

## DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

### BUREAU OF FIRE SERVICES

#### UNDERGROUND STORAGE TANK REGULATIONS

(By authority conferred on the director of the department of licensing and regulatory affairs by section 21106 of 1994 PA 451, MCL 324.21106, and Executive Reorganization Order Numbers 1995-16, 1998-2, 2009-31, 2011-1, and 2012-7, MCL 324.99903, 29.461, 324.99919, 324.99921, and 29.462.)

#### **R 29.2101 Adoption of standards by reference.**

Rule 1. The provisions of 40 C.F.R. part 280, subparts A to K, (2015), entitled "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," as amended by 54 F.R. November 9, 1989, pages 47081 to 47092, and as amended by 58 F.R. February 18, 1993, pages 9050 to 9059, and as amended by 135 F.R. July 15, 2015, pages 41623 to 41669 are adopted by reference in these rules. Copies of the adopted regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202-512-1800 or online at [www.bookstore.gpo](http://www.bookstore.gpo), at a cost as of the time of adoption of these rules of \$56.00, or a copy can be obtained online without cost at <https://www.ecfr.gov>.

History: 1998-2000 AACCS; 2008 AACCS; 2018 AACCS.

### AMENDMENTS TO ADOPTED FEDERAL REGULATIONS

#### SUBPART A. PROGRAM SCOPE AND INTERIM PROHIBITION

#### **R 29.2103 Applicability.**

Rule 3. Sections 280.10 is amended to read as follows:

Section 280.10. (a) The requirements of these rules apply to all owners and operators of a UST system as defined in section 280.12, except as otherwise provided in subsection (c) of this section.

(1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators shall meet the following requirements as applicable:

(i) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall meet the requirements in subpart K.

(ii) UST systems that store fuel solely for use by emergency power generators installed on or before October 13, 2015 shall meet the subpart D requirements on or before October 13, 2018.

(iii) UST systems that store fuel solely for use by emergency power generators installed after October 13, 2015 shall meet all applicable requirements of these rules at installation.

(2) Any UST system listed in subsection c of this section shall meet the requirements of section 280.11.

(b) ~~Deleted.~~

(c) Partial exclusions. Subparts B, C, D, E, G, J, and K do not apply to any of the following types of UST systems:

(1) A wastewater treatment tank system not covered under definition of underground storage tank.

(2) Any UST system that contains radioactive material and which is regulated under the provisions of the atomic energy act of 1954, as amended, 42 U.S.C. §2011 et seq.

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the nuclear regulatory commission and subject to nuclear regulatory commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50.

(4) Aboveground storage tanks associated with either of the following:

(i) Airport hydrant fuel distribution systems regulated under subpart K.

(ii) UST systems that have field-constructed tanks regulated under subpart K.

(d) Prohibitions.

(1) Upon notification by the implementing agency, a person shall not deliver a regulated substance into any UST system if the system is not in compliance with these rules. Such notification may include verbal or written communication or an affixed written notification on the UST system.

(2) A person shall not tamper with, remove, or disregard written notification affixed to the UST system.

(3) Any UST system or practice that is not in compliance with these rules shall be considered to be in violation of these rules.

(4) An owner and operator shall not continue to use an UST system that is causing a release. If the release is from the piping, then the piping shall be emptied of any liquid product until repaired and tested or replaced. If the release is from the tank, or if the origin of the release cannot be determined, then the UST system shall be expeditiously emptied of all liquid product until repaired and tested or replaced.

(e) An implementing agency may order, at the expense of the owner, a tightness test of a UST system in accordance with the provisions of subsections 280.43(c) and 280.44(b), the installation of dry well test holes, or the emptying of a UST system in accordance with the provisions of section 280.71 when there is reason to believe that the UST system is releasing a regulated substance.

(f) A person may request a variation of the application of a rule by applying to the department with a satisfactory explanation of why compliance is not possible, and stating what equivalent safety factors will be used instead of the rule. If the requested variation involves a substantive rule as opposed to a procedural rule, such as time deadlines, then the department shall notify affected state and local agencies of the nature of, and the reasons for, the request and consider any input provided within 10 days of receipt of the notice by affected state and local agencies. The department may make a variation upon

finding that the variation does not result in an increased hazard to life, property, or the environment. The findings must be transmitted to the person requesting the variation and must be maintained at the facility.

(1) Within 45 days of receiving a request for variance of section 280.35, the department may grant a variance to any person requesting to extend the compliance deadline for completion of integrity testing, as required under Section 280.35, of existing spill prevention equipment and containment sumps used for interstitial monitoring at all systems that they are responsible for under this section, not to exceed October 13, 2021. Existing spill prevention equipment and containment sumps are those installed prior to April 11, 2016.

(2) As an equivalent measure for purposes of granting the variance, the requestor shall inspect all spill prevention equipment and containment sumps used for interstitial monitoring included under the variance as part of their normal inspections as required by these rules. Equivalent measures may be ceased for spill prevention equipment and containment sumps for which integrity testing has been completed.

(3) The variance request shall include a written plan that the requestor will implement by October 13, 2021 to insure completion of integrity testing at all systems that the requestor is responsible for.

(g) A person aggrieved by a final decision of the department on a request for variance may appeal to the circuit court within 21 days of the decision.

(h) All UST systems shall comply with R 29.5601 to R 29.5605 and R 29.5651 to R 29.5917. These rules shall supersede any conflicting provision of R 29.5601 to R 29.5605 and R 29.5651 to R 29.5917.

(i) UST systems installed on or before the effective date of these amendatory rules in accordance with the provisions of R 29.2101 to R 29.2169 then in effect are deemed to be in compliance with these amendatory rules. Where specified, the provisions of these rules are retroactive.

History: 1998-2000 AACCS; 2008 AACCS; 2018 AACCS.

### **R 29.2105 Installation requirements for partially excluded UST systems.**

Rule 5. Section 280.11 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.11. (a) No person may install an UST system listed in subdivisions 280.10(c)(1), (2), or (3) for the purpose of storing regulated substances unless the UST system:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an owner or operator may install an UST system without corrosion protection at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its

operating life. Owners and operators shall maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

History: 1990 AACCS; 2018 AACCS.

#### **R 29.2107 Definitions.**

Rule 7. Section 280.12 is amended to read as follows:

Section 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 aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Active UST system" means an UST system that has been in use within the past 12 months.

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

"Approved" means acceptable to the department, unless specifically indicated otherwise in the rule.

"Belowground release" means any release to the subsurface of the land or to groundwater. This includes releases such as those from the belowground portions of an UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST.

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

"Cathodic protection" is a technique to prevent the 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 and who has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems. The person shall be certificated as being qualified by the national association of corrosion engineers (NACE) international, steel tank institute (STI), or any other organization that is acceptable to the department.

"CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended, 42 U.S.C. section 9601 et seq.

"Class A operator" means either the O/O as defined in these rules or legal designee and has primary responsibility to operate and maintain the UST system. The class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means an individual, or individuals, who has day-to-day responsibility for implementing applicable regulatory requirements established by the

department. The class B operator typically implements in-field aspects of operation, maintenance, and recordkeeping for USTs at 1 or more facilities.

"Class C operator" means an individual responsible for responding to alarms or other indications of emergencies caused by spills, releases, overfills, and other emergency conditions associated with an UST system. The class C operator typically controls or monitors the dispensing or sale of regulated substances. A "class C operator" is not considered a "designated class B operator" as defined in these rules, although the same individual may hold both positions.

"Compatible" means the ability of 2 or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping, including valves, fittings, joints, flanges, and flexible connectors attached to a tank system, through which regulated substances flow. For determining how much piping is connected to any individual UST system, the piping that joins 2 UST systems must be allocated equally between the systems.

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

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"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. The person shall be certificated as being qualified by the NACE international as a senior corrosion technologist, a cathodic protection specialist, or a corrosion specialist 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.

"Deminimis concentration" An UST meets the requirements of exclusion (o) for deminimis concentration of regulated substances, under the definition of "UST system," if both of the following conditions are met:

(a) The concentration of a regulated substance in an UST system, when mixed with a nonregulated substance, is less than 110 gallons of regulated substance when the storage tank is full.

(b) The UST system, of any size or capacity, contains less than the reportable quantity of hazardous substance or substances in the product stored, as identified in the United States environmental protection agency table 302.4 list of hazardous substances and reportable quantities, when the storage tank is full.

"Deminimis quantity" means that the total quantity of a hazardous substance mixed with petroleum in a full UST is less than the reportable quantity for the substance as specified on the CERCLA list. This does not apply to motor fuel additives and blends that are added at the refinery or shipped via pipeline with the finished product, or both.

"Department" means the department of licensing and regulatory affairs, bureau of fire services.

"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 fittings are used to electrically isolate portions of the UST system, for example, the tank from piping.

"Director" means the director of the department.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the UST system.

"Dispenser system replacement" means to remove an existing dispenser and the equipment necessary to connect the dispenser to the UST system and install a new dispenser and the equipment necessary to connect the dispenser to the UST system. This equipment includes the following:

(a) Flexible connectors.

(b) Risers.

(c) Check valves, shear valves, and unburied risers.

(d) Other transitional components that are beneath the dispenser and connect the dispenser to the piping.

"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 materials 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 is considered to have commenced if the O/O 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 either a continuous on-site physical construction or installation program has begun or the O/O has entered into contractual obligations - that cannot be canceled or modified without substantial loss. These obligations include the physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" means 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 that have growing operations.

"Field-constructed tank" means a tank that is constructed on-site.

"Flow-through process tank" means 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 and the tank is utilized to carry out or control the heating, cooling, mixing, blending, separating, metering, or chemical action of materials. The processing is done on a regular basis and it is the primary function of the tank. Flow-through process tanks do not include tanks used for the storage of materials before their introduction into the production process or for the storage of



finished products or by-products from the production process or tanks that are only used to recirculate materials.

"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.

"Hazardous substance UST system" means an UST system that contains a hazardous substance defined in section 101(14) of the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601, (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, unless the mixture is a petroleum product.

"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 1 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.

"Implementing agency" means the department of licensing and regulatory affairs, bureau of fire services, by section 21106 of 1994 PA 451, MCL 324.21106, or a local unit of government delegated authority under part 211 of 1994 PA 451, MCL 324.21101 to 324.21113.

