored and external soil/fluids for the operational life of the tank; or
 - (5) The tank construction and corrosion protection are determined by the MDEQ to be designed to prevent the leak or threatened leak of any stored regulated substance in a

manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this rule.

- (b) *Piping*. Each pipe and ancillary component that routinely contains regulated substances must be properly designed, constructed, and protected from corrosion as specified below and all new or replacement piping installed on or after October 1, 2008, that is not part of a repair must be secondarily contained in accordance with §280.20(b)(4):
- (1) The piping is constructed of fiberglass-reinforced plastic or other polymeric materials;
or
 - (2) The piping is constructed of steel and cathodically protected in the following manner:
 - (i) The piping is coated with a suitable dielectric material;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed to allow determination of current operating status as required in §280.32(c);
 - (iv) Cathodic protection systems are operated and maintained in accordance with §280.32; and
 - (v) The cathodic protection systems meet the MDEQ “Guidance for the Evaluation of Underground Storage Tank Cathodic Protection Systems” document or similar guidance as approved by MDEQ; or
 - (3) The piping is of composite construction (metal with fiberglass-reinforced plastic or other polymeric materials); or
 - (4) The piping is of secondarily contained construction. Secondarily contained piping shall comply with the following:
 - (i) Prevent the release of regulated substances to the environment for the operational life of the piping system;
 - (ii) Prevent the ingress of water or other external fluids into the interstitial space for the operational life of the piping system;
 - (iii) Allow for monitoring of the interstitial space to detect any leak from the primary pipe and ingress of external fluids;
 - (iv) Be checked for evidence of a leak and ingress of external fluids at least once every 30 days in accordance with §280.44(c) and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ; and
 - (v) Be compatible with the substances stored and external soil/fluids for the operational life of the piping system; or

- (5) The piping construction and corrosion protection are determined by the MDEQ to be designed to prevent the leak or threatened leak of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b) (1) through (4) of this section
- (c) *Spill prevention equipment.* Except as provided in §280.20(e)(2), to prevent spilling associated with product transfer to the UST system, owners and operators must use spill prevention equipment that will, for the operational life of the spill prevention equipment:
- (1) Prevent the release of any product to the environment that may leak from the transfer hose/tank connection during the product transfer; and
 - (2) Be compatible with the substances stored and external soil/fluids.
 - (3) The spill prevention equipment must be checked for evidence of a leak and/or ingress of external fluids at least once every 12 months in accordance with §280.30 and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ.
- (d) *Overfill prevention equipment.* Except as provided in §280.20(e)(2), and, to prevent overfilling of the tank during product transfer to the UST system, owners and operators must use overfill prevention equipment that is accessible for inspection, compatible with the substances stored and will, for the operational life of the overfill prevention equipment, meet one of the following:
- (1) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
 - (2) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or
 - (3) An alternative method approved by MDEQ prior to installation.

The overfill prevention equipment must be checked for proper operation at least once every 12 months in accordance with §280.30 and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ.

Note to paragraph (d): Flow restrictors used in vent lines may not be used to comply with paragraph (d) when overfill prevention is installed or replaced after [DATE OF REGULATION ADOPTION]

- (e) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraphs (c) and (d) of this rule if:
- (1) Alternative equipment is used that is determined by the MDEQ to be no less protective of human health and the environment than the equipment specified in paragraphs (c) and (d) of this rule; or
 - (2) The UST system is filled by transfers of no more than 25 gallons at one time.

- (f) *Installation.* All tanks, piping and ancillary equipment must be properly installed in accordance with one or more of the industry codes and recommended practices listed in §280.13 and in accordance with the manufacturer's instructions.
- (g) *Certification of installation.* All owners and operators must ensure that all tanks, piping and applicable ancillary components are installed by a contractor certified by the MDEQ as a UST installer. Owners and operators must provide certification of compliance with these requirements on the UST notification form in accordance with §280.22. In addition, one or more of the following may also be required in order to demonstrate compliance with paragraph (f) of this rule by providing a certification of compliance on the UST notification form in accordance with §280.22.
 - (1) The installer has been certified by the manufacturer; or
 - (2) All work listed in the manufacturer's installation checklists have been completed; or
 - (3) The owner and operator have complied with another method for ensuring compliance with paragraph (f) of this rule that is determined by the MDEQ to be no less protective of human health and the environment.
- (h) *Dispensers.* All new or replacement dispensers installed on or after October 1, 2008, must have secondary containment installed that will:
 - (1) Prevent the release of regulated substances to the environment for the operational life of the dispenser secondary containment;
 - (2) Prevent the ingress of water or other external fluids into the interstitial space for the operational life of the dispenser secondary containment;
 - (3) Allow for monitoring of the interstitial space to detect any leak from the dispensers or enclosed components of the piping system and ingress of external fluids;
 - (4) Be checked for evidence of a leak and ingress of external fluids at least once every 30 days in accordance with §280.45 and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ; and
 - (5) Be compatible with the substances stored and external soil/fluids for the operational life of the dispenser secondary containment.
- (i) *Submersible pumps.* All new or replacement submersible pumps installed on or after October 1, 2008, must have secondary containment installed that will:
 - (1) Prevent the release of regulated substances to the environment for the operational life of the submersible pump secondary containment;
 - (2) Prevent the ingress of groundwater or other external fluids into the interstitial space for the operational life of the submersible pump secondary containment;

- (3) Allow for monitoring of the interstitial space to detect any leak from the submersible pump or enclosed components of the piping system and ingress of external fluids;
 - (4) Be checked for evidence of a leak and ingress of external fluids at least once every 30 days in accordance with §280.45 and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ; and
 - (5) Be compatible with the substances stored and external soil/fluids for the operational life of the submersible pump secondary containment.
- (j) Piping shear valves. All pressurized piping must be equipped with shear valves designed to shut-off the flow of product in the event a dispenser cabinet is impacted. All shear valves must be:
- (1) Properly installed in accordance with one or more of the industry codes and recommended practices listed in §280.13 and in accordance with the manufacturer's instructions.
 - (2) Effective October 1, 2009, be tested for functionality (the poppet valve or other shut off mechanism is manually closed to confirm that it will shut off the flow of product) at least once every 12 months and be repaired within 90 days of an observed failure, or another timeframe as approved by MDEQ.
 - (3) Records. A written record documenting the shear valve testing must be maintained (in accordance with §280.35) to demonstrate compliance with this section. These records must provide the results of the last two (2) tests required in this section.

§280.21 Upgrading of existing UST systems.

Owners and operators must permanently close (in accordance with Rule 2.7) any UST system that does not meet the new UST system performance standards in §280.20 or has not been upgraded in accordance with paragraph (b) through (d) of this section. This does not apply to previously deferred UST systems described in Rule 2.10 of this part and where an upgrade is determined to be appropriate by MDEQ.

- (a) *Alternatives allowed.* All existing UST systems must comply with one of the following requirements:
 - (1) New UST system performance standards under §280.20;
 - (2) The upgrading requirements in paragraphs (b) through (d) of this rule; or
 - (3) Closure requirements under Rule 2.7 of this part, including applicable requirements for corrective action under Rule 2.6.
- (b) *Tank upgrading requirements.* Steel tanks must be upgraded to meet one of the following requirements in accordance with any applicable code of practice listed in §280.13:

(1) *Interior lining.* A tank may be upgraded by internal lining if:

- (i) The lining is installed in accordance with the requirements of §280.34, and
- (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of §280.20(a)(2) (ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

- (i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system;
or
- (ii) The tank has been installed for less than 10 years and is monitored monthly for leaks in accordance with §280.43 (d) through (h); or
- (iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of §280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or
- (iv) The tank is assessed for corrosion holes by a method that is determined by the MDEQ to prevent leaks in a manner that is no less protective of human health and the environment than paragraphs (b)(2) (i) through (iii) of this section.

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

- (i) The lining is installed in accordance with the requirements of §280.34; and
- (ii) The cathodic protection system meets the requirements of §280.20(a)(2)(ii), (iii), and (iv).

(c) *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the soil and/or water (electrolyte) must be cathodically protected in accordance with one or more of the industry codes recommended practices listed in §280.13 and must meet the requirements of §280.20(b)(2)(ii), (iii), and (iv).

(d) *Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overflow prevention equipment requirements specified in §280.20 (c) and (d).

§280.22 Notification requirements.

- (a) Any owner who intends to install a new or replace an existing underground storage tank, pipe, dispenser, or submersible pump on or after October 1, 2008, must, within 30 days of such planned installation, submit a "State of Mississippi Notice of Upcoming Underground Storage Tank System Installation" form.

Note: If an unplanned replacement of an existing tank, pipe, dispenser, or submersible pump is necessary due to failure, an accident or for other circumstances the MDEQ deems appropriate, submittal of a "State of Mississippi Notice of Upcoming Underground Storage Tank System Installation" form is not required unless replacement is scheduled to occur more than 90 days after failure or accident.

- (b) Any owner who brings into use, installs, replaces or changes the operational status of an underground storage tank, pipe, dispenser or submersible pump, after May 8, 1986, must within 30 days of bringing such tank, pipe, dispenser or submersible pump into use or changing the operational status of, register with MDEQ by submittal of a "State of Mississippi Notification for Underground Storage Tank System" form.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, on a form published by EPA on November 8, 1985, (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA.

- (c) Any person who becomes the owner of an existing underground storage tank system must, within 30 days of becoming the owner, register with MDEQ by submittal of a "State of Mississippi Underground Storage Tank System Change of Ownership" form or a "State of Mississippi Notification for Underground Storage Tank System" form.

- (d) All owners and operators of UST systems installed on or after December 22, 1988, must certify in the notification form compliance with the following requirements:

- (1) Installation of tanks and piping under §280.20(g);
- (2) Cathodic protection of steel tanks and piping under §280.20 (a) and (b);
- (3) Financial responsibility under Rule 2.8 of this part; and
- (4) Leak detection under §§280.41 and 280.42.

- (e) All owners and operators of UST systems installed on or after December 22, 1988, must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in §280.20(f).