"Integral secondary containment system" means a tank or piping system that has the primary containment tank or piping system fully jacketed by an external, 360-degree, unbonded, nonmetallic material, that provides for external corrosion protection, liquid interstitial space communication and monitoring, and product compatibility to contain a release from the primary containment tank or piping system. The jacketing material for the tank must be a minimum of 100 mils in thickness. The integral secondary containment system must be acceptable to the department.

"In use" means that an UST or UST system contains more than 2.5 centimeters (1 inch) of a regulated substance.

"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.

"Local unit of government" means a city, village, township, county, or governmental authority or any combination of cities, villages, townships, counties, or governmental authorities.

"Maintenance" means the normal operational upkeep to prevent an UST system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, no. 1 or no. 2 diesel fuel, or any blend containing 1 or more of these substances (for example: motor gasoline blended with alcohol).

"NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water.

"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."

"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" means the period beginning when installation of the tank system has commenced until the time the tank system is permanently closed under subpart G.

"Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an UST system.

"Out of service" is defined the same as "out of use".

"Out of use" means that an UST system is not in use. (See definition of "in use"). The system must be reported as either temporarily closed or permanently closed.

"Overfill release" means a release that occurs when a tank is filled beyond its capacity and results in a discharge of the regulated substance into the environment.

"Owner" means a person who holds, or at the time of a release held, a legal, equitable, or possessory interest of any kind in an UST system or in the property on which an UST system is located, such as, a trust, vendor, vendee, lessor, or lessee. However, "owner" does not include a person or a regulated financial institution acting in a fiduciary capacity that, without participating in the management of an UST system and without being otherwise engaged in petroleum production, refining, or marketing relating to the UST system, holds indicative of ownership primarily to protect the person's or the regulated financial institution's security interest in the UST system or the property on which it is located or to implement the terms of a trust agreement.

"O/O" means owner ~~and~~/or operator.

"Person" means any of the following:

- (a) An individual.
- (b) A partnership.
- (c) A joint venture.
- (d) A trust.
- (e) A firm.
- (f) A joint stock company.
- (g) A corporation, including a government corporation.
- (h) An association.
- (i) A local unit of government.
- (j) A commission.
- (k) The state.
- (l) A political subdivision of a state.
- (m) An interstate body.
- (n) The federal government.
- (o) A political subdivision of the federal government.
- (p) Any other legal entity.



"Petroleum UST system" means an UST system that contains petroleum or a mixture of petroleum that has additives and de minimis quantities of other regulated substances. The systems include those containing any of the following:

- (a) Motor fuels.
- (b) Jet fuels.
- (c) Distillate fuel oils.
- (d) Residual fuel oils.
- (e) Lubricants.
- (f) Used oils.
- (g) Petroleum solvents.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonferrous materials that routinely contains and conveys regulated substances from the tank or tanks to the dispenser or dispensers or other end use equipment and includes connected piping. Piping does not include any of the following:

- (a) Vent pipe.
- (b) Vapor recovery lines.
- (c) Fill lines that are not remote fill lines and that do not routinely contain regulated substances.

"Piping replacement" means to remove, and install as new more than 50% of piping connected to a single underground tank.

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

"Public water supply" has the same meaning as defined in 1976 PA 399, MCL 325.1001 to 325.1023, and rules promulgated under that act.

"Regulated substance" means either of the following:

(a) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation and liability act of 1980, Public Law 96-510, 42 U.S.C. section 9601 et seq., but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. section 6921 to section 6931 and section 6933 to section 6939b.

(b) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes mixtures of petroleum that have de minimis quantities of other regulated substances and also includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing, such as any of the following:

- (1) Motor fuels.
- (2) Jet fuels.
- (3) Distillate fuel oils.
- (4) Residual fuel oils.
- (5) Lubricants.
- (6) Petroleum solvents.
- (7) Used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into 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 a tank or UST system component to proper operating condition, such as a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly. Repairs that involve the replacement of more than 50% of the length of any underground piping between the tank and the dispenser at any 1 time must be considered a replacement of the underground piping and must meet the requirements of the new UST system underground piping in subsection 280.20(b).

"Replaced" means either of the following:

(1) For a tank – to remove a tank and install another tank.

(2) For piping – to remove 50% or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

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

"SARA" means the superfund amendments and reauthorization act of 1986, 42 U.S.C. section 9601 et seq. as amended by 1986 Public Law 99-499.

"Secondary containment," 360-degree integral secondary containment system and, for piping, a 360-degree double-walled pipe or a 360-degree integral secondary containment system or other method of containment indicated in subsection 280.42(e). Secondary containment systems must meet the requirements of subsections 280.42(a), (b), and (d). This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a watertight 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.

"State fire marshal" means fire marshal for the state of Michigan.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff 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.

"Surface impoundment" means a natural topographic depression, manmade 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" means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, for example, concrete, steel, or plastic, that provide structural support.

“Training program” means any program that provides information to and evaluates the knowledge of a class A, class B, or class C operator through testing, practical demonstration, or another approach acceptable to the implementing agency regarding requirements for UST systems that meet the requirements of subpart J.

“Under-dispenser containment (UDC)” means containment underneath a dispenser that will prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater. Such containment must meet all of the following:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations.
- (b) Be compatible with the substance conveyed by the piping.
- (c) Allow for visual inspection and access to the components in the containment system and/or be monitored.

- (d) Prevent the intrusion of surface water.

“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 system” or “UST system” or “tank system” means a tank or combination of tanks, including underground pipes connected to the tank or tanks or underground ancillary equipment containment systems, if any, which is, was, or may have been, used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An UST system does not include any of the following:

- (a) A farm or residential tank that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes.

- (b) A tank used for storing heating oil for consumptive use on the premises where the oil is stored.

- (c) A septic tank.

- (d) A pipeline facility, including gathering lines, regulated under either of the following:

- (1) The natural gas pipeline safety act of 1968, Public Law 90-481, as amended, 49 U.S.C. appendix section 1671 to section 1677, section 1679A to section 1682, and section 1683 to section 1687.

- (2) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, as amended, title II of Public Law 96-129, 49 U.S.C. appendix section 2001.

- (e) A surface impoundment, pit, pond, or lagoon.

- (f) A stormwater or wastewater collection system.

- (g) A flow-through process tank.

- (h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

- (i) A storage tank situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel if the storage tank is situated on or above the surface of the floor.

- (j) Any pipes connected to a tank that is described in subparagraphs (a) to (i) and (k) to (p) of this paragraph.

(k) An UST system holding hazardous wastes listed or identified under the provisions of subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. section 6921 to section 6931 and section 6933 to section 6939b, or a mixture of the hazardous waste and other regulated substances.

(l) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under the provisions of section 307(b) of title III or section 402 of title IV of the federal water pollution control act of 1972, as amended, 33 U.S.C. section 1317 and section 342.

(m) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.

(n) An UST system that has a capacity of 110 gallons or less.

(o) An UST system that contains a de minimis concentration of regulated substances. Please see the definition of "de minimis concentration."

(p) An emergency spill or overflow containment UST system that is emptied within 10 days after use.

"Underground tank" means an UST, except that such term does not include underground piping.

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

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

History: 1998-2000 AACCS; 2008 AACCS; 2012 AACCS; 2018 AACCS.

## **R 29.2108 Rescinded.**

History: 1998-2000 AACCS; 2012 AACCS; 2018 AACCS.

## **SUBPART B. UST SYSTEMS; DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION**

### **R 29.2109 Performance standards for new UST systems.**

Rule 9. Section 280.20 is amended to read as follows:

Section 280.20. Performance standards for new UST systems. In order to prevent releases 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 shall meet the following requirements. In addition, except for suction piping that meets the requirements of subparagraphs 280.41(b)(1)(ii)(A) to (E), tanks and piping must be secondarily contained and use interstitial monitoring in accordance with subsection 280.43(g) of these rules. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system. For cases where the piping meets the

definition of “replaced” in section 280.12, the entire piping run must be secondarily contained.

(a) Tanks. Each tank must meet the definition of secondary containment as defined in section 280.12 and must be properly designed and constructed. Any portion of a tank that is underground and that routinely contains product must be protected from corrosion by 1 of the following:

- (1) The tank must be constructed of fiberglass-reinforced plastic.
- (2) The tank must be constructed of steel and be cathodically protected by all of the following:
  - (i) The tank must be coated with a suitable dielectric material.
  - (ii) Factory-installed or field-installed cathodic protection systems must be designed by a corrosion expert.
  - (iii) Impressed current systems must be designed to allow a determination of current operating status as required in subsection 280.31(c).
  - (iv) Cathodic protection systems must be operated and maintained in accordance with section 280.31 or according to procedures acceptable to the department.
- (3) The tank must be constructed of a steel-fiberglass-reinforced-plastic composite. The fiberglass-reinforced plastic must be a minimum of 100 mils thick.
- (4) The tank is constructed of metal without additional corrosion protection measures provided that both of the following requirements are met:
  - (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.
  - (ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank.
- (5) The department shall determine that the tank construction and corrosion protection have been designed to prevent the release or threatened release of any stored regulated substance in a manner that is at least as protective of human health and the environment as the protections specified in subdivisions(1) to (3) of this subsection.

(b) Piping. All piping in contact with the ground shall be equipped with secondary containment as defined in section 280.12. Any piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in compliance with 1 of the following provisions:

- (1) The piping must be constructed of fiberglass-reinforced plastic.
- (2) The piping must be constructed of metal and be cathodically protected in the following manner:
  - (i) The piping must be coated with a suitable dielectric material.
  - (ii) Field-installed cathodic protection systems must be designed by a corrosion expert.
  - (iii) Impressed current systems must be designed to allow a determination of current operating status as required in subsection 280.31(c).
  - (iv) Cathodic protection systems must be operated and maintained in accordance with the provisions of section 280.31 or procedures acceptable to the department.
  - (v) Metallic secondary containment underground piping systems must have corrosion protection as specified in paragraphs (2)(i) to (iv) of this subdivision.
- (3) The piping is constructed of metal without additional corrosion protection measures provided that both of the following requirements are met:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life.

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping.

(4) The department shall determine that the piping construction and corrosion protection have been designed to prevent the release or threatened release of any stored regulated substance in a manner that is at least as protective of human health and the environment as the protections specified in subdivisions (1) and (2) of this subsection.

(c) The following provisions apply to spill and overfill prevention equipment:

(1) Except as provided in subdivisions (2) and (3) of this subsection, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators shall use both of the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent the release of product to the environment when the transfer hose is detached from the fill pipe, for example, a spill catchment basin.

(ii) Overfill prevention equipment that does 1 of the following:

(A) Automatically shut off flow into the tank when the tank is not more than 95% full.

(B) Alert the transfer operator when the tank is not more than 90% full by restricting the flow into the tank or by triggering a high-level alarm. For suction pump systems, a pressure regulator valve or other suitable device must be installed in the suction piping if the flow restrictor causes a pressure buildup in the tank when activated.

(C) Restrict the flow from the delivery truck into the tank 30 minutes before overfill, and sound an audible alarm 1 minute before overfill, or automatically shut off the flow into the tank not less than 30 seconds before overfill.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision (1) of this subsection if alternative equipment is used that is determined by the department to be at least as protective of human health and the environment as the equipment specified in paragraphs (1)(i) or (1)(ii) of this subsection or the UST system is filled by transfers of no more than 25 gallons at 1 time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (c)(1)(ii) of this section when overfill prevention is installed or replaced.

(4) Spill and overfill prevention equipment shall be periodically tested or inspected in accordance with section 280.35 or as otherwise allowed under section 280.10(f).

(d) All tanks and piping must be properly designed, constructed, installed, operated, and maintained in accordance with R 29.5601 to R 29.5917. All of the following provisions shall also apply:

(1) Except at an active UST system location installed on or before January 3, 1991, a person shall not install an UST system unless the UST system is more than the following distances from the following items:

(i) All UST system installations must also be in compliance with section 12701 of part 127 of 1978 PA 368, MCL 333.12701, and rules promulgated under 1978 PA 368.

(ii) Section 1001 of 1976 PA 399, MCL 325.1001 to 325.1023, and rules promulgated under 1976 PA 399.

(e) Certification of installation. All owners and operators shall ensure that 1 or more of the following methods of certification, testing, or inspection are used to



demonstrate compliance with subsection(d) of this section by providing a certification of compliance on the UST registration form in accordance with section 280.22:

(1) The installer has been certified by the tank and piping manufacturer or the tank liner has been certified by the tank lining manufacturer.

(2) The installer has been certified or licensed by the department.

(3) The installation has been inspected and certified by a registered professional engineer who has education and experience in UST system installation.

(4) The installation has been inspected and approved by the implementing agency.

(5) All work listed in the manufacturer's installation checklists has been completed.

(6) The owner and operator have complied with another method for ensuring compliance with the provisions of subsection (d) of this section that is determined by the department to be at least as protective of human health and the environment as the protections specified in subsection (d) of this section.

(f) Dispenser systems. Each UST system must be equipped with under-dispenser containment for any new dispenser system installed.

(1) A dispenser system is considered new when both the dispenser and all of the equipment needed to connect the dispenser to the UST system are installed at an underground storage tank facility. The equipment necessary to connect the dispenser to the UST system includes check valves, shear valves, unburied risers, flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

(2) Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations. Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

History: 1998-2000 AACCS; 2008 AACCS; 2018 AACCS.

### **R 29.2111 Upgrading existing UST systems.**

Rule 11. Section 280.21 is amended to read as follows:

Section 280.21. In accordance with subpart G, owners and operators shall permanently close any UST system that does not meet the new UST system performance standards in section 280.20 or has not been upgraded in accordance with subsections (b) to (d) of this section. This does not apply to previously deferred UST systems described in subpart K of these rules and where an upgrade is determined to be appropriate by the implementing agency.

(a) Alternatives allowed. All existing UST systems must comply with 1 of the following requirements:

(1) New UST system performance standards under section 280.20.

(2) The upgrading requirements of subsections (b) to (d) of this section.

(3) Closure requirements under subpart G of these rules, including applicable requirements for corrective action under subpart F of these rules.

(b) Tank upgrading requirements. Steel tanks must be upgraded to meet the provisions of subsection 280.20(d) and 1 of the following requirements:

(1) Interior lining. Tanks upgraded by internal lining must meet the following:

(i) The lining is installed in accordance with the requirements of section 280.33 and within 10 years after lining and, every 5 years thereafter, the lined tank is internally inspected in accordance with paragraph (ii)(A) to (I) of this subdivision and found to be structurally sound with the lining still performing in accordance with the original design specifications. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank shall be permanently closed in accordance with subpart G of these rules.

(ii) After the tank is internally inspected and determined to be eligible for upgrading, the interior lining shall be applied in compliance with the American petroleum institute (API) recommended practice 1631 or the national leak prevention association (NLPA) standard 631 and shall be certified by the same methods specified in subsection 280.20(e). In addition, all of the following requirements must be met:

(A) Personnel shall be certified by a national organization acceptable to the department or certified in nondestructive testing, level I competence, in accordance with the guidelines specified by the American society for nondestructive testing entitled, "ASNT Standard for Qualification in Nondestructive Testing Personnel, CP-189-2011" including being certified in administering training to, and examining and retesting, personnel for certification of tank entry, surface preparation, inspection, ultrasonic thickness gauging, manway closure, and testing.

(B) Equipment used for ultrasonic thickness gauging must have a minimum measurement range of 0.050 inches to 2 inches and a minimum resolution of 0.002 inches.

(C) After the tank has been emptied, the internal tank surfaces shall be cleaned as required for the use of ultrasonic thickness gauging.

(D) For gauging measurement control, tank walls and heads must be divided into sections. Measurements for tank walls shall be divided into 3-foot by 3-foot sections beginning at the fill end of the bottom of the tank and extending outward around the tank circumference and along the tank length. Any additional area of the tank wall that is less than 3 feet by 3 feet shall be measured and treated as an additional section. Measurement for tank heads shall divide the tank head into 4 equal divisions by establishing horizontal and vertical diameter lines as axes. Each division shall be divided into 3-foot by 3-foot sections beginning at the center point and extending outward on each axis line. Any additional area of the tank head that is less than 3 feet by 3 feet shall be measured and treated as an additional section.

(E) Section gauging. Thickness gauging measurements shall be taken in the center of each section of the tank wall and heads. Thickness readings of 75% or less of the original wall thickness as specified in underwriters laboratories standard 58 (UL 58) shall require further gauging as prescribed for readings or more than 75% of the original wall thickness as specified in UL 58 shall be reported as the average wall thickness for the section.

(F) Gauging section subdivisions. Sections that have a center gauge measurement of 75% or less than the original wall thickness as specified in UL 58 shall be subdivided into 9 equal subdivisions. Thickness gauging for each of the subdivisions shall be taken at the center of each subdivision. The subdivision thickness readings shall then be averaged to get the average wall thickness for the section.

(G) Thin wall target area gauging. Areas that have a thickness gauging measurements less than 50% of the original wall thickness as specified in UL 58 must each receive 8 additional readings. Four of the 8 readings must be equally spaced readings and each of the 4 readings must be at a 1 1/2 inch radius from the initial reading. The 4 other readings must be equally spaced readings each at a 3-inch radius from the initial reading. The average of the 8 readings must be reported as the average reading of the thin wall target area.

(H) Perforations. Perforations must be identified and reamed to establish a minimum of 1/8 of an inch edge wall thickness before any repairs. Eight thickness measurements must be taken around the perforation in the same pattern as described in subparagraph (G) of this paragraph. The 8 thickness measurements shall be averaged and the average shall be reported for the subdivision closest to the perforation.

(I) Average tank wall thickness. The average tank wall thickness must be established by averaging all of the section thicknesses reported. Thickness gauge readings must be reported on an ultrasonic thickness gauging report form that conforms to the requirements of subparagraphs (D) to (H) of this paragraph.

(J) Thin wall. The presence of any region that has less than 1/8 of an inch of metal due to internal or external corrosion or both internal and external corrosion requires that the tank be provided with an additional layer of lining material or have a 1/8 of an inch thick steel plate that has minimum dimensions of 8 inches by 8 inches and that is rolled to the contour of the tank and welded on all seams in a continuous manner covering the thin wall area of the tank.

(K) A tank is eligible for upgrade by lining only if the average wall thickness as described in subparagraph (I) of this paragraph was found to be more than 75% of the original wall thickness required under the UL 58 standard and if all of the following requirements are met:

(a) None of the perforations shall be larger than 1 inch in diameter, except under the gauging opening, where the perforation is not more than 2 1/2 inches in diameter.

(b) A tank shall not have more than 4 perforations that are 1/2 inch in diameter in any 1 square foot area of the tank internal surface.

(c) A tank shall not have more than 20 perforations that are 1/2 inch in diameter in any 500 square foot area. The total number of perforations shall not be more than 2 for every year of the age of the tank.

(L) A tank is not eligible for upgrade if it does not meet the requirements of subparagraph (K) of this paragraph before any repairs. A tank that fails to meet the eligibility requirements for upgrade is required to be replaced or permanently closed in compliance with subsection (a)(3) of this section.

(M) All internally inspected tanks that meet the upgrading requirements by internal lining must be provided with a 1/4 inch thick steel striker plate that has minimum dimensions of 8 inches by 8 inches and that is rolled to the contour of the tank and welded on all seams in a continuous manner under the fill tube.

(N) Interior tank walls shall be abrasive blasted in accordance with the steel structures painting council (SSPC) standard SP 5 entitled "White Metal Blast Cleaning" and must not have any perforations.

(O) A suspected release meeting the requirements of section 280.50 shall be reported if there are indications of a release or if perforations are found in the tank before the addition of tank lining.

(iii) The department shall approve all lining materials and procedures. Each lining manufacturer must maintain and submit a current list of qualified applicators to the department. Lining thickness shall be 100-mil dry film thickness or greater.

(iv) The O/O shall notify the department of all tank linings not less than 15 days before any work is performed, unless the department is notified of and approves an emergency repair. Notification of the lining must be on a form provided by the department. A qualified applicator shall perform any tank lining.

(v) The lining company shall provide the owner with a complete report of the tank evaluation, as well as the design, installation, and operational requirements of the lining system. The lining company responsible for the lining upgrade shall sign the report.