- (f) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (b) of this rule.
- (g) Any owner who changes the content of a UST to a regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel must notify the MDEQ at least 30 days prior to such change.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 2.3 General Operating Requirements.

§280.30 Operation and maintenance of spill and overflow prevention equipment.

- (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Prior to receiving a delivery, owners and operators must ensure that the spill prevention equipment is free of any fluids or debris and the full volume of the spill containment device is available to contain any spills that may occur during the delivery. After completion of the delivery, owners and operators must ensure that the spill prevention equipment is emptied of any regulated substances that may have accumulated during the delivery operation.
- (b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with §280.53.
- (c) The integrity of all spill prevention equipment must be tested in accordance with the following requirements:
 - (1) Frequency.
 - (i) Spill prevention equipment installed on or after October 1, 2008, must be tested after installation and before the UST system receives any delivery of regulated substances and at least once every 12 months thereafter.
 - (ii) Spill prevention equipment installed before October 1, 2008, must be tested by October 1, 2009, and at least once every 12 months thereafter.
 - (iii) Spill prevention equipment must be tested whenever it is suspected, by visual evidence or other means, that the integrity of the spill prevention equipment may be in question.
 - (2) Criteria. All spill prevention equipment integrity testing must be conducted in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13.

Note: In the absence of manufacturer's specifications or an applicable industry code or recommended practice, the inspection may be accomplished by filling the spill

containment with water or other suitable liquid and checking to ensure that no more than one-eighth inch of liquid is lost or gained over a one (1) hour period. Alternative test methods may be utilized only if recognized by the MDEQ as no less protective of human health and the environment than those test methods listed above.

- (3) Records. A written record documenting the integrity testing of spill containment equipment must be maintained (in accordance with §280.35) to demonstrate compliance with this section. These records must provide the results of the last two (2) tests required in this section.
- (d) Overfill prevention equipment (including any tight-fill adapters that may be in use) must be inspected and proper operation ensured in accordance with the following requirements:
 - (1) Frequency.
 - (i) Overfill prevention equipment installed on or after October 1, 2008, must be inspected for proper operation at installation and before the UST system receives any delivery of regulated substances and at least once every 12 months thereafter.
 - (ii) Overfill prevention equipment installed before October 1, 2008, must be inspected for proper operation by October 1, 2009, and at least once every 12 months thereafter.
 - (iii) Overfill prevention equipment must be inspected whenever it is suspected, by visual evidence or other means, that the proper operation of the overfill prevention equipment may be in question.
 - (2) Criteria. At a minimum, the inspection must ensure that the overfill prevention equipment:
 - (i) Is properly installed meeting the performance standards listed in §280.20(d); and
 - (ii) Is properly functioning in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13.

Note: In the absence of manufacturer's specifications or an applicable industry code or recommended practice, the inspection may be accomplished by removal of the equipment from the tank, visual examination and confirmation that the overfill device is installed at the correct height within the tank.

- (3) Records. A written record documenting the inspection of the overfill prevention equipment must be maintained (in accordance with §280.35) to demonstrate compliance with this section. These records must provide the results of the last two (2) inspections required in this section.

§280.31 Operation and maintenance of secondary containment.

Owners and operators of UST systems installed on or after October 1, 2008, and all secondarily contained UST systems utilizing interstitial monitoring in accordance with §280.43(g), §280.44(c), or §280.45 must comply with the following requirements in order to ensure that releases due to improper operation and maintenance of secondary containment do not occur:

- (a) The owner and operator must report and investigate any leak or suspected release in accordance with Rule 2.5.
- (b) Any regulated substances found within the secondary containment must be removed within 24 hours of discovery or another time frame determined by the MDEQ to be appropriate.
- (c) All secondary containment must be inspected for proper operation in accordance with the following requirements:
 - (1) Frequency.
 - (i) Secondary containment equipment must be tested at installation and before the UST system receives any delivery of regulated substances and at least once every 36 months thereafter.
 - (ii) The integrity of all secondary containment components of a UST that can be observed must be visually inspected at least once every 12 months.
 - (iii) Secondary containment equipment must be integrity tested whenever it is suspected, by visual evidence or other means, that the integrity of the secondary containment equipment may be in question.
 - (iv) On or before [INSET 1 YEAR FROM DATE OF REGULATION ADOPTION], continuously monitored secondary containment shall be visually inspected at least once every 12 months.

Note: If a containment sump is not the lowest point in a piping run, then at least once every 36 months the primary piping and the secondary containment jacket interstitial space shall be integrity tested.

- (2) Criteria for inspection. At a minimum, the inspection must ensure that the secondary containment:
 - (i) Is maintained free of liquids and debris if the interstice is designed to be dry;
 - (ii) Appears to be liquid tight with no cracks, broken seals or other visual evidence of failure; and
 - (iii) The integrity of the secondary containment must be tested in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13 if there is evidence of failure. The presence of fluids other than the substance

stored or the hydrostatic monitoring fluid within the interstice may be sufficient to require testing of the integrity. If the integrity of the secondary containment is in question, testing must be conducted unless it can be shown that the source of the fluid has been determined and the condition has been corrected.

- (3) Criteria for integrity testing. At a minimum, the integrity of the secondary containment must be tested in accordance with the manufacturer's specifications and by filling the secondary containment with water or other suitable liquid to a level at least four (4) inches above the highest penetration fitting or joint and at least four (4) inches above the existing groundwater elevation and checking to ensure that no more than one-eighth inch of liquid is lost or gained over one (1) hour period. If the secondary containment is not the lowest point in the UST system, an alternate integrity test method must be proposed. Alternative test methods may be utilized only if recognized by the MDEQ as no less protective of human health and the environment than those test methods listed above.
- (4) Records. A written record documenting the integrity testing and of the secondary containment must be maintained (in accordance with §280.35) to demonstrate compliance with this section. These records must provide the results of the last two (2) tests required in this section.

§280.32 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that leaks due to corrosion are prevented for as long as the UST system can be used to store regulated substances:

- (a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank, piping, and ancillary equipment that routinely contain regulated substances and are in contact with the soil and/or water (electrolyte).
- (b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
 - (1) *Frequency.* All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the MDEQ; and
 - (2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the requirements in "Guidelines for the Evaluation of Underground Storage Tank Cathodic Protection Systems" and any applicable industry code or recommended practice listed in §280.13.
- (c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.
- (d) For UST systems using cathodic protection, records of the operation of the cathodic

protection must be maintained (in accordance with §280.35) to demonstrate compliance with the performance standards in this section. These records must provide the following:

- (3) The results of the last six (6) inspections required in paragraph (c) of this rule; and
- (4) The results of testing from the last two (2) inspections required in paragraph (b) of this rule.

§280.33 Compatibility.

- (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substances stored in the UST system and with any soils backfill materials, interstitial monitoring fluids, groundwater or other fluids the tanks system may be exposed to either internally or externally.
- (b) Owners and operators with UST systems storing a regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel must meet one of the following:
 - (1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:
 - (i) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
 - (ii) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
 - (2) Use another option determined by MDEQ to be no less protective of human health and the environment than the options listed in paragraph (b)(1) of this section.
- (c) Owners and operators must maintain records in accordance with §280.35(b) documenting compliance with paragraph (b) of this section for as long as the UST system can be used to store regulated substances.

§280.34 Repairs and replacements allowed

Owners and operators of UST systems must ensure that repairs will prevent leaks due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must be made within 90 days of an observed failure, or another timeframe as approved by MDEQ and meet the following requirements:

- (a) Repairs to UST systems must be properly conducted in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13.
- (b) Repairs to fiberglass-reinforced plastic tanks must be conducted in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13.

- (c) Metal pipe sections and fittings that have leaked product as a result of corrosion or other damage must be replaced. Replaced as it applies to metal pipe sections means that only the section of pipe from joint-to-joint must be replaced when repairing such a pipe system. It is not intended to imply that the entire piping system must be replaced with a secondarily contained pipe system unless more than 50 percent of the individual piping run has to be repaired. Repairs to fiberglass-reinforced plastic piping must be conducted in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13.
- (d) Repaired tanks and piping must be tightness tested in accordance with §280.43(c) and §280.44(b) after such repairs are complete and before the UST system is brought back into service.
- (e) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13 after such repairs are complete and before the UST system is brought back into service.
- (f) Repaired spill containment equipment and secondary containment that cannot be tightness tested must be tested in accordance with §280.30(c) and §280.31(d) after such repairs are complete and before the UST system is brought back into service.
- (g) Repaired dispensers, submersible pumps and other ancillary equipment that cannot be tightness tested must be visually inspected for any leaks to ensure integrity after such repairs are complete and before the UST system is brought back into service.
- (h) If an existing underground storage tank, pipe, dispenser, or submersible pump is replaced, the requirements in §280.20 apply only to the specific underground storage tank, pipe, dispenser, or submersible pump being replaced, not to other underground storage tanks, piping, dispensers or submersible pumps located at the underground storage tank facility.
- (i) The MDEQ may waive the requirement that secondary containment be installed when a dispenser or submersible pump is replaced because of an accident or for other circumstances the MDEQ deems appropriate.
- (j) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with §280.32 (b) and (c) to ensure that it is operating properly.
- (k) UST system owners and operators must maintain records of each repair and replacement for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

§280.35 Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the MDEQ, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) *Reporting.* Owners and operators must submit the following information to the MDEQ:

- (1) Notification for all UST systems (§280.22), which includes registration and certification of installation for new and replacement UST systems (§280.20(g));
- (2) Notification for registration when any person assumes ownership of an UST system (§280.22(c));
- (3) A notification within 30 days of changing the status of a tank (§280.22(b));
- (4) A notification before installation of new tanks, piping, dispensers, and submersible pumps (§280.22(a));
- (5) Notification prior to UST systems switching to certain regulated substances listed in §280.22(g);
- (6) Reports of all leaks including suspected releases (§280.50), spills and overfills (§280.53), and confirmed releases (§280.61);
- (7) Corrective actions planned or taken including initial abatement measures (§280.62), initial site characterization (§280.63), free product removal (§280.64), investigation of soil and ground-water cleanup (§280.65), and corrective action plan (§280.66);
- (8) A notification before permanent closure or change-in-service (§280.71); and
- (9) Notification of persons trained in accordance with §280.37(d) as UST compliance managers