(2) Cathodic protection. Tanks upgraded by cathodic protection must meet the requirements of section 280.20(a)(2)(ii), (iii), and (iv) and all of the following provisions:

(i) The integrity of the tank is ensured using 1 of the following methods:

(A) The tank was internally inspected and assessed to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(B) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with subsections 280.43(d) to (i).

(C) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet the requirements of subsection 280.43(c). The first tightness test must be conducted before installing the cathodic protection system. The second tightness test must be conducted between 3 and 6 months after the first operation of the cathodic protection system.

(D) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of internal corrosion and corrosion holes before installing the cathodic protection system. All personnel involved in the internal inspection related activities shall be qualified in accordance with subparagraph (1)(ii)(A) of this subsection and shall conduct the ultrasonic thickness gauging in accordance with subparagraphs (1)(ii)(B) to (G) of this subsection, with the average wall thickness established by averaging all the section thicknesses reported. A tank is eligible for upgrade by cathodic protection alone if the average wall thickness is not less than 75% of the original wall thickness specified in the UL 58 standard.

(E) The tank is assessed to determine its eligibility for upgrade by cathodic protection by other means determined by the department to prevent releases in a manner that is at least as protective to human health and the environment as the protections specified in subparagraphs (i)(A) to (C) of this subdivision.

(ii) The corrosion expert responsible for the design and the installation of the cathodic protection system shall provide the owner with a complete report of all of the results of any corrosion protection investigations, as well as the design, installation, and operational requirements of the cathodic protection system. The corrosion expert shall sign the report.

(iii) All internally inspected tanks that meet the upgrading requirements by cathodic protection must be provided with a ¼ inch thick steel striker plate that is not less

than 8 inches by 8 inches and that is rolled to the contour of the tank and welded on all seams in a continuous manner under the fill tube.

(iv) The O/O shall notify the department of all cathodic protection upgrades not less than 15 days before any work is performed, unless the department is notified of and approves an emergency repair. Notification of cathodic protection upgrade shall be on a form provided by the department. Cathodic protection upgrade must be performed under the direct supervision and instruction of a corrosion expert.

(v) A suspected release meeting the requirements of section 280.50 shall be reported when there are indications of a release, such as visual or olfactory presence of product in the soil, before the addition of cathodic protection.

(3) Internal lining simultaneously combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if all of the following provisions are complied with:

(i) Not more than 1 month is allowed between the lining and the installation of cathodic protection.

(ii) The lining is installed in accordance with the requirements of section 280.33 and paragraphs (1)(ii) to (v) of this subsection.

(iii) Internal inspection requirements will be waived if the lining and the cathodic protection upgrade are done within 1 month of each other.

(iv) The cathodic protection system meets the requirements of subdivision (2) of this subsection.

(4) Other methods approved by the department.

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and that is in contact with the ground must be cathodically protected in accordance with the provisions of subsection 280.20(d) and must meet the requirements of paragraphs 280.20(b)(2)(ii) to (v).

(1) Replacement of underground piping systems in contact with the ground must include the installation of secondary containment as defined in section 280.12.

(2) The O/O shall notify the department, in writing, not less than 15 days before any underground piping upgrade or total replacement of an underground piping system, unless the department is notified of, and approves, an emergency replacement.

(d) Spill protection and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with UST system spill and overfill prevention equipment requirements specified in subsection 280.20(c).

History: 1998-2000 AACCS; 2008 AACCS; 2018 AACCS.

### **R 29.2113 Registration submittal requirements.**

Rule 13. Section 280.22 is amended to read as follows:

Section 280.22. (a) Owners shall register the UST system under part 211 of 1994 PA 451, MCL 324.21101 to 324.21113, on forms provided by the department. Owners shall register all UST systems and pay all fees before any UST is removed from the ground or closed in place under subpart G of these rules, unless written approval is obtained from the department. To be considered properly registered, new owners of existing UST systems shall register the UST system with the department within 30 days

of ownership on a registration for underground storage tank form. New owners of an UST system who do not intend to use the UST to contain a regulated substance and who have not placed the UST temporarily out-of-service under subpart G of these rules shall empty the UST system within 45 days from acquiring ownership of the UST system. If, however, the property has been condemned by the state or a local unit of government, then the state or local unit of government shall empty any underground storage tanks that are located on the property, within 45 days of taking possession. All tanks must be emptied under subsection 280.71(b). Also, any change in tank status or any change in the information required on the form must be reported to the department on the registration for underground storage tank form within 30 days of the change.

(b) The owner must submit a notice of proposed installation of underground storage tank registration form provided by the department shall be submitted by the owner to the department 45 days before installation of the UST system. The notice of UST installation form must include all of the following information:

(1) A plot map showing the distances of all of the following within 25 feet of the UST system:

- (i) The location of buildings, public roadways, and railroad main lines.
  - (ii) The location of property lines and easements.
  - (iii) The location of existing aboveground storage tanks and the location of existing and proposed underground storage tanks, piping, and dispensers.
  - (iv) The location of surface water and wetlands.
- (2) The location of all drinking water wells within 200 feet of the UST system.
- (3) The construction materials of the tank and piping.
- (4) The dimensions and capacity of each tank.
- (5) The name of the regulated substance to be stored.
- (6) A diagram of the UST system.
- (7) The manufacturer and part number of all components of the UST system.

(c) Upon receipt of the proposed installation registration form, the department may issue a review report within 30 days. If the review report is not issued within 30 days, then the UST system may be brought into use according to the submitted registration form and shall be in accordance with these rules. The department shall be notified not less than 7 calendar days before installation of the UST system. The department shall inspect the installation within 2 working days of the scheduled installation date, excluding Saturdays, Sundays, and holidays, and shall certify the installation if the requirements of these rules have been met. If the inspection is not made within 2 working days of the installation date, excluding Saturdays, Sundays, and holidays, then the UST system must be covered from sight and a notarized affidavit must be submitted by the owner to the department attesting to the fact that the installation complied with the applicable rules under subsection 280.20(e). The UST system shall not be brought into use until it has been registered with the department on the registration for underground storage tank form under part 211 of 1994 PA 451, MCL 324.21101 to 324.21113. Upon request, all UST information submitted to the department for review must be returned within 30 working days after the UST system has been brought into use. The information may be marked "CONFIDENTIAL - DO NOT COPY" at the time it is submitted.



(d) Any O/O who meets the requirements of a designated clean corporate citizen in R 336.2401 to R 336.2420 is entitled to an expedited review report by the department to complete the review process.

(e) An owner who is required to register a UST system under subsection (a) of this section may register several tanks using 1 registration for underground storage tank form, but an owner who owns tanks located at more than 1 place of operation shall file a separate form for each separate place of operation.

(f) For underground storage tank forms required to be submitted under subsection (a) of this section, an owner shall provide all of the applicable information for each tank registered. For each tank installed or upgraded after December 22, 1988, an owner shall also provide all of the information required in the certification of compliance section of the form.

(g) All owners and operators of new UST systems shall certify, in the registration for underground storage tank form, compliance with all of the following requirements:

(1) The installation of tanks and piping under subsection 280.20(e).

(2) Cathodic protection of steel tanks and piping under subsections 280.20(a) and (b).

(3) The financial responsibility rules under subpart H of these rules.

(4) Release detection under sections 280.41 and 280.42.

(h) An owner of a new UST system shall ensure that the installer certifies, in the registration form, that the methods used to install the tanks and piping comply with the requirements in subsection 280.20(d).

(i) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank of the owner's registration obligations under subsection (a) of this section.

(j) An O/O shall verify annually that he or she is compliant with the registration requirements and submit that verification to the department. This must be accomplished by using either the department database or a form provided by the department. The department shall provide proof of registration upon receipt of proper registration and O/O verification.

History: 1998-2000 AACCS; 2008 AACCS; 2018 AACCS.

## **SUBPART C. GENERAL OPERATING REQUIREMENTS**

### **R 29.2114 Spill and overflow control.**

Rule 14. Section 280.30 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.30. (a) Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall 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.

(b) The owner and operator shall report, investigate, and clean up any spills and overfills in accordance with section 280.53.

**R 29.2115 Operations and maintenance of corrosion protection.**

Rule 15. Section 280.31 is amended to read as follows:

Section 280.31. All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems are operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems are inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. All cathodic protection systems shall be tested upon completion of underground piping and tank installation and backfilling, but before placement of any permanent or hard surface over the UST system. Testing must be done within 6 months of installation regardless of the surface over the UST system. Testing must also be conducted every 3 years after the initial testing.

(2) Inspection criteria. The corrosion engineer who designs the system shall specify the criteria that are used to determine that cathodic protection is performing adequately. If the corrosion engineer does not specify criteria, then the criteria must be as specified in NACE international standard practice SP-02-85-2011.

(c) UST systems with impressed current cathodic protection systems shall 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 shall be maintained (in accordance with section 280.34) to demonstrate compliance with the performance standards in this section. These records must provide both of the following:

(1) The results of the last 3 inspections required in paragraph (c) of this section.

(2) The results of testing from the last 2 inspections required in paragraph (b) of this section.

(e) For galvanic anode systems equipped with an approved buried copper-copper sulfate reference electrode that can be read at a surface test station, the inspection may be made using a test measurement device designed for tank O/O not meeting the cathodic protection tester definition. The O/O shall be trained in the testing procedure and shall be familiar with the testing specifications of the galvanic anode system. Tests shall be made in accordance with the requirements of subsection (b) of this section.

(f) Cathodic protection testing is not required for the following:

(1) A composite tank which meets the requirements of subsection 280.20(a)(3) and that is equipped with galvanic anodes installed by the tank manufacturer. The tank shall be installed and tested in accordance with section 280.20(d).

(2) A 360-degree double-wall steel tank equipped with galvanic anodes. Interstitial monitoring of the tank must be conducted in accordance with subsection 280.43(g).

(g) Another method determined by the department to be equally protective.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2116 Compatibility.**

Rule 16, Section 280.32 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.32. Compatibility. (a) Owners and operators shall use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators shall notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10% ethanol, greater than 20% biodiesel, or any other regulated substance identified by the implementing agency. In addition, owners and operators with UST systems storing these regulated substances shall meet 1 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 either 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.

(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.

(2) Use another option determined by the implementing agency to be no less protective of human health and the environment than the options listed in paragraph (b)(1) of the section.