(b) *Recordkeeping.* Owners and operators must maintain the following information:

- (1) Recent compliance with piping shear valve testing requirements (§280.20(j));
- (2) Recent compliance with spill prevention testing requirements (§280.30(c));
- (3) Recent compliance with overfill prevention inspection requirements (§280.30(d));
- (4) Recent compliance with secondary containment inspection and testing requirements (§280.31);
- (5) Documentation of operation of corrosion protection equipment (§280.32);
- (6) Documentation of UST system repairs and replacement (§280.34);

- (7) Recent compliance with leak detection requirements (§280.45);
 - (8) Results of the site investigation conducted at permanent closure (§280.74);
 - (9) Records documenting the training of all persons trained in accordance with §280.37(d) as UST compliance managers and §280.37(e) as UST operations clerks;
 - (10) Records documenting UST compatibility (§280.33(a)); and
 - (11) Documentation of periodic walkthrough inspections (§ 280.38(c)).
- (c) *Availability and maintenance of records.* Owners and operators must keep the records required either:
- (1) At the UST site and immediately available for inspection by the MDEQ; or
 - (2) At a readily available alternative site and be provided for inspection to the MDEQ upon request.

§280.36 Delivery Prohibition

Effective October 1, 2008, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the MDEQ to be ineligible for such delivery, deposit, or acceptance.

- (a) Classification as ineligible.
- (1) The MDEQ shall classify an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance as soon as practicable after it is determined one or more of the following conditions exists:
 - (i) Assessed tank regulatory fees are more than 90 days past due for payment;
 - (ii) Required spill prevention equipment is not installed;
 - (iii) Required overfill prevention equipment is not installed;
 - (iv) Required leak detection equipment is not installed;
 - (v) Required corrosion protection equipment is not installed;
 - (vi) Required secondary containment is not installed;
 - (vii) Required shear valve is not installed or a shear valve is purposely disabled;
 - (viii) A leak of regulated substances which presents an eminent threat of release or for which the owner/operator has not initiated repairs or an appropriate response in a timely manner; or

- (ix) Other conditions where MDEQ deems equipment has been purposely disabled.
- (2) The MDEQ may classify an underground storage tank or underground storage tank facility as ineligible for delivery, deposit, or acceptance of a regulated substance if the owner/operator of the tank system has been issued a written warning for any of the following violations and the owner/operator fails to complete corrective action within 60 days of the issuance of the written warning, unless the deadline is extended:
- (i) Required spill prevention equipment is not properly operated or maintained;
 - (ii) Required overfill prevention equipment is not properly operated or maintained;
 - (iii) Required leak detection equipment is not properly operated or maintained;
 - (iv) Required corrosion protection equipment is not properly operated or maintained;
 - (v) Required secondary containment is not properly operated or maintained; or
 - (vi) Other conditions the MDEQ deems appropriate.
- (3) The MDEQ may defer the application of delivery prohibition if it is determined that delivery prohibition is not in the public interest.
- (b) Notification of ineligibility.
- (1) The MDEQ will provide owners/operators with a written notice of the determination of ineligibility prior to the prohibition of delivery, deposit, or acceptance of regulated substances into the tank becoming effective. The written notice may be:
- (i) Personally delivered to the owner/operator or the authorized representative of the owner/operator at the conclusion of the inspection or as soon as practicable thereafter; or
 - (ii) Sent via US mail to the last known address of the owner/operator.
- (2) The MDEQ may provide further notification to owners/operators of the determination of ineligibility by one or more of the following:
- (i) Telephone;
 - (ii) Electronic mail;
 - (iii) Facsimile;
 - (iv) Posting a listing of ineligible tanks on the MDEQ website; or
 - (v) Presence of a delivery prohibition tag on the fill riser of an ineligible tank.

- (3) The MDEQ will notify suppliers of tanks determined to be ineligible for delivery by posting a list of ineligible tanks on the MDEQ website. Suppliers may also be notified of ineligible tanks by one or more of the following:
 - (i) Telephone;
 - (ii) Electronic mail;
 - (iii) Facsimile;
 - (iv) US mail; or
 - (v) Presence of a delivery prohibition tag on the fill riser of an ineligible tank.
- (4) Owners/Operators shall document that they have notified the appropriate product suppliers when the MDEQ has made a determination of product delivery ineligibility for any tank that they own/operate.
- (c) Identification of ineligible underground storage tanks. Once a determination of ineligibility has been made, the MDEQ will identify those underground storage tanks by placing them on a list of ineligible tanks on the MDEQ website. The ineligible tanks may also be identified by one or more of the following:
 - (1) Delivery prohibition tags may be placed on the fill riser or other appropriate alternative location of any ineligible tank. It shall be unlawful for anyone to remove, alter, destroy, deface or otherwise tamper with a delivery prohibition tag without valid authorization from the MDEQ; or
 - (2) Withdrawal of the Certificate of Operation.
- (d) Reclassification of underground storage tanks that have reestablished compliance. The MDEQ shall reclassify any ineligible tank as eligible to receive deliveries as soon as practicable upon receipt of documentation that the conditions that caused the ineligibility have been satisfactorily corrected, the MDEQ will subsequently:
 - (1) If present, remove the delivery prohibition tag from the tank or alternatively provide the owner/operator with the authority to remove the red tag;
 - (2) Remove the name of the facility from the list of ineligible tanks on the MDEQ website; and
 - (3) Provide a letter to the owner/operator stating the tank is eligible to receive product.

§280.37 UST compliance manager and UST operations clerk training.

To ensure UST systems are managed, operated and maintained in a compliant manner protective of human health and the environment, trained UST compliance managers and UST operations clerks must be identified for every UST facility that is operating.

(a) *General Requirements.*

- (1) Owners must identify at least one person as the UST compliance manager for each of their UST facilities.
- (2) Owners must identify at least one person as the UST operations clerk for each of their manned, operating UST facilities.
- (3) Separate individuals may be identified as a UST compliance manager and a UST operations clerk or the same individual may be identified as both.
- (4) For manned facilities, at least one UST operations clerk must be present onsite whenever the UST system is operating. Emergency contact information and appropriate emergency response procedures shall be available at the facility.
- (5) For unmanned facilities, emergency contact information and appropriate emergency response procedures shall be prominently posted at the facility.

(b) *UST compliance manager training requirements.* The training required for UST compliance managers must provide the instruction necessary to operate and maintain a UST system in compliance with all applicable MDEQ requirements including, but not limited to:

- (1) Notification;
- (2) Emergency response and release reporting;
- (3) Record keeping, testing, and inspections;
- (4) Temporary and permanent closure;
- (5) Release detection;
- (6) Spill and overflow prevention;
- (7) Corrosion protection;
- (8) UST system construction and product compatibility;
- (9) Financial responsibility; and
- (10) UST operations clerk training.

(c) *UST operations clerk training requirements.* The training required for UST operations clerks must provide the instruction necessary to:

- (1) Properly respond to emergencies involving the operation of the UST system that pose an immediate danger or threat to the public or to the environment; and

- (2) Properly respond to alarms caused by spills, leaks or releases from an UST system.
- (d) *Acceptable methods of UST compliance manager training.* The training requirements for UST compliance managers may be satisfied by any one of the following:
- (1) A MDEQ approved program consisting of classroom, on-line, or hands-on training. An evaluation must be conducted after the training to measure and verify that the person has the skills necessary to maintain compliance with the applicable UST rules and regulations. Examples of evaluation include written testing, practical demonstration, or other tools acceptable to MDEQ; or
 - (2) A MDEQ approved examination designed to measure and verify that the person tested has the skills necessary to maintain compliance with the applicable UST rules and regulations; or
 - (3) Training that is determined by MDEQ to be no less protective of human health and the environment as the methods described in paragraphs (1) and (2) of this section.
- (e) *Acceptable methods of UST operations clerk training.* The training requirements for UST operations clerks may be satisfied by any one of the following:
- (1) Training conducted by the UST compliance manager that includes, at a minimum, the requirements in §280.37(c).
 - (2) Training that is determined by MDEQ to be no less protective of human health and the environment as the method described in paragraph (1) of this rule.
- (f) *Schedule for training.*
- (1) Owners shall ensure that UST compliance managers and UST operations clerks for each of their UST facilities is trained no later than August 8, 2012.
 - (i) After August 8, 2012, any new UST compliance manager must be trained in accordance with §280.37(d) within 30 days of assuming UST system compliance responsibilities.
 - (2) After August 8, 2012, any new UST operations clerk must be trained in accordance with §280.37(e) before assuming UST clerk responsibility
 - (3) Retraining. If a UST facility is determined by MDEQ to be out of significant operational compliance, the UST compliance manager must be retrained in accordance with §280.37(d) or a new compliance manager designated for that facility.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

§280.38 Operation and maintenance walkthrough inspections.

- (a) To properly operate and maintain UST systems, not later than October 5, 2021 owners and operators must conduct a walkthrough inspection every 30 days that meet one of the following:
- (1) Inspects spill prevention equipment and release detection equipment; or
 - (i) Spill prevention equipment shall be visually checked for damage. All liquid or debris shall be removed. Fill lines shall be visually inspected with any obstructions removed. Fill caps must be inspected to ensure a tight fit. Double walled spill prevention equipment with interstitial monitoring shall be checked for a leak in the interstitial area. *Note: UST systems receiving deliveries at intervals greater than every 30 days may reduce spill prevention equipment inspections to coincide with fuel deliveries.*
 - (ii) Release detection equipment shall be visually checked to ensure the equipment is operating with no alarms or other unusual operating conditions present. All records of release detection testing and alarm reconciliation are reviewed and current.
 - (2) Inspects UST equipment according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to (a)(1) of this section.
- (b) To properly operate and maintain UST systems, not later than October 5, 2021 owners and operators must conduct a walkthrough inspection every 12 months to
- (1) review annual testing results which can include
 - (i) Spill bucket testing;
 - (ii) Overfill prevention testing;
 - (iii) Shear valve testing;
 - (iv) Release detection equipment testing for tanks and piping; and
 - (v) Containment sump integrity inspecting; and
 - (2) inspect hand held release detection equipment such as tank gauge sticks, vapor meters, oil/water interface probes, or groundwater bailers for operability and serviceability. Vapor meters shall be calibrated annually by a third party.
- (c) Owners and operators must maintain records of operation and maintenance walkthrough inspections for one year. Records must include:
- (1) A list of each item checked;
 - (2) Operational condition of each item checked;
 - (3) Certificate of Verification for third party inspection of vapor meter, if applicable;
 - (4) Description of actions taken for each item found to be out of compliance with operational requirements; and

- (5) Fuel delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

Rule 2.4 Leak Detection.

§280.40 General requirements for all UST systems.

- (a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of leak detection that:
 - (1) Can detect a leak from any portion of the tank and the connected underground piping and ancillary equipment that routinely contains product;
 - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions and any applicable code of practice listed in §280.13, including routine maintenance and service checks for operability or running condition;
 - (3) Beginning on [three years after effective date of rule], is operated and maintained, and electronic and mechanical components are tested for proper operation. The leak detection equipment shall be tested for proper operation in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by MDEQ to be no less protective of human health and the environment than the two options listed above. A test of the proper operation must be performed at least every 12 months and, at a minimum, as applicable to the facility, cover the following components and criteria:
 - (i) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;
 - (ii) Probes and sensors: inspect for proper placement; remove any residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;
 - (iii) Automatic line leak detector: test operation to meet criteria in § 280.44(a) by simulating a leak;
 - (iv) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
 - (v) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation: and
 - (4) Meets the performance requirements in §280.43, §280.44, §280.45, or Rule 2.10 with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used must be capable of detecting the leak rate or quantity specified for that method in the corresponding

section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

- (b) When a leak detection method operated in accordance with the performance standards in §280.43, §280.44, §280.45, or Rule 2.10 indicates a leak may have occurred, owners and operators must notify the MDEQ in accordance with Rule 2.5.
- (c) Any UST system that can not apply a method of leak detection that complies with the requirements of this rule must complete the closure procedures in rule 2.7.

§280.41 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide leak detection for tanks, piping, and ancillary equipment within secondary containment sumps as follows:

- (a) *Tanks.* Tanks installed on or after October 1, 2008, must be monitored at least every 30 days for leaks in accordance with §280.43(g). Tanks installed before October 1, 2008, must be monitored at least every 30 days for leaks using one of the methods listed in §280.43 (d) through (h) except that:
 - (1) UST systems that meet the performance standards in §280.20 or §280.21, and the monthly inventory control requirements in §280.43 (a) or (b), may use tank tightness testing (conducted in accordance with §280.43(c)) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under §280.21(b), whichever is later;
 - (2) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with §280.43(b)).
- (b) *Piping.* Underground piping that routinely contains regulated substances must be monitored for leaks in a manner that meets one of the following requirements:
 - (1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with §280.44(a) except for life safety/critical function UST systems, in which case, an alternative method of leak detection must be approved by MDEQ; and
 - (i) Pressurized piping installed before October 1, 2008, must have an annual line tightness test conducted in accordance with §280.44(b) or have monthly monitoring conducted in accordance with §280.44(c) or §280.44(d).
 - (ii) Pressurized piping installed on or after October 1, 2008, must be monitored at least once every 30 days for leaks in accordance with §280.44(c).
 - (2) *Suction piping.* Underground piping that conveys regulated substances under suction must:

- (i) Have a line tightness test conducted at least every 3 years and in accordance with §280.44(b), or use a monthly monitoring method conducted in accordance with §280.44(c) or §280.44(d) if it was installed before October 1, 2008.

No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (A) The below-grade piping operates at less than atmospheric pressure;
- (B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (C) Only one check valve is included in each suction line;
- (D) The check valve is located directly below and as close as practical to the suction pump; and
- (E) A method is provided that allows compliance with paragraphs (b)(2)(iii) (B)-(D) of this rule to be readily determined.

- (ii) Must be monitored at least every 30 days for leaks in accordance with §280.44(c) if it was installed on or after October 1, 2008.

- (c) *Ancillary equipment in secondary containment sumps.* Ancillary equipment within secondary containment sumps where the containment sumps were installed on or after October 1, 2008, must be monitored at least every 30 day for leaks or ingress of water in accordance with §280.45.

§280.42 Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide leak detection that meets the following requirements:

- (a) Leak detection at existing UST systems must meet the requirements for petroleum UST systems in §280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the leak detection requirements for new systems in paragraph (b) of this rule.
- (b) Leak detection at new hazardous substance UST systems must meet the following requirements:
 - (1) Secondary containment systems must be designed, constructed and installed to:
 - (i) Contain regulated substances leaked from the tank system until they are detected and removed;
 - (ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
 - (iii) Be checked for evidence of a leak at least every 30 days.

Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

- (2) Double-walled tanks must be designed, constructed, and installed to:
 - (i) Contain a leak from any portion of the inner tank within the outer wall;
 - (ii) Detect the failure of the inner wall.
- (3) External liners (including vaults) must be designed, constructed, and installed to:
 - (i) Contain 100 percent of the capacity of the largest tank within its boundary;
 - (ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a leak of regulated substances; and
 - (iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- (4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this rule. In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with §280.44(a).
- (5) Other methods of leak detection may be used if owners and operators:
 - (i) Demonstrate to the MDEQ that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §280.43(b) through (h) can detect a release of petroleum;
 - (ii) Provide information to the MDEQ on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,
 - (iii) Obtain approval from the MDEQ to use the alternate release detection method before the installation and operation of the new UST system.

§280.43 Methods of leak detection for tanks.

Each method of leak detection for tanks used to meet the requirements of §280.41 must be conducted in accordance with the following:

- (a) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a leak of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:
 - (1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

- (2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (4) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
- (6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

(b) *Manual tank gauging.* Manual tank gauging must meet the following requirements:

- (1) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;
- (2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
- (3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (4) A leak is suspected and subject to the requirements of Rule 2.5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum Duration	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	36 hours	10 gallons	5 gallons.
551-1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	
551-1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	
551-1,000 gallons	36 hours	13 gallons	7 gallons.
1,001-2,000 gallons	36 hours	26 gallons	13 gallons.

- (5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of leak detection. Tanks of 551 to 2,000 gallons may use this method in place of manual inventory control in §280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this rule.

- (c) *Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (d) *Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product must meet the following requirements:
- (1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product. The equipment must be capable of visual or audible alarms and the equipment must be capable of printing the completed 0.2 gallon per hour leak rate test; and
 - (2) The equipment is inspected for proper operation at least once every 12 months. The inspection must be conducted in accordance with the manufacturer's periodic maintenance specifications and any applicable code of practice listed in §280.13.
 - (3) The test must be performed with the system operating in one of the following modes:
 - (i) In-tank static testing conducted at least once every 30 days; or
 - (ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.
- (e) *Vapor monitoring.* Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
 - (2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
 - (3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;
 - (4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
 - (5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

- (6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e) (1) through (4) of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product and
 - (7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (f) *Ground-water monitoring.* Testing or monitoring for liquids on the ground water must meet the following requirements:
- (1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;
 - (2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
 - (3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;
 - (4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
 - (5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
 - (6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;
 - (7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f) (1) through (5) of this rule and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
 - (8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (g) *Interstitial monitoring.* Monitoring of the space between the inner (primary) and the outer (secondary) tank walls may be used, but only if the system is designed, constructed and installed to meet the following requirements:
- (1) The sampling or testing method can detect a release from any portion of the tank that routinely contains product;

- (2) The sampling or testing method can detect ingress of external fluids (groundwater or other fluids not intended as monitoring fluids) into the interstice;
- (3) Records must be maintained that show the interstice has been checked at least every 30 days for evidence of a leak or ingress of external fluids;
 - (i) If the interstice is monitored continuously, records must document that the electronic device monitoring the interstice is in communication with the control console at least monthly;
 - (ii) If the interstice is monitored continuously, records must document the alarm history and provide the response action taken, appropriate reporting (if applicable) and reconciliation of each alarm;
 - (iii) Any electronic device that monitors the interstice must be tested at least once every 12 months for proper function. The functionality test must simulate a leak and be in accordance with the manufacturer's specifications and any applicable industry code or recommended practice listed in §280.13; and
- (4) Any regulated substance that enters the interstice must be removed within 24 hours of discovery or another time frame determined by the MDEQ to be reasonable.
- (h) *Other methods.* Any other type of leak detection method, or combination of methods, can be used if:
 - (1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
 - (2) The MDEQ may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this rule. In comparing methods, the MDEQ shall consider the size of leak that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the MDEQ on its use to ensure the protection of human health and the environment.

§280.44 Methods of leak detection for piping.