(c) Owners and operators shall maintain records in accordance with subsection 280.34(b) documenting compliance with subsection (b) of this section for as long as the UST system is used to store the regulated substance.

History: 2018 AACCS.

### **R 29.2117 Repairs.**

Rule 17, Section 280.33 is amended to read as follows:

Section 280.33. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet all of the following requirements:

(a) Alterations to UST systems for product compatibility, repairs, or upgrades must be properly conducted in accordance with the provisions of subsections 280.20(d) and 280.21(b) and (c).

(b) Repairs to fiberglass-reinforced plastic tanks must be made in accordance with the provisions of subsection 280.20(d).

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings that have released product must be replaced or repaired in accordance with the manufacturer's specifications. The implementing agency may require that replacements or repairs be made where damage to pipe sections or fittings is discovered and presents a significant risk of release.

(d) 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 according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or in compliance with these rules, within 30 days following the date of completion of the repair. Repaired or upgraded tanks and piping must be tightness-tested in accordance with the provisions of sections 280.43(c) and 280.44(b) within 30 days after the date of the completion of the repair or upgrade. Exceptions may be made to this requirement if the repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; the repaired or upgraded portion of the tank system is monitored monthly for release in accordance with a method specified in section 280.43(d) to (i); or another test method that is determined by the department to be at least as protective of human health and the environment as the protections specified in sections 280.43(c) and 280.44(b).

(e) Within 6 months after the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with sections 280.31(b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators shall maintain records, in accordance with section 280.34, of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

(g) Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 280.35 to ensure it is operating properly.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2119 Reporting and recordkeeping.**

Rule 19. Section 280.34 is amended to read as follows:

Section 280.34. Owners and operators of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the O/O pursuant to section 9005 of subtitle I of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq.

(a) Reporting. O/Os shall submit all of the following information to the department:

(1) Notification for all UST systems (section 280.22), which includes certification of installation for new UST systems (subsection 280.20(e)) and notification when any person assumes ownership of an UST system (subsection 280.22(b)).

(2) Notification prior to UST systems switching to certain regulated substances (subsection 280.32(b)).

(3) Reports of all releases, including suspected releases (section 280.50), spills and overfills (section 280.53), and confirmed releases (section 280.61).

(4) The corrective action planned or taken that meets the requirements of part 213, of 1994 PA 451, MCL 324.21301a to 324.21334

(5) A notification before permanent closure or change in service (section 280.71).

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

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (subdivision 280.20)(a)(4); subdivision 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (subsection 280.31(d)).

(3) Documentation of compatibility for UST systems (subsection 280.32(c)).

(4) Documentation of UST system repairs (subsection 280.33(g)).

(5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (subsection 280.35(c)).

(6) Documentation of periodic walkthrough inspections (subsection 280.36(b)).

(7) Documentation of compliance with release detection requirements (section 280.45).

(8) Results of the site assessment conducted at permanent closure (section 280.74).

(9) Documentation of operator training (section 280.245).

(c) Availability and maintenance of records. Owners and operators shall keep required records under either of the following provisions:

(1) At the UST site and have the records immediately available for inspection by the implementing agency.

(2) At a readily available alternative site and provide the records for inspection to the implementing agency upon request. In the case of permanent closure or change-in-service records required under section 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or at an alternative site.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2120 Testing.**

Rule 20. Section 280.35 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.35. Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

(a) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping shall meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping shall prevent releases to the environment by meeting either of the following:

(i) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in section 280.36. Owners and operators shall begin meeting paragraph (a)(1)(ii) of this section and conduct a test within 30 days of discontinuing periodic monitoring of this equipment.

(ii) The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every 3 years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with 1 of the following criteria.

(A) Requirements developed by the manufacturer. Note: This is only an option if the manufacturer has developed requirements.

(B) Code of practice developed by a nationally recognized association or independent testing laboratory.

(C) Requirements determined by the implementing agency to be no less protective of human health and the environment than the requirements listed in subparagraphs (a)(1)(ii)(A) and (B) of this section.

(2) Overfill prevention equipment shall be inspected at least once every 3 years. At a minimum, the inspection shall ensure that overfill prevention equipment is set to activate at the correct level specified in subsection 280.20(c) and will activate when regulated substance reaches that level. Inspections shall be conducted in accordance with 1 of the criteria in subparagraphs (a)(1)(ii)(A) to (C) of this section.

(3) An under-dispenser containment (UDC) sump containing single-wall piping within or above the UDC sump is not considered to be a containment sump used for interstitial monitoring of piping, if both of the following apply:

(i) The dispenser system and UDC sump were installed prior to April 11, 2016.

(ii) The UDC sump is not used for interstitial monitoring of double-wall piping installed outside the sump.

(b) Owners and operators shall begin meeting these requirements as follows:

(1) For UST systems in use on or before October 13, 2015, the initial spill prevention equipment test, containment sump test and overfill prevention equipment inspection must be conducted not later than October 13, 2018, or as otherwise allowed under section 280.10(f). For diligent tank owners who nevertheless are unable to comply with the October 2018 deadline, the department considers any good faith effort to comply with the law when deciding if and how to respond to a violation.

(2) For UST systems brought into use after October 13, 2015, these requirements apply at installation.

(c) Owners and operators shall maintain the following records, in accordance with section 280.34, for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection shall be maintained for 3 years.

(2) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every 3 years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

History: 2018 AACCS.



**R 29.2120a Periodic operation and maintenance walkthrough inspections.**

Rule 20a. Section 280.36 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.36 Periodic operation and maintenance walkthrough inspections.

(a) To properly operate and maintain UST systems owners and operators shall meet 1 of the following:

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified by the following:

(i) Every 30 days, except spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery:

(A) Spill prevention equipment:

(I) Visually check for damage.

(II) Remove liquid or debris.

(III) Check for and remove obstructions in the fill pipe.

(IV) Check the fill cap to make sure it is securely on the fill pipe.

(V) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area.

(B) Release detection equipment:

(I) Check to ensure the release detection equipment is operating with no alarms or other unusual operating conditions present.

(II) Ensure records of release detection testing are reviewed and current.

(ii) Annually:

(A) Containment sumps:

(I) Visually check for damage, leaks to the containment area, or release to the environment.

(II) Remove liquid or debris in containment sumps.

(III) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area.

(B) Hand held release detection equipment:

(I) Check devices such as tank gauge sticks or ground water bailers for operability and serviceability.

(2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory, acceptable to the department, that checks equipment comparable to subdivision (a)(1) of this section.

(3) The facility class B operator shall conduct a site visit inspection to determine the operational compliance status of each regulated UST system at the facility. The facility class B operator shall perform these site visits at a minimum on a quarterly basis. The quarterly site visit inspections do not eliminate the need for more frequent monitoring of release detection and inspection of impressed current corrosion protection systems.

(i) The facility class B operator shall document the site visit inspections in accordance with subdivisions (b)(1) and (3) of this section. The class B operator shall provide the class A operator with a copy of each site visit inspection report and alert the

class A operator of any condition discovered during the inspection that may require follow-up actions. These records shall include all of the following:

(A) Verification of proper tank registration.

(B) Verification of functional status of corrosion protection equipment, if required and present, including proper cathodic protection system readings in the case of impressed current corrosion protection systems.

(C) Verification of functional status of release detection equipment including reviewing the alarm history report for the previous 3 months and checking that each alarm condition was documented and responded to appropriately. A copy of the alarm history report or log, along with documentation describing action taken in response to any alarm or alarms, must be attached to the monthly report.

(D) Results of inspection for the following:

(I) The presence of product, water, or debris in the spill containers.

(II) Verifying the functional status of leak prevention equipment, such as spill and overfill.

(III) Inspection of fill riser for damage and obstructions that would prevent a shutoff valve from operating properly.

(IV) Inspection of fill riser cap for secure fit.

(V) Inspection of spill protection equipment interstice (if double-walled) for leaks.

(VI) Verification that liquid and debris (if present) were removed from spill protection.

(E) Results of inspection for the following:

(I) The presence of product, water, or debris in under dispenser containment areas or containment sumps, including interstices, if double-walled.

(II) Checking to ensure that the monitoring equipment in these containment areas is located in the proper position to detect a leak at the earliest possible opportunity.

(III) Verification that liquid and debris, if present, were removed from containment areas.

(F) Results of checks to ensure operability and serviceability of devices such as tank gauge sticks or groundwater bailers.

(G) Verification that any required testing, monitoring, or periodic inspections of the UST systems have been completed, including documentation of the dates those activities occurred.

(H) Verification of the presence of all required records necessary to substantiate operational compliance.

(b) Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, and a description of actions taken to correct an issue. Owners and operators shall maintain the following records of operation and maintenance walkthrough inspections for 1 year:

(1) Inspections must be documented on a form approved by the department.

(2) Documentation of inspections performed in accordance with subdivision (a)(3) of this section must contain a signature of the class B operator.

(3) Delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

(c) Within 30 days of changing from 1 inspection option to another, the facility shall amend its registration and perform an inspection in accordance with the newly chosen walkthrough inspection option from subsection (a) of this section.

History: 2018 AACCS.

## **SUBPART D. RELEASE DETECTION**

### **R 29.2121 General requirements for all UST systems.**

Rule 21. Section 280.40 is amended to read as follows:

Section 280.40. Upon purchase or acquisition of an existing UST system and upon request by the department, the owners and operators of the system shall provide the department with not less than 2 years of leak detection records as required by section 280.45. If the records are unavailable, then the O/O shall conduct tightness testing as provided in sections 280.43(c) and 280.44(b).

(a) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that is in compliance with all of the following provisions:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

(2) Is installed, calibrated, operated, maintained, and electronic and mechanical components are tested for proper operation in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment.

(3) A test of the proper operation shall be performed at least annually 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; and test battery backup.

(ii) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; and test alarm operability and communication with controller.

(iii) Automatic line leak detector: test operation to meet criteria in subsection 280.44(a) by simulating a leak.

(iv) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

(v) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(4) Meets the performance requirements in section 280.43, 280.44 or subpart K, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer. In addition, the methods listed in subsections 280.43(b); 280.43(c); 280.43(d); 280.43(h); 280.43(i); 280.44(a); 280.44(b); and subpart K, must be capable of detecting the leak rate or quantity specified for the 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) If a release detection method operated in accordance with the performance standards in section 280.43, 280.44, or subpart K indicates a release may have occurred, then O/Os shall notify the department in accordance with the provisions of subpart E of these rules.