Each method of leak detection for piping used to meet the requirements of §280.41 must be conducted in accordance with the following:

- (a) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. Testing must be performed in accordance with the following requirements:

- (1) Frequency.
 - (i) Automatic line leak detectors installed on or after October 1, 2008, must be tested in accordance with the requirements of this rule at startup to verify proper operation and at least once every 12 months thereafter.
 - (ii) Automatic line leak detectors installed before October 1, 2008, must be tested in accordance with the requirements of this rule by no later than October 1, 2009, and at least once every 12 months thereafter.
 - (2) Criteria. All testing of automatic line leak detectors must be conducted in accordance with the manufacturer's specifications and any applicable code of practice listed in §280.13 and
 - (i) Involve the simulation of a leak in the piping at the dispenser that is at the highest elevation above the submersible pump. If there is no change in elevation, the test must be conducted at the dispenser that is the furthest away from the submersible pump;
 - (ii) Be conducted with the leak detector installed in the system as it normally would be during operation;
 - (iii) Verify that the leak detector is capable of detecting a leak equivalent to 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour; and
 - (iv) Be conducted finitely and the test results reported quantitatively.
 - (3) Records. A written record documenting the testing of automatic line leak detectors must be maintained (in accordance with §280.35) to demonstrate compliance with this section. These records must provide the results of the last two (2) tests required in this section.
- (b) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure and the test is conducted in accordance with manufacturer specifications or other recommended code of practice.
- (c) *Interstitial monitoring.* Monitoring of the space between the inner (primary) and the outer (secondary) pipe walls may be used, but only if the system is designed, constructed and installed to meet the following requirements:
- (1) The sampling or testing method can detect a leak from any portion of the pipe that routinely contains product;
 - (2) The sampling or testing method can detect ingress of water or other external fluids into the interstice;
 - (3) Records must be maintained that show the interstice has been checked at least every 30 days for evidence of a leak or ingress of external fluids;

- (i) If the interstice is monitored continuously, records must document that the electronic device monitoring the interstice is in communication with the control console at least monthly;
 - (ii) If the interstice is monitored continuously, records must document the alarm history and provide the appropriate reporting (if applicable) and reconciliation of each alarm;
 - (iii) Any electronic device that monitors the interstice must be tested at least once every 12 months for proper function. The functionality test must be in accordance with the manufacturer's specifications and any applicable industry code or recommended practice listed in §280.13. The functionality test must simulate a leak; and
- (4) Any regulated substance that enters the interstice must be removed within 24 hours of discovery or another time frame determined by the MDEQ to be reasonable.
- (d) *Applicable tank methods.* Any of the methods in §280.43 (e), (f) or (h) may be used if they are designed to detect a leak from any portion of the underground piping that routinely contains regulated substances.

§ 280.45 Methods of leak detection for ancillary equipment within secondary containment sumps

Each method of leak detection for ancillary equipment within secondary containment sumps used to meet the requirements of §280.31 and §280.41 must be conducted in accordance with the following:

- (a) **Visual Monitoring.** Testing or monitoring for liquids in the containment sump or in the interstice of a double walled containment sump must meet the following requirements:
 - (1) Records must be maintained that show the containment sump or the interstice of a double walled containment sump has been checked at least every 30 days for evidence of a leak or ingress of external fluids
 - (2) Once measurements have been recorded, any fluids in the containment sumps shall be removed and properly dispose
- (b) **Electronic Monitoring.** Testing or monitoring for liquids in the containment sump must meet the following requirements:
 - (1) The electronic sensors must be securely mounted permanently within the sump to prevent tampering, removal, or adjustment of the sensor
 - (2) The electronic sensors must be placed no more than 1 inch off the bottom of the containment sump

§ 280.46 Leak detection recordkeeping.

All UST system owners and operators must maintain records in accordance with §280.35 demonstrating compliance with all applicable requirements of this rule. These records must include the following:

- (a) All written performance claims pertaining to any leak detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the MDEQ, from the date of installation;
- (b) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the MDEQ, except that the results of tank tightness testing conducted in accordance with §280.43(c) must be retained until the next test is conducted; and
- (c) The results of annual operation tests conducted in accordance with §280.40(a)(3) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in § 280.40(a)(3) or needs to have action taken, and describe any action taken to correct an issue;
- (d) Written documentation of all calibration, maintenance, and repair of leak detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the MDEQ. Any schedules of required calibration and maintenance provided by the leak detection equipment manufacturer must be retained for 5 years from the date of installation.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 2.5 Leak Reporting, Release Reporting, Investigation, and Confirmation.

§280.50 Reporting of leaks and suspected releases.

Owners and operators of UST systems must report to the MDEQ within 24 hours, or another reasonable time period specified by the MDEQ, and follow the procedures in §280.52 for any of the following conditions:

- (a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (b) The discovery by owners and operators or others of regulated substances within the interstitial space of a double-walled tank or pipe. In the case of containment sumps, reporting is required only if the amount of regulated substances is equal to or greater than one eighth inch or if there is evidence of a leak and it appears the containment sump is not liquid tight;

- (c) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced;
- (d) The discovery by owners and operators or others of failures of UST system equipment (such as failed spill buckets, failed line leak detectors, failed sensors, etc.), if the failed UST system equipment is not repaired and re-tested within 24 hours of the discovery of the failure; and
- (e) Monitoring results from a leak detection method required under §280.41 and §280.42 that indicate a leak may have occurred unless:
 - (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
 - (2) In the case of inventory control, a second month of data does not confirm the initial result.
 - (3) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

§280.51 Investigation due to off-site impacts.

When required by the MDEQ, owners and operators of UST systems must follow the procedures in §280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the MDEQ or brought to its attention by another party.

§280.52 Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with Rule 2.6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under §280.50 within 7 days, or another reasonable time period specified by the MDEQ, using either the following steps or another procedure approved by the MDEQ:

- (a) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in §280.43(c) and §280.44(b) or, as appropriate, secondary containment testing described in §280.31(c)(3)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both, or if a breach of either wall of the secondary containment has occurred.
 - (1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Rule 2.6 if the test results for the system, tank, or delivery piping indicate that a leak exists.

- (2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.
 - (3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.
- (b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.
- (1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subpart F;
 - (2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

§280.53 Reporting and cleanup of spills and overfills.

- (a) Owners and operators of UST systems must contain and immediately clean up a spill or overflow and report to the MDEQ within 24 hours, or another reasonable time period specified by the MDEQ, and begin corrective action in accordance with Rule 2.6 in the following cases:
 - (1) Spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the MDEQ, or that causes a sheen on nearby surface water; and
 - (2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR part 302).
- (b) Owners and operators of UST systems must contain and immediately clean up a spill overflow of petroleum that is less than 25 gallons or another reasonable amount specified by the MDEQ, and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the MDEQ, owners and operators must immediately notify the MDEQ.

Note: Pursuant to §§302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, et seq., 49-2-1, et seq. and 49-17-1, et seq.

Rule 2.6 Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances.

§280.60 General.

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under §280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

§280.61 Initial response.

Upon confirmation of a release in accordance with §280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the MDEQ:

- (a) Report the release to the MDEQ (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

§280.62 Initial abatement measures and site check.

- (a) Unless directed to do otherwise by the MDEQ, owners and operators must perform the following abatement measures:
 - (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 - (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
 - (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 - (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable State and local requirements;

- (5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by §280.52(b) or the closure site assessment of §280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and
 - (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with §280.64.
- (b) Within 10 days after release confirmation, or within another reasonable period of time determined by the MDEQ, owners and operators must submit a report to the MDEQ summarizing the initial abatement steps taken under paragraph (a) of this rule and any resulting information or data.

§ 280.63 Initial site characterization.

- (a) Unless directed to do otherwise by the MDEQ, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in §§280.60 and 280.61. This information must include, but is not necessarily limited to the following:
- (1) Data on the nature and estimated quantity of release;
 - (2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
 - (3) Results of the site check required under §280.62(a)(5); and
 - (4) Results of the free product investigations required under §280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under §280.64.
- (b) Within 45 days of release confirmation or another reasonable period of time determined by the MDEQ, owners and operators must submit the information collected in compliance with paragraph (a) of this rule to the MDEQ in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the MDEQ.

§ 280.64 Free product removal.

At sites where investigations under §280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the MDEQ while continuing, as necessary, any actions initiated under §§280.61 through 280.63, or preparing for actions required under §§280.65 through 280.66. In meeting the requirements of this rule, owners and operators must:

- (a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and Federal regulations;
- (b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (d) Unless directed to do otherwise by the MDEQ, prepare and submit to the MDEQ, within 45 days after confirming a release, a free product removal report that provides at least the following information:
 - (1) The name of the person(s) responsible for implementing the free product removal measures;
 - (2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (3) The type of free product recovery system used;
 - (4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - (5) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - (6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - (7) The disposition of the recovered free product.

§280.65 Investigations for soil and ground-water cleanup.

- (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:
 - (1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
 - (2) Free product is found to need recovery in compliance with §280.64;
 - (3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§280.60 through 280.64); and

- (4) The MDEQ requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.
- (b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the MDEQ.

§280.66 Corrective action plan.

- (a) At any point after reviewing the information submitted in compliance with §§280.61 through 280.63, the MDEQ may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the MDEQ. Alternatively, owners and operators may, after fulfilling the requirements of §§280.61 through 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the MDEQ, and must modify their plan as necessary to meet this standard.
- (b) The MDEQ will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the MDEQ should consider the following factors as appropriate:
 - (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
 - (2) The hydrogeologic characteristics of the facility and the surrounding area;
 - (3) The proximity, quality, and current and future uses of nearby surface water and ground water;
 - (4) The potential effects of residual contamination on nearby surface water and ground water;
 - (5) An exposure assessment; and
 - (6) Any information assembled in compliance with this rule.
- (c) Upon approval of the corrective action plan or as directed by the MDEQ, owners and operators must implement the plan, including modifications to the plan made by the MDEQ. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the MDEQ.
- (d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:
 - (1) Notify the MDEQ of their intention to begin cleanup;

- (2) Comply with any conditions imposed by the MDEQ, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the MDEQ for approval.

§280.67 Public participation.

- (a) For each confirmed release that requires a corrective action plan, the MDEQ must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
- (b) The MDEQ must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
- (c) Before approving a corrective action plan, the MDEQ may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.
- (d) The MDEQ must give public notice that complies with paragraph (a) of this rule if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the MDEQ.

Source: Miss. Ann. §§ 49-2-9(1)(b), 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 2.7 Out-of-Service UST Systems and Closure.

§280.70 Temporary closure.