(c) The owners and operators of an existing UST system that has not complied with the requirements of this subpart shall complete the closure procedures in subpart G of these rules. For previously deferred UST systems described in subpart A and subpart K, this requirement applies after the effective dates described in paragraphs 280.10(a)(1)(ii) and (iii) and subsection 280.251(a).

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2122 Requirements for petroleum UST systems.**

Rule 22. Section 280.41 is amended to read as follows:

Section 280.41. Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks. Tanks shall be monitored at least once every 30 days for releases using 1 of the methods listed in section 280.43(d) to (i), except as follows:

(1) UST systems that meet the performance standards in section 280.20 or 280.21 and the monthly inventory control requirements in section 280.43(a) or (b) shall use tank tightness testing conducted in accordance with section 280.43(c) at least once every 5 years until 10 years after the tank was installed.

(2) A tank that has a capacity of 550 gallons or less and a tank with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in subsection 280.43(b) and that is not used for motor fueling may use weekly tank gauging conducted in accordance with section 280.43(b).

(b) Piping. Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets 1 of the following requirements:

(1) Piping installed on or before April 11, 2016 must meet 1 of the following:

(i) Pressurized piping. Underground piping that conveys regulated substances under pressure must be in compliance with both of the following requirements:

(A) Be equipped with an automatic line leak detector in accordance with section 280.44(a).

(B) Have an annual line tightness test conducted in accordance with section 280.44(b) or have monthly monitoring conducted in accordance with section 280.44(c).

(ii) Suction piping. Underground piping that conveys regulated substances under suction must have a line tightness test conducted at least once every 3 years and in accordance with section 280.44(b) or use an applicable method conducted in accordance with section 280.44(c). Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(A) The belowgrade piping operates at less than atmospheric pressure.

(B) The belowgrade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(C) Only 1 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.

(E) A method is provided that allows compliance with paragraphs (B) to (D) of this subdivision to be readily determined.

(2) Piping installed or replaced after April 11, 2016 must meet 1 of the following:

(i) Pressurized piping shall be monitored for releases at least every 30 days in accordance with subsection 280.43(g) and be equipped with an automatic line leak detector in accordance with subsection 280.44(a).

(ii) Suction piping shall be monitored for releases at least every 30 days in accordance with subsection 280.43(g). No release detection is required for suction piping that meets subparagraphs (b)(1)(ii)(A) to (E) of this section.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2123 Requirements for hazardous substance UST systems.**

Rule 23. Section 280.42 is amended to read as follows:

Section 280.42. Requirements for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide containment, and release detection in accordance with section 280.43(g) at least every 30 days, that meets the following requirements:

(a) "Secondary containment system," must be designed, constructed, and installed to facilitate all of the following:

(1) Contain regulated substances released from the tank system until they are detected and removed.

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

(3) Be checked for evidence of a release not less than once every 30 days.

(b) Double-wall tanks and integral secondary containment systems must be designed, constructed, and installed to contain a release from any portion of the inner tank within the outer wall and to detect the failure of the inner and outer walls.

(c) External liners and vaults must be designed, constructed and installed to contain 100% capacity of largest tank in its boundary, prevent interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances, and surround the tank completely, lateral and vertical, to prevent migration of regulated substance.

(d) Underground piping must be equipped with secondary containment that satisfies the requirements of this section. In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with section 280.44(a) and must be installed to contain a release from any portion of the inner pipe within the outer wall and to detect the failure of the inner or outer wall.

(e) Other methods of release detection may be used if owners and operators comply with all of the following provisions:

(1) Demonstrate to the department that an alternative method can detect a release of the stored substance as effectively as any of the methods allowed in section 280.43(b) to (i) can detect a release of petroleum.

(2) Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance and the characteristics of the UST site.

(3) Obtain approval from the department to use the alternative release detection method before the installation and operation of the UST system.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2125 Methods of release detection for tanks.**

Rule 25. Section 280.43 is amended to read as follows:

Section 280.43. Each method of release detection for tanks used to meet the requirements of section 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 release of not less than 1.0% 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 and computed each operating day.

(2) The equipment and tank charts used are capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 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 1 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.

(6) The measurement of any water level in the tank is made to the nearest 1/8 of an inch not less than once a month.

(b) Manual tank gauging. Manual tank gauging must meet all of 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 following table during which liquid is not added to or removed from the tank.

(2) Level measurements are based on an average of 2 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 1/8 of an inch.

(4) A leak is suspected and subject to the requirements of subpart E of these rules if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table:



Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (1 test)	Monthly Standard (average of 4 tests)
550 gallons or less	36 hours	10 gallons	5 gallons
551 to 1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551 to 1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551 to 1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1,001 to 2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

(5) Only a tank that has a nominal capacity of 550 gallons or less and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter criteria in the table in subdivision (b)(4) of this section may use manual tank gauging as the sole method of release detection. A tank that has a nominal capacity of 551 to 2,000 gallons may use manual tank gauging in place of inventory control under subsection (a) of this section. A tank that has a nominal capacity of more than 2,000 gallons nominal capacity shall not use manual tank gauging to meet the requirements of this subpart.

(6) A tank of any capacity that is used for motor vehicle fueling shall not use the manual tank gauging method to meet the requirements of this subpart.

(c) Tank tightness testing. Tank tightness testing, or another test of equivalent performance, shall 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 the contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Unless a method is evaluated by a third party and certified as capable of testing manifolded tank systems, each tank in a manifolded tank system can be tested only if it can be isolated from all other tanks in the manifolded tank system and the siphons or other liquid transfer devices to the tank being tested are shut off. Testers shall be trained and certified by the manufacturer or vendor of the testing method and the testers' names must appear on the qualified testers list provided by the manufacturer or vendor to the department. The department has the authority to disapprove any existing or future testing device or procedure if the requirements of this subsection cannot be met. The department has the authority to prohibit a person from performing tank tightness testing if the requirements of this subsection cannot be met.

(d) Automatic tank gauging.

(1) Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet both of the following requirements:

(i) 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.

(ii) Inventory control, or another test of equivalent performance, is conducted in accordance with the requirements of subsection (a) of this section.

(2) The test shall be performed with the system operating in 1 of the following modes:

(i) In-tank static testing conducted at least once every 30 days.

(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.

(3) For waste oil UST(s) and a non-motor fueling system of any size that do not meet the criteria of hazardous wastes listed or identified under the provisions of subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. MCL 6921 to 6931 and 6933 to 6939b, automatic tank gauging equipment that tests for the loss of product by mass measurement probes and conducts inventory control is adequate as required by this section if it meets both of the following requirements:

(i) 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.

(ii) Manual tank gauging is conducted in accordance with the requirements of subsection (b)(1) and (2) of this section.

(4) Each tank in a manifolded tank system must be provided with its own automatic tank gauging probe that meets the requirements of subdivisions (1) and (2) of this subsection and must be isolated from all other tanks during the testing process.

(e) Vapor monitoring. Prior approval by the department is required for the utilization of vapor monitoring as the primary method of release detection for an UST or the underground piping system, or both, to verify that testing or monitoring for vapors within the soil gas of the excavation zone meet all of the following conditions:

(1) The materials used as backfill are sufficiently porous, for example, gravel, sand, or crushed rock to readily allow diffusion of vapors from releases in the excavation area.

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile, for example, 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 groundwater, 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 subdivisions (1) to (4) of this subsection 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 project.

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering. A monitoring well shall have a liquid tight cover and not less than 3-foot deep annular seal to prevent surface water runoff and subsurface water infiltration into the monitoring well.

(f) Groundwater monitoring. Prior approval by the department is required for the utilization of groundwater monitoring as the primary method of release detection for an UST or the underground piping system, or both, to verify that testing or monitoring for liquids on the groundwater meets all of the following conditions:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than 1.

(2) Groundwater is not more than 20 feet from the ground surface and the hydraulic conductivity of the soil or soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec. The soil shall consist of gravel, 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 groundwater conditions.

(4) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering. A monitoring well shall also have a liquid tight cover to prevent surface water runoff from entering the monitoring well and an annular seal extending from the ground surface to the top of the filter pack. All well construction and abandonment must comply with part 127 of 1978 PA 368, MCL 333.12701 to 333.12771, and rules promulgated under 1978 PA 368.

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

(6) The continuous monitoring devices in accordance with subsection (e) of this section or manual methods used through visual or olfactory observation can detect the presence of the regulated substance stored in the tank system, a component or components of the substance, or a tracer compound placed in the tank system. The monitoring device can detect at least 1/8 of an inch of NAPL on top of the groundwater 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 subdivision (1) to (5) of this subsection 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.

(g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it must be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets 1 of the following requirements:

(1) For double walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier. The secondary barrier shall meet all of the following:

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection.

(ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under these conditions.

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in subsection 280.43(a) shall meet all of the following requirements:

(1) Report a quantitative result with a calculated leak rate.

(2) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days.

(3) Use a threshold that does not exceed  $1/2$  the minimum detectible leak rate.

(i) Other methods. The department may approve another method or combination of methods of monthly monitoring if a person can demonstrate, by clear and convincing evidence, that the method can detect a release as effectively as any of the methods allowed in subsections (c) to (h) of this section. In comparing methods, the department shall consider the size of the release that the method can detect and the frequency and reliability with which it can be detected. A detection capability of 0.2 gallons per hour release rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 will be deemed sufficient to approve a monthly monitoring method. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on the use of the method to ensure the protection of human health and the environment.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2126 Methods of release detection for piping.**

Rule 26. Section 280.44 is amended to read as follows:

Section 280.44. Each method of release detection for piping used to meet the requirements of section 280.41 must be conducted in accordance with all of the following provisions:

(a) Automatic line leak detectors. A methods that alerts 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 the method detects leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with subdivision 280.40(a)(3).

(b) With respect to line tightness testing, the following provisions:

(1) Line tightness testing must be capable of detecting a 0.1 gallons per hour leak rate at 1 ½ times the operating pressure.

(2) Secondary containment piping must be tested by a positive pressure of not less than 5 psig for a minimum of 1 hour.