- (a) When an UST system is temporarily closed, owners and operators must notify the MDEQ and continue operation and maintenance of corrosion protection in accordance with §280.32, and any leak detection in accordance with Rule 2.4 and Rule 2.10. Rule 2.5 and Rule 2.6 must be complied with if a release is suspected or confirmed. However, leak detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than one (1) inch of residue remains in the system.
- (b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:
 - (1) Leave vent lines open and functioning;
 - (2) Cap and secure all other lines, pumps, manways, and ancillary equipment;

- (3) Empty the tank in accordance with §280.70(a); and
 - (4) Continue operation and maintenance of corrosion protection in accordance with §280.32.
- (c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in §280.20 for new UST systems or the upgrading requirements in §280.21, *except that* the spill and overflow equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§280.71-280.74, *unless* the MDEQ provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with §280.72 before such an extension can be applied for.
- (d) On or before October 5, 2019, when an UST system is temporarily closed for more than 12 months and the UST system meets the performance standards in §280.20 for new UST system or the upgrading requirements in §280.21, owners and operators shall permanently close the UST system at the end of this 12-month period in accordance with §280.71-280.74, or complete a site assessment in accordance with §280.72. At the end of the 12-month period and each calendar year thereafter, the owner and operator must perform and document an UST system inspection to verify the UST system is empty (less than one inch of petroleum product is in the tank), vent lines are open and functioning, piping is securely capped, and corrosion protection is operating correctly. The records for the annual temporary closure inspection shall be made available to MDEQ upon request.

§280.71 Permanent closure and changes-in-service.

- (a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this rule, or within another reasonable time period determined by the MDEQ, owners and operators must notify the MDEQ of their intent to permanently close or make the change-in-service, *unless* such action is in response to corrective action. The required assessment of the excavation zone under §280.72 must be performed after notifying the MDEQ but before completion of the permanent closure or a change-in-service.
- (b) To permanently close a tank system, owners and operators must empty and clean it by removing all liquids and accumulated sludges from the tank system. All tank systems taken out of service permanently must also be either removed from the ground or filled with an inert solid material.
- (c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with §280.72.

§280.72 Assessing the site at closure or change-in-service.

- (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release in accordance with "Guidelines for the Permanent Closure of Petroleum Underground Storage Tank Systems" and any applicable industry code or recommended practice listed in §280.13.
- (b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this rule, or by any other manner, owners and operators must begin corrective action in accordance with Rule 2.6.

§280.73 Applicability to previously closed UST systems.

When directed by the MDEQ, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the MDEQ, pose a current or potential threat to human health and the environment.

§280.74 Closure records.

Owners and operators must maintain records in accordance with §280.35 that are capable of demonstrating compliance with closure requirements under this rule. The results of the excavation zone assessment required in §280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and operators who took the UST system out of service;
- (b) By the current owners and operators of the UST system site; or
- (c) By mailing these records to the MDEQ if they cannot be maintained at the closed facility.

Source: Miss. Code Ann. § § 49-2-9(1)(b); 49-17-17(i), 49-17-401, *et seq.*, 49-2-1, *et seq.* and 49-17-1, *et seq.*

Rule 2.8 Financial Responsibility

Source: 53 FR 43370, Oct. 26, 1988, unless otherwise noted.

§ 280.90 Applicability.

- (a) This rule applies to owners and operators of all petroleum underground storage tank (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 §280.91.

- (c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this rule.
- (d) The requirements of this rule do not apply to owners and operators of any UST system described in §280.10 (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.

§ 280.91 Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this rule 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; January 24, 1989, except that compliance with §280.94(b) is required by: July 24, 1989.
- (b) All petroleum marketing firms owning 100–999 USTs; October 26, 1989.
- (c) All petroleum marketing firms owning 13–99 USTs at more than one facility; April 26, 1991.
- (d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; December 31, 1993.
- (e) All local government entities (including Indian tribes) not included in paragraph (f) of this section; February 18, 1994.
- (f) Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of this part; December 31, 1998.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 5452, Feb. 3, 1989; 55 FR 18567, May 2, 1990; 55 FR 46025, Oct. 31, 1990; 56 FR 66373, Dec. 23, 1991; 59 FR 9607, Feb. 28, 1994]

§ 280.92 Definition of terms.

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

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

Bodily injury shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

Chief Financial Officer, in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

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

Director of the Implementing Agency means the EPA Regional Administrator, or, in the case of a state with a program approved under section 9004, the Director of the designated state or local agency responsible for carrying out an approved UST program.

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:

- (1) a 10-K report submitted to the SEC;
- (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) 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,

- (1) By EPA or a state to require corrective action or to recover the costs of corrective action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

Local government shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

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

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 parties, refers to the party that is obtaining or has obtained financial assurances.

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.

Property damage shall have the meaning given this term by applicable state law. This term shall 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 shall not include corrective action associated with releases from tanks which are covered by the policy.

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 §§280.95–280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

Substantial business relationship means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

Substantial governmental relationship means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

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.

Termination under §280.97(b)(1) and §280.97(b)(2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 47081, Nov. 9, 1989; 58 FR 9050, Feb. 18, 1993]

§ 280.93 Amount and scope of required financial responsibility.

- (a) Owners or operators of petroleum underground storage tanks must 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 must 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 paragraphs (b) and (f) of this section, 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 paragraph (e) of this section, 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 non-sudden accidental releases, the amount of assurance provided by each mechanism or

combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

- (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 shall 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 anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, 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.

§ 280.94 Allowable mechanisms and combinations of mechanisms.

- (a) Subject to the limitations of paragraphs (b) and (c) of this section,
 - (1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in §§280.95 through 280.103 to demonstrate financial responsibility under this rule for one or more underground storage tanks, and
 - (2) A local government owner or operator may use any one or combination of the mechanisms listed in §§280.104 through 280.107 to demonstrate financial responsibility under this rule for one or more underground storage tanks.
- (b) An owner or operator may use a guarantee under §280.96 or surety bond under §280.98 to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.

- (c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

[53 FR 43370, Oct. 26, 1988, as amended at 58 FR 9051, Feb. 18, 1993]

§ 280.95 Financial test of self-insurance.

- (a) An owner or operator, and/or guarantor, may satisfy the requirements of §280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.
- (b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
 - (i) The total of the applicable aggregate amount required by §280.93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a state implementing agency under a state program approved by EPA under 40 CFR part 281;
 - (ii) 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 to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR part 271; and
 - (iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR part 145.
- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.
- (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.
- (4) The owner or operator, and/or guarantor, must either:
 - (i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service;
 - or

(ii) 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)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in §280.93 (b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/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, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He 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, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

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

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "non-sudden accidental releases"] in the amount

of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program by this [insert: “owner or operator,” and/or “guarantor”]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program authorized under 40 CFR part 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding State requirements.]

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or “guarantor”] 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:

<i>EPA Regulations</i>	<i>Amount</i>
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	\$____

This [insert: “owner or operator,” or “guarantor”] has not received an adverse opinion, a disclaimer of opinion, or a “going concern” qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of §280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of §280.95 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	\$ ____
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$ ____
3.	Sum of lines 1 and 2	\$ ____
4.	Total tangible assets	\$ ____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$ ____
6.	Tangible net worth [subtract line 5 from line 4]	\$ ____
		Yes No
7.	Is line 6 at least \$10 million?	__ __
8.	Is line 6 at least 10 times line 3?	__ __
9.	Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	__ __
10.	Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	__ __
11.	Have financial statements for the latest fiscal year been filed with the Rural Utilities Service?	__ __
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]	__ __

Alternative II

1.	Amount of annual UST aggregate coverage being assured by a test, and/or guarantee	\$ ____
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$ ____
3.	Sum of lines 1 and 2	\$ ____
4.	Total tangible assets	\$ ____

5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$_____
6.	Tangible net worth [subtract line 5 from line 4]	\$_____
7.	Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	\$_____
		Yes No
8.	Is line 6 at least \$10 million?	\$__ _
9.	Is line 6 at least 6 times line 3?	__ _
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	__ _
11.	Is line 7 at least 6 times line 3?	__ _
[Fill in either lines 12–15 or lines 16–18:]		
12.	Current assets	\$_____
13.	Current liabilities	_____
14.	Net working capital [subtract line 13 from line 12]	_____
		Yes No
15.	Is line 14 at least 6 times line 3?	__ _
16.	Current bond rating of most recent bond issue	__ _
17.	Name of rating service	__ _
18.	Date of maturity of bond	__ _
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service?	__ _

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4–18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR part 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

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

(f) The Director of the implementing agency may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of §280.95(b) or (c) and (d), the owner or operator must 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 he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director of the implementing agency that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

§ 280.96 Guarantee.

(a) An owner or operator may satisfy the requirements of §280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under paragraph (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in §280.95(d) and must 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 Director of the implementing agency notifies the guarantor that he no longer meets the requirements of the financial test of §280.95 (b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. 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 must obtain alternative coverage as specified in §280.110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.95 (b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, Rule 2.7 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner or operator); “On behalf of our affiliate” (if guarantor is a related firm of the owner or operator); or “Incident to our business relationship with” (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s)

in accordance with 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CFR 280.95 (b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Rule 2.7 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

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

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of §280.93 must 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 instructions from the Director of the implementing agency under §280.112. This standby trust fund must meet the requirements specified in §280.103.

§ 280.97 Insurance and risk retention group coverage.

(a) An owner or operator may satisfy the requirements of §280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) of this section, or evidenced by a certificate of insurance worded as specified in paragraph (b)(2) of this section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e);

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this endorsement is attached.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95–280.102 and 280.104-280.107.

c. Whenever requested by [a Director of an implementing agency], the [“Insurer” or “Group”] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states”].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) Certificate of Insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy
Endorsement (if applicable): _____

Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Group”] of its obligations under the policy to which this certificate applies.

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95–280.102 and 280.104-280.107 .

c. Whenever requested by [a Director of an implementing agency], the [“Insurer” or “Group”] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 47081, Nov. 9, 1989]

§ 280.98 Surety bond.

(a) An owner or operator may satisfy the requirements of §280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date _____ bond _____ executed:_____

Period of coverage:_____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases” “arising from operating the underground storage tank”].