(3) A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at 1 ½ times the operating pressure.

(c) Applicable tank methods. Except as described in subsection 280.41(a), any of the methods in section 280.43(e) to (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2127 Release detection recordkeeping.**

Rule 27. Section 280.45 is amended to read as follows:

Section 280.45. All UST system owners and operators shall maintain records in accordance with section 280.34 demonstrating compliance with all applicable requirements of this subpart. The records must include all of the following:

(a) All written performance claims pertaining to any release detection system used and the manner in which the claims have been justified or tested by the equipment manufacturer or installer shall be maintained for 5 years from the date of installation or for another reasonable period of time determined by the department. Not later than October 13, 2018, records of site assessments required under subdivisions 280.43(e)(6) and 280.43(f)(7) shall be maintained for as long as the methods are used. Records of site assessments developed after October 13, 2015 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the implementing agency.

(b) The results of any sampling, testing, or monitoring shall be maintained for not less than 1 year or for another reasonable period of time determined by the department. The results of tank and piping tightness testing conducted in accordance with sections 280.43(c) and 280.44(b) shall be retained until the next test is conducted as follows:

(1) The results of annual operation tests conducted in accordance with subdivision 280.40(a)(3) shall be maintained for 3 years. At a minimum, the results shall list each component tested, indicate whether each component tested meets criteria in subdivision 280.40(a)(3) or needs to have action taken, and describe any action taken to correct an issue.

(2) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with subsection 280.252(d) shall be retained until the next test is conducted.

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for not less than 1 year after the servicing work is completed or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

History: 1998-2000 AACCS; 2018 AACCS.

## **SUBPART E. RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION**

### **R 29.2129 Reporting of suspected releases.**

Rule 29. Section 280.50 is amended to read as follows:

Section 280.50. O/Os of UST systems, or a person who is employed by the O/O, shall report to the department in a manner specified in section 280.61 and follow the procedures specified in section 280.52 when any of the following conditions occur:

(a) The discovery by owners, operators or others of released regulated substances at the UST site or in the surrounding area, such as the presence of visible NAPL or vapors in soils, basements, sewer and utility lines, and nearby surface water.

(b) 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 any unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems, unless system equipment or component is found not to be releasing regulated substances to the environment; any defective system equipment or component is immediately repaired or replaced; and for secondarily contained systems, except as provided for in paragraph 280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method, for example, brine filled, is immediately removed.

(c) Monitoring results, including investigation of an alarm, from a release detection method required under sections 280.41 and 280.42 that indicate a release may have occurred, unless either of the following conditions is satisfied:

(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.

(2) The leak is contained in the secondary containment and both of the following are met:

(i) Except as provided for in paragraph 280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method, such as brine filled, is immediately removed.

(ii) Any defective system equipment or component is immediately repaired or replaced.



(3) In the case of inventory control, described in subsection 280.43(a), a second month of data does not confirm the initial result or the investigation determines no release has occurred.

(4) 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.

(d) A person who is employed by the O/O may do the reporting on behalf of the O/O; however, the O/O has the final responsibility to make sure the report is made.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2130 Investigation due to offsite impacts.**

Rule 30. Section 280.51 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.51. When required by the implementing agency, owners and operators of UST systems shall follow the procedures in section 280.52 to determine if the UST system is the source of offsite impacts. These impacts include the discovery of regulated substances, for instance the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters, that have been observed by the implementing agency or brought to its attention by another party.

History: 2018 AACCS.

#### **R 29.2131 Release investigation and confirmation steps.**

Rule 31. Section 280.52 is amended to read as follows:

Section 280.52. Unless corrective action is initiated in accordance with subpart F of these rules and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 280.50, within 7 days or within another reasonable time period specified by the implementing agency, using either of the following steps or another procedure approved by the department:

(a) System test. Owners and operators shall conduct tests, according to the requirements for tightness testing in sections 280.43(c) and 280.44(b), or as appropriate, secondary containment testing described in subsection 280.33(d).

(1) The test shall determine whether a leak exists in the portion of the UST system that routinely contains product, or the attached delivery piping, or if a breach of either wall of the secondary containment has occurred.

(2) If the system test confirms a leak into the interstice or a release, owners and operators shall repair, replace, upgrade, or close the UST system. In addition, owners and operators shall begin corrective action in accordance with the provisions of subpart F of these rules and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334, if the test results for the UST system, tank, or delivery piping, indicate that a leak exists.

(3) Further investigation is not required if the test results for the UST system, tank, and delivery piping, do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(4) Owners and operators shall conduct a site check as described in subdivision (b) of this section if the test results for the UST 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 shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting samples types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. If the test results for the excavation zone or the UST site indicate that a release has occurred, O/Os shall begin corrective action in accordance with subpart F of these rules and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, then further investigation is not required.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2133 Reporting and cleanup of spills and overfills.**

Rule 33. Section 280.53 is amended to read as follows:

Section 280.53. (a) O/Os of UST systems shall contain and immediately clean up a spill or overflow, report to the department in the manner specified in section 280.61, and begin corrective action in accordance with subpart F of these rules and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334, in either of the following cases:

(1) Spill or overflow of petroleum that results in a release into the environment, such as groundwater, surface water, or subsurface soils, that exceeds 25 gallons or that causes a sheen on nearby surface water.

(2) A spill or overflow of a hazardous substance that results in a release into groundwater, surface water, or subsurface soils.

(b) Owners and operators of UST systems shall contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons 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 implementing agency, owners and operators shall immediately notify the implementing agency.

History: 1998-2000 AACCS; 2018 AACCS.

### **SUBPART F. RELEASE RESPONSE AND CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING PETROLEUM OR HAZARDOUS SUBSTANCES**

#### **R 29.2135 General.**

Rule 35. Section 280.60 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.60. General. Owners and operators of petroleum or hazardous substance UST systems shall, in response to a confirmed release from the UST system, comply with the requirements of this subpart and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334, except for underground storage tanks excluded under definition in these rules and UST systems subject to subtitle C, resource conservation and recovery act (RCRA), 42 U.S.C. §6901 et seq. 1976, as amended, corrective action requirements under section 3004(u) of the RCRA.

History: 1990 AACCS; 2018 AACCS.

#### **R 29.2137 Initial response.**

Rule 37. Section 280.61 is amended to read as follows:

Section 280.61. Upon confirmation of a release in accordance with section 280.52 or after a release from the UST system is identified in any other manner, O/Os, or a person employed by the O/Os, shall perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the department:

(a) Report the release to the department by telephone, in person, by electronic mail, or by facsimile. To meet the requirements of this section, the report must contain, at a minimum, all of the following information:

- (1) Name of the person reporting the release.
- (2) Date and time the release was discovered.
- (3) Date and time the release was reported.
- (4) Location of the release, including the facility name, address, county, and township.
- (5) The owner's or operator's names and mailing addresses.
- (6) Name of the contact person and phone number.
- (7) Release information, including the type of construction of the tank, the tank capacity, the substance released, and the site condition that led the O/O to believe a release had occurred.

(b) Take immediate action to prevent any further release of the regulated substance into the environment.

(c) Identify and mitigate fire, explosion, and vapor hazards.

(d) If the site assessment report required under section 280.72 is the only indication that an owner and operator has of a release and if the site assessment report is submitted within 45 days, then the site assessment report is considered valid notification of the release.

(e) A person who is employed by the O/O may do the reporting on behalf of the O/O; however, the O/O has the final responsibility to ensure the report is made.

History: 1990 AACCS; 2018 AACCS.

#### **R 29.2139 Notifications.**

Rule 39. Section 280.62 is amended to read as follows:

Section 280.62. Upon receiving a report of a release, the department shall send a confirmation of receiving the release report to the O/O within 14 days.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2141 Rescinded.**

History: 1990 AACCS; 2018 AACCS.

**R 29.2143 Rescinded.**

History: 1990 AACCS; 2018 AACCS

**R 29.2145 Rescinded.**

History: 1990 AACCS; 2018 AACCS.

**R 29.2147 Rescinded.**

History: 1990 AACCS; 2018 AACCS.

**R 29.2149 Rescinded.**

History: 1990 AACCS; 2018 AACCS.

**SUBPART G. CLOSURE AND CHANGE IN SERVICE OF UST SYSTEMS**

**R 29.2151 Temporary closure.**

Rule 51. Section 280.70 is amended to read as follows:

Section 280.70. Temporary closure.

(a) An UST system is considered temporarily closed if it is empty for more than 90 continuous days and it is intended to be brought back into use within 12 months. Owners and operators shall continue the operation and maintenance of corrosion protection in accordance with section 280.31 and any release detection in accordance with subpart D and K of these rules. However, release detection and release detection operation and maintenance testing and inspections in subparts C and D are not required if the UST system is empty. In addition, spill and overfill operation and maintenance testing and inspections in subpart C are not required. The UST system is empty when all materials have been removed using commonly employed practices so that not more than 2.5 centimeters (1 inch) of residue or 0.3% by weight of the total capacity of the UST system remains in the system. The provisions of subparts E and F of these rules must be

complied with if a release is suspected or confirmed. The owner shall provide the department with written notification, using the registration form provided by the department, indicating that the UST system will be temporarily closed for not more than 12 months and that the owner intends to bring the UST system back into service within the 12-month period.

(b) If an UST system is temporarily closed for 3 months or more, then the owners and operators shall also comply with both of the following requirements:

(1) Leave vent lines open and functioning.

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) If an UST system is temporarily closed for more than 12 months, then the owners and operators shall permanently close the UST system if it does not meet either the performance standards specified in section 280.20 for new UST systems or the upgrading requirements specified in section 280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close the substandard UST systems at the end of the 12-month period in accordance with sections 280.71 to 280.74, unless the department provides an extension of the 12-month temporary closure period. The request shall be received in writing not less than 30 days before the 12-month deadline ends. The extension shall not be for more than 12 months. Owners and operators shall complete a site assessment in accordance with section 280.72 before applying for an extension.