Penal sums of bond:

Per occurrence \$ _____
Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully [“take corrective action, in accordance with 40 CFR part 280, Rule 2.6 and the Director of the state implementing agency's instructions for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CFR part 280, subpart

H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [the Director of the implementing agency] that the Principal has failed to ["take corrective action, in accordance with 40 CFR part 280, Rule 2.6 and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 40 CFR part 280 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by [the Regional Administrator or the Director] under 40 CFR 280.112.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that [the Director] has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by [the Director] under 40 CFR 280.112.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual

aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Names(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

[State of Incorporation: _____]

[Liability limit: \$_____]

[Signature(s)]

[Names(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$_____

(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 §280.93 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 Director under §280.112. This standby trust fund must meet the requirements specified in §280.103.

§ 280.99 Letter of credit.

(a) An owner or operator may satisfy the requirements of §280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]

[Name and address of Director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. ____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Solid Waste Disposal Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of §280.93 must 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 Director of the implementing agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under §280.112. This standby trust fund must meet the requirements specified in §280.103.

(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.

[53 FR 37194, Sept. 23, 1988, as amended at 59 FR 29960, June 10, 1994]

§ 280.100 Use of state-required mechanism.

(a) For underground storage tanks located in a state that does not have an approved program, and where the state requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a state-required financial mechanism to meet the requirements of §280.93 if the Regional Administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this rule.

(b) The Regional Administrator will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of §280.93. The submission must include copies of the appropriate state statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petitioner to submit additional information as is deemed necessary to make this determination.

(d) Any petition under this section may be submitted on behalf of all of the state's underground storage tank owners and operators.

(e) The Regional Administrator will notify the petitioner of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this rule. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of §280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[53 FR 43370, Oct. 26, 1988; 53 FR 51274, Dec. 21, 1988]

§ 280.101 State fund or other state assurance.

(a) An owner or operator may satisfy the requirements of §280.93 for underground storage tanks located in a state, where EPA is administering the requirements of this rule, which assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in §280.93 or otherwise assures that such costs will be paid if the Regional Administrator determines that the state's assurance is at least equivalent to the financial mechanisms specified in this rule.

(b) The Regional Administrator will evaluate the equivalency of a state fund or other state assurance principally in terms of: Certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state must submit to the Regional Administrator a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the state to submit additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of §280.93 for the amounts and types of costs covered by the state fund or other state assurance.

(d) The Regional Administrator will notify the state of his determination regarding the acceptability of the state's fund or other assurance in lieu of financial mechanisms specified in this rule. Within 60 days after the Regional Administrator notifies a state that a state fund or other state assurance is acceptable, the state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with §280.111(b)(8).

§ 280.102 Trust fund.

(a) An owner or operator may satisfy the requirements of §280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has

the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in §280.103(b)(1), and must be accompanied by a formal certification of acknowledgement as specified in §280.103(b)(2).

(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 mechanism(s) 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 Director of the implementing agency for release of the excess.

(e) If other financial assurance as specified in this rule is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director of the implementing agency 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 paragraph (d) or (e) of this section, the Director of the implementing agency will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

§ 280.103 Standby trust fund.

(a) An owner or operator using any one of the mechanisms authorized by §§280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of ___" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and

property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standpoint trust agreement.

[Whereas, the Grantor has elected to establish [insert either “a guarantee,” “surety bond,” or “letter of credit”] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to [the Director of the implementing agency's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by [the state implementing agency]

Section 4. Payment for [“Corrective Action” and/or Third-Party Liability Claims”]

The Trustee shall make payments from the Fund as [the Director of the implementing agency] shall direct, in writing, to provide for the payment of the costs of [insert: “taking corrective action” and/or compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by [the Director], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Director] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as [the Director] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence,

acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held

in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes

effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by [the Director of the implementing agency] to the Trustee shall be in writing, signed by [the Director], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or [the director] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or [the Director], except as provided for herein.

Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

(2) The standby trust agreement, or trust agreement must be accompanied by a formal certification of acknowledgement similar to the following. State requirements may differ on the proper content of this acknowledgment.

State _____ of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such

corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(c) The Director of the implementing agency will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director 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 rule.

[53 FR 43370, Oct. 26, 1988; 53 FR 51274, Dec. 21, 1988]

§ 280.104 Local government bond rating test.

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of §280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of §280.93 by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, A, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

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

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

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

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

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

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

[Date] _____
 [Signature] _____
 [Name] _____
 [Title] _____

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert : “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

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

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

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

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

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

[Date] _____
 [Signature] _____
 [Name] _____
 [Title] _____

(f) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Director finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond

rating test requirements of §280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

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

(h) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the Director of the implementing agency that it no longer meets the requirements of the bond rating test, the owner or operator must notify the Director of such failure within 10 days.

[58 FR 9053, Feb. 18, 1993]

§ 280.105 Local government financial test.

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

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

(i) *Total revenues*: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

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

under the direct control of the local government using the financial test (interfund transfers).

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

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

(v) *Total funds*: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

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

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

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

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

Letter From Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or

“nonsudden accidental releases”) in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 40 CFR Part 280.22 or the corresponding state requirements.]

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

Worksheet for Municipal Financial Test

Part I: Basic Information

1. Total Revenues

a. Revenues (dollars) _____

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

b. Subtract interfund transfers (dollars)_____

c. Total Revenues (dollars)_____

2. Total Expenditures

a. Expenditures (dollars) _____

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

b. Subtract interfund transfers (dollars)_____

c. Total Expenditures (dollars)_____

3. Local Revenues

- a. Total Revenues (from 1c) (dollars) _____
- b. Subtract total intergovernmental transfers (dollars) _____
- c. Local Revenues (dollars) _____

4. Debt Service

- a. Interest and fiscal charges (dollars) _____
- b. Add debt retirement (dollars) _____
- c. Total Debt Service (dollars) _____

5. Total Funds (Dollars) _____

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

6. Population (Persons) _____

Part II: Application of Test

7. Total Revenues to Population

- a. Total Revenues (from 1c) _____
- b. Population (from 6) _____
- c. Divide 7a by 7b _____
- d. Subtract 417 _____
- e. Divide by 5,212 _____
- f. Multiply by 4.095 _____

8. Total Expenses to Population

- a. Total Expenses (from 2c) _____
- b. Population (from 6) _____
- c. Divide 8a by 8b _____

d. Subtract 524 _____

e. Divide by 5,401 _____

f. Multiply by 4.095 _____

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c) _____

b. Total Revenues (from 1c) _____

c. Divide 9a by 9b _____

d. Subtract .695 _____

e. Divide by .205 _____

f. Multiply by 2.840 _____

10. Debt Service to Population

a. Debt Service (from 4c) _____

b. Population (from 6) _____

c. Divide 10a by 10b _____

d. Subtract 51 _____

e. Divide by 1,038 _____

f. Multiply by -1.866 _____

11. Debt Service to Total Revenues

a. Debt Service (from 4c) _____

b. Total Revenues (from 1c) _____

c. Divide 11a by 11b _____

d. Subtract .068 _____

e. Divide by .259 _____

f. Multiply by -3.533 _____

12. Total Revenues to Total Expenses

a. Total Revenues (from 1c)_____

b. Total Expenses (from 2c)_____

c. Divide 12a by 12b_____

d. Subtract .910 _____

e. Divide by .899 _____

f. Multiply by 3.458 _____

13. Funds Balance to Total Revenues

a. Total Funds (from 5) _____

b. Total Revenues (from 1c)_____

c. Divide 13a by 13b _____

d. Subtract .891 _____

e. Divide by 9.156_____

f. Multiply by 3.270 _____

14. Funds Balance to Total Expenses

a. Total Funds (from 5)_____

b. Total Expenses (from 2c)_____

c. Divide 14a by 14b_____

d. Subtract .866 _____

e. Divide by 6.409 _____

f. Multiply by 3.270 _____

15. Total Funds to Population _____

a. Total Funds (from 5) _____

b. Population (from 6)_____

c. Divide 15a by 15b _____

d. Subtract 270 _____

e. Divide by 4,548 _____

f. Multiply by 1.866 _____

16. Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$ _____

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

[Date]

[Signature]

[Name]

[Title]

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

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

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Director of the implementing agency that it no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

[58 FR 9054, Feb. 18, 1993]

§ 280.106 Local government guarantee.

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

and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

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

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

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

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

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

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Director of the implementing agency, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Director of the implementing agency for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a state, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, Rule 2.8 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Rule 2.6, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [”sudden” and/or “non-sudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

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

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Rule 2.8 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

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

- (i) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (ii) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
- (iii) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (iv) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (v) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

- (i) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR part 280.104, the local government financial test requirements of 40 CFR part 280.105, or the local government fund under 40 CFR part 280.107(a), 280.107(b), or 280.107(c)].
- (ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, Rule 2.8 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
- (iii) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:
- (iv) In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

- (v) In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Rule 2.6F, the guarantor upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.
- (vi) If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.
- (vii) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
- (viii) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (ix) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.
- (x) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Rule 2.8 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.
- (xi) The guarantor's obligation does not apply to any of the following:
 - (a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(xii) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

If the guarantor is a state, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a State

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

- (i) Guarantor is a state.
- (ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks

are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, Rule 2.8 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

- (iii) Guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Rule 2.6F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

- (iv) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (v) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(vi) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Rule 2.8 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

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

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

- (i) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR part 280.104, the local government financial test requirements of 40 part CFR 280.105, the local government fund under 40 CFR part 280.107(a), 280.107(b), or 280.107(c).
- (ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, Rule 2.8 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
- (iii) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director] shall make funds available

to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Rule 2.6, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

- (iv) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
- (v) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (vi) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.
- (vii) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, Rule 2.8 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.
- (viii) The guarantor's obligation does not apply to any of the following:
 - (A) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

- (B) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
- (C) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (D) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (E) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(ix) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[58 FR 9056, Feb. 18, 1993]

§ 280.107 Local government fund.

A local government owner or operator may satisfy the requirements of §280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (b), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

- (a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of

coverage required under §280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under §280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under §280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the “pay-in-period.” The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

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

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: “The local government fund is funded for the full amount of coverage required under §280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.” or “The local government fund is funded for five times the full amount of coverage required under §280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage,” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority”].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): _____

[If fund balance is incrementally funded as specified in §280.107(c), insert:

Amount added to fund in the most recently completed fiscal year: _____

Number of years remaining in the pay-in period: ____]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 280.107(d) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

[58 FR 9059, Feb. 18, 1993]

§ 280.108 Substitution of financial assurance mechanisms by owner or operator.

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this rule, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of §280.93.

(b) After obtaining alternate financial assurance as specified in this rule, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

[53 FR 43370, Oct. 26, 1988. Redesignated at 58 FR 9051, Feb. 18, 1993]

§ 280.109 Cancellation or nonrenewal by a provider of financial assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 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 §280.114, the owner or operator must 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 must notify the Director of the implementing agency 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 §280.111(b).

[58 FR 9051, Feb. 18, 1993]

§ 280.110 Reporting by owner or operator.

(a) An owner or operator must submit the appropriate forms listed in §280.111(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under §280.53 or §280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this rule, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by §280.95(g) and §280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under §280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in §280.111(b) or other information relevant to compliance with this rule at any time.

[58 FR 9051, Feb. 18, 1993]

§ 280.111 Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this rule for an underground storage tank until released from the requirements of this rule under §208.113. An owner or operator must

maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§280.95 through 280.100 or §280.102 or §§280.104 through 280.107 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must 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 must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under §280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under §280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under §280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under §280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must 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.

(8) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under §280.101(d).

(9) An owner or operator using a local government fund under §280.107 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under §280.107(a)(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under §280.107 using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under §280.107(c)(1)), or attestation by the State Attorney General as specified under §280.107(c)(2).

(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) An owner or operator using an assurance mechanism specified in §§280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of Rule 2.8 of 40 CFR part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under Rule 2.8 of 40 CFR part 280 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

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

[58 FR 9051, Feb. 18, 1993]

§ 280.112 Drawing on financial assurance mechanisms.

(a) Except as specified in paragraph (d) of this section, the Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) 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

(ii) The Director 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 the Director pursuant to Rule 2.5 or 2.6 of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2) (i) or (ii) of this section are satisfied.

(b) The Director of the implementing agency may draw on a standby trust fund when:

(1) The Director makes a final determination that a release has occurred and immediate 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 40 CFR part 280, Rule 2.6; or

(2) The Director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

or (ii) 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 rule and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under §280.106(e), the local government guarantee without standby trust, shall make payments as directed by the Director under the circumstances described in §280.112 (a), (b), and (c).

[58 FR 9052, Feb. 18, 1993]

§ 280.113 Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this rule for an underground storage tank after the tank has been permanently closed or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed as required by 40 CFR part 280, Rule 2.7.

[53 FR 43370, Oct. 26, 1988. Redesignated at 58 FR 9051, Feb. 18, 1993]

§ 280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in §280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in §280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this rule within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

[58 FR 9053, Feb. 18, 1993]

§ 280.115 Replenishment of guarantees, letters of credit, or surety bonds.

(a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage 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 required is the amount of coverage to be provided by §280.93 of this rule. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[58 FR 9053, Feb. 18, 1993]

§ 280.116 Suspension of enforcement. [Reserved]

Rule 2.9 Lender Liability

§280.120 Definitions.

(a) UST technical standards, as used in this rule, refers to the UST preventative and operating requirements under Rule 2.2, 2.3, 2.4, 2.7, and 2.10 of this part and §280.50.

(b) Petroleum production, refining, and marketing.

(1) Petroleum production means the production of crude oil or other forms of petroleum (as defined in §280.12) as well as the production of petroleum products from purchased materials.

(2) Petroleum refining means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) Petroleum marketing means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) Indicia of ownership means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter “lease financing transaction”), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A holder is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in §280.200(c)) primarily to protect a security interest (as defined in §280.200(f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A borrower, debtor, or obligor is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) Primarily to protect a security interest means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) Security interest means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) Primarily to protect a security interest, as used in this rule, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) Operation means, for purposes of this rule, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system.

§280.121 Participation in management.

The term “participating in the management of an UST or UST system” means that, subsequent to the effective date of this rule, October 5, 2018, the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this rule, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this part or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this rule. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or

facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this rule. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in §280.121(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this part, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in §280.121(a) and §280.123. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this part or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the

work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in §280.121(a). For purposes of this rule, “work out” refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this rule, the term “foreclosure” means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in §280.121(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or

appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in §280.121(c)(2). A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in §280.121(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this rule.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which

the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under §§280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph (c).

(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in §280.121(c). A “written, bona fide, firm offer” means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month

period begins to run from December 6, 1995 or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this part, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in §280.121(a) and §280.123. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this part or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

§280.1220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an “owner” of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in §280.120(a), the UST corrective action requirements under §§280.51 through 280.67, and the UST financial responsibility requirements under §§280.90 through 280.111, provided the person:

- (a) Does not participate in the management of the UST or UST system as defined in §280.121; and
- (b) Does not engage in petroleum production, refining, and marketing as defined in §280.120(b).

§280.123 Operating an underground storage tank or underground storage tank system.

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in §280.121(c), is not an “operator” of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in §280.120(a), the UST corrective action requirements under §§280.51 through 280.67, and the UST financial responsibility requirements under §§280.90 through 280.111, provided that, after December 6, 1995, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in §280.121(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an “operator” of a petroleum UST or UST system for purposes of compliance with this part if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this part or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an “operator” of the UST or UST system, for purposes of compliance with the UST technical standards as defined in §280.200(a), the UST corrective action requirements under §§280.51 through 280.67, and the UST financial responsibility requirements under §§280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with §§280.71 through 280.74, except §280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of §280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with §280.31;

(B) Report suspected releases to the implementing agency; and

(C) Conduct a site assessment in accordance with §280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in §280.20 for new UST systems or the upgrading requirements in §280.21, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the implementing agency. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this part or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

Rule 2.10 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

§280.130 Definitions.

For purposes of this rule, the following definitions apply:

Airport hydrant fuel distribution system (also called airport hydrant system) means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

Field-constructed tank means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

§280.131 General requirements.

(a) *Implementation of requirements.* Owners and operators must comply with the requirements of this part for UST systems with field-constructed tanks and airport hydrant systems as follows:

(1) For UST systems installed on or before October 5, 2018 the requirements are effective according to the following schedule:

Requirement	Effective date
Upgrading UST systems; general operating requirements; and operator training	October 5, 2021.
Release detection	October 5, 2021.
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph (b) of this section)	October 5, 2018

(2) For UST systems installed after October 5, 2018, the requirements apply at installation.

(b) Not later than October 5, 2021, all owners of previously deferred UST systems must submit a one-time notice of tank system existence to the implementing agency, using the form in appendix I of this part or a state form in accordance with §280.22(c). Owners and operators of UST systems in use as of October 13, 2015 must demonstrate financial responsibility at the time of submission of the notification form.

(c) Except as provided in §280.132, owners and operators must comply with the requirements of Rule 2.1 through Rule 2.8 and Rule 2.9 of this part.

(d) In addition to the codes of practice listed in §280.20, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, *Petroleum Fuel Facilities*, when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

§280.132 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

(a) *Exception to piping secondary containment requirements.* Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

(b) *Upgrade requirements.* Not later than October 5, 2021, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before October 5, 2018 must meet the following requirements or be permanently closed pursuant to Rule 2.7 of this part.

(1) *Corrosion protection.* UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:

(i) Except as provided in paragraph (a) of this section, the new UST system performance standards for tanks at §280.20(a) and for piping at §280.20(b); or

(ii) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:

(A) Cathodic protection must meet the requirements of §280.20(a)(2)(ii), (iii), and (iv) for tanks, and §280.20(b)(2)(ii), (iii), and (iv) for piping.

(B) Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the implementing agency to adequately assess the tank for structural soundness and corrosion holes.

(2) *Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overflow prevention equipment requirements specified in §280.20(c).

(c) *Walkthrough inspections.* In addition to the walkthrough inspection requirements in §280.38, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to §280.36(b).

(1) Hydrant pits—visually check for any damage; remove any liquid or debris; and check for any leaks, and

(2) Hydrant piping vaults—check for any hydrant piping leaks.

(d) *Release detection.* Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this rule not later than October 5, 2021.

(1) *Methods of release detection for field-constructed tanks.* Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in Rule 2.4 of this part. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in Rule 2.4 (except §280.43(e) and (f) must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(i) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(ii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(iii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(iv) Perform vapor monitoring (conducted in accordance with §280.43(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(v) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance

Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(A) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with §280.43(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or

(vi) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (d)(1)(i) through (v) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability of detection.

(2) *Methods of release detection for piping.* Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in Rule 2.4 of this part. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in Rule 2.4 (except §280.43(e) and (f) must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table listed.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test—leak detection rate not to exceed (gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS ≥100,000 GALLONS IN VOLUME

First test	Not later than October 5, 2021 (may use up to 6.0 gph leak rate).
Second test	Between October 5, 2021 and October 13, 2021 (may use up to 6.0 gph leak rate).
Third test	Between October 13, 2021 and October 13, 2022 (must use 3.0 gph for leak rate).
Subsequent tests	After October 13, 2022, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

- (iii) Perform vapor monitoring (conducted in accordance with §280.43(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
- (iv) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and
 - (A) Perform a line tightness test (conducted in accordance with paragraph (d)(2)(i) of this section using the leak rates for the semiannual test) at least every two years; or
 - (B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with §280.43(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or

(v) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (d)(2)(i) through (iii) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability of detection.

(3) *Recordkeeping for release detection.* Owners and operators must maintain release detection records according to the recordkeeping requirements in §280.45.

(e) *Applicability of closure requirements to previously closed UST systems.* When directed by MDEQ, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before October 13, 2015 must assess the excavation zone and close the UST system in accordance with Rule 2.7 of this part if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.