(d) Immediately before bringing an UST systems back into use, the owners and operators shall perform tank and piping tightness tests conducted in accordance with the requirements of sections 280.43(c) and 280.44(b) on a UST system that is temporarily closed for 12 months or more and shall confirm that the UST system is tight.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2153 Permanent closure and changes in service.**

Rule 53. Section 280.71 is amended to read as follows:

Section 280.71. (a) Not less than 30 days before beginning either permanent closure or a change in service under subsections (b) and (c) of this section, or within another reasonable time period determined by the department, an owner and operator, or a person employed by the owner and operator, shall notify the department of the owner's and operator's intent to permanently close or make the change in service, unless the action is in response to corrective action. The 30-day notification requirement may be waived by the department. The required assessment of the excavation zone under section 280.72 must be performed after notifying the department, but before completion of the permanent closure or change in service. The owner and operator has the final responsibility to ensure the notification is given.

(b) an UST system is considered permanently closed when the UST system is empty for 30 days or more and does not meet the requirements of temporary closure specified in section 280.70 or the requirements for change in service specified in section 280.72. To permanently close a tank, an owner and operator shall empty and clean it by removing all liquids and accumulated sludge and purge it of all vapors. All tanks closed permanently must be removed from the ground. If buildings or structures exist above or near the tank, or in close proximity to the tank such that removal would

jeopardize the building or structure integrity, the O/O may close the UST system in place. To close the UST system in place, the tank must be emptied and cleaned as defined in this subsection and filled with an inert solid material and a site assessment shall be conducted under section 280.72. Piping permanently removed from service must be emptied of all liquids and sludge, purged, and capped or shall be removed from the ground. Unless approved by the department, the owners and operators of an improperly closed UST system shall close the UST system in accordance with this section and sections 280.72 to 280.74. A tank is considered improperly closed in place if removal would not cause structural damage to any building or major structure.

(c) The use of an UST system to store a nonregulated substance is considered a change in service. Owners and operators are required to provide a 30-day notice in accordance with subsection (a) of this section. This notice must be on a form provided by the department. Owners and operators or their agent shall then empty and clean the tank and piping by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 280.72.

(d) Notification of permanent closure or a change in service, as required under subsection (a) of this section, must be on a form provided by the department. The owner and operator shall notify the department not less than 2 working days, excluding Saturdays, Sundays, and holidays, before the actual permanent closure or change in service of the UST system.

(e) Upon notification received under subsection (d) of this section, the department shall forward an approval notice to the O/O. The approval is valid for 6 months. If the UST system is not closed or a change in service does not occur within the 6-month period, then the owner and operator shall resubmit the notification form specified in subsection (d) of this section.

(f) Within 30 days of permanent closure or a change in service of the UST system, the owner and operator shall sign and submit an amended registration for underground storage tank form or, in place of an amended registration form required under section 280.22, an O/O may submit a site assessment form, in accordance with section 280.72, signed by the owner, within 45 days of permanent closure or a change in service.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2155 Assessing site at closure or change in service.**

Rule 55. Section 280.72 is amended by to read as follows:

Section 280.72. (a) Before permanent closure or a change in service is completed, owners and operators shall 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 shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if ~~one~~ of the external release detection methods allowed in section 280.43(e) and (f) is operating in accordance with the requirements in section 280.43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or visible NAPL as a liquid or vapor is discovered, under subsections (a) or (c) of this section or in any other manner,



then the owners and operators shall report a confirmed release in accordance with section 280.61 and begin corrective action in accordance with subpart F of these rules and part 213 of 1994 PA 451, MCL 324.21301a to 324.21334.

(c) Visible or olfactory evidence of a regulated substance in the UST excavation constitutes a confirmed release. Positive indication from field screening instruments constitutes a suspected release.

(d) Upon closure or a change in service of an UST, the owners and operators shall perform a site assessment in compliance with either of the following provisions:

(1) Two soil borings must be taken as close as practical to the tank, but not more than 5 feet from the tank. One boring must be taken at each end of the tank, but not more than 2 feet below the bottom of the tank and the boring must be taken at the bottom of each end of the tank.

(2) Upon removal of an UST, the owners and operators shall perform a site assessment in compliance with either of the following provisions:

(i) One discrete sample must be taken from the excavation floor underneath the fill pipe area for each tank removed and 1 discrete sample must be taken from the excavation floor underneath the opposite end of the tank.

(ii) One water sample must be taken if the entire floor of the excavation is covered with water or a 1-for-1 water-for-soil sample must be taken if the excavation is partially covered with water.

(e) Additional sample or samples must be taken when deemed necessary by the department or the person who performs the site assessment.

(f) A site assessment for piping must be performed after emptying and purging the piping run or after the removal of piping. The site assessment shall consist of 1 discrete sample for every 30 feet of the underground piping run, starting at the dispenser location or the furthest point from the tank and moving towards the tank.

(g) Samples must be analyzed using the following testing methods:

(1) An appropriate method listed in the United States environmental protection agency standard entitled "Test Methods For Evaluating Solid Waste; Physical/Chemical Methods," SW-846 document.

(2) Other testing methods determined by the department to be equally effective in assessing the level of contamination.

(h) Copies of site assessment results must be submitted to the department within 45 days of the sampling date, together with the site assessment report form provided by the department. The owner and operator shall complete the information specified on the form and shall provide a site map that indicates the location of tanks and piping and that identifies the depth and location of the samples taken. The site assessment report shall also include a copy of the laboratory report that indicates the test methods used in the analyses and the chain of custody of the samples.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2157 Applicability to previously closed UST systems.**

Rule 57. Section 280.73 is amended to read as follows:

Section 280.73. When directed by the department, the O/O of an UST system that was permanently closed before the effective date of these rules shall assess the

excavation zone and close the UST system in accordance with this subpart if suspected or confirmed releases from the UST system, in the judgment of the department, may pose a current or potential threat to human health and the environment.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2159 Closure records.**

Rule 59. Section 280.74 is amended to read as follows:

Section 280.74. Closure records. Owners and operators shall maintain records in accordance with the provisions of section 280.34, that are capable of demonstrating compliance with closure requirements under this subpart. The results of the excavation zone assessment required in section 280.72 shall be maintained for not less than 3 years after completion of permanent closure or a change in service in 1 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.
- (c) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

History: 1998-2000 AACCS; 2018 AACCS.

## **SUBPART H. FINANCIAL RESPONSIBILITY**

**R 29.2161 Applicability.**

Rule 61. Section 280.90 is amended to read as follows:

Section 280.90. (a) This subpart 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 section 280.91.

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state of the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system excluded or deferred under part 211 of 1994 PA 451, MCL 324.21101 to 324.21113.

(e) If the owner and operator of a petroleum UST are separate persons, only 1 person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2162 Compliance dates.**

Rule 62. Section 280.91 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.91. Owners of petroleum USTs are required to comply with the requirements of this subpart. Previously deferred UST systems shall comply with the requirements of this subpart according to the schedule in section 280.251(a).

History: 2018 AACCS.

### **R 29.2163 Definition of terms.**

Rule 63. Section 280.92 is amended to read as follows:

Section 280.92. As used in this subpart:

(a) "Accidental release" means any sudden or nonsudden release of petroleum arising from an UST that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank O/O.

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

(c) "Chief financial officer," in the case of local government owners and operators, means the individual who has the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(d) "Controlling interest" means direct ownership of not less than 50% of the voting stock of another entity.

(e) "Director of the implementing agency" means the director of the Michigan department of licensing and regulatory affairs, bureau of fire services.

(f) "Financial reporting year," which may comprise either a fiscal or a calendar year period, means the latest consecutive 12-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 securities exchange commission.

(2) An annual report of tangible net worth submitted to Dun and Bradstreet.

(3) Annual reports submitted to the energy information administration or the rural utilities service.

(g) "Legal defense cost" means any expense that an O/O or provider of financial assurance incurs in defending against claims or actions brought by any of the following entities:

(1) 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.

(3) Any person to enforce the terms of a financial assurance mechanism.

(h) "Local government" has the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include the following entities:

(1) Counties.

(2) Municipalities.

(3) Townships.

(4) Separately chartered and operated special districts, including local government public transit systems and redevelopment authorities.

(5) Independent school districts authorized as governmental bodies by state charter or constitution.

(6) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(i) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an UST.

(j) "Petroleum marketing facilities" means 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.

(k) "Petroleum marketing firms" means all firms that own petroleum marketing facilities. Firms that own other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(l) "Property damage" has the meaning given this term by applicable state law. The term does not include liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, the exclusions for property damage shall not include corrective action associated with releases from tanks that are covered by the policy.

(m) "Provider of financial assurance" means an entity that provides financial assurance to an O/O of an UST through 1 of the mechanisms listed in sections 280.95 to 280.107, including any of the following entities:

- (1) A guarantor.
- (2) An insurer.
- (3) A risk retention group.
- (4) A surety.
- (5) An issuer of a letter of credit.
- (6) An issuer of a state-required mechanism.
- (7) A state.

(n) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to the relationship valid and enforceable. A guarantee contract is issued incident to the relationship if it arises from and depends on existing economic transactions between the guarantor and the O/O.

(o) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to the relationship valid and enforceable. A guarantee contract is issued incident to the relationship if it arises from a clear commonality of interest in the event of a UST release, such as any of the following:

- (1) Coterminous boundaries.
- (2) Overlapping constituencies.
- (3) Common groundwater aquifer.

(4) Another relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(p) "Tangible net worth" means the tangible assets that remain after deducting liabilities. Tangible assets do not include intangibles such as goodwill and rights to patents or royalties. For the 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.

(q) "Termination," under sections 280.97(b)(1) and (2), means only the changes that could result in a gap in coverage such 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.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2163a Amount and scope of required financial responsibility.**

Rule 63a. Section 280.93 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.93. (a) O/Os of petroleum USTs shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per occurrence amounts:

(1) For O/Os of petroleum USTs 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 O/Os of petroleum USTs, \$500,000.

(b) O/Os of petroleum USTs shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least both of the following annual aggregate amounts:

(1) For O/Os of 1 to 100 petroleum USTs, \$1 million.

(2) For O/Os of 101 or more petroleum USTs, \$2 million.

(c) For the purposes of subsections (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 subsection (e) of this section, if the O/O uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for taking corrective action, and 1 of the following:

(1) Compensating third parties for bodily injury and property damage caused by sudden accidental releases.

(2) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b) of this section.

(e) If an O/O uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) O/Os shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed. If the number of petroleum USTs for which assurance must be provided exceeds 100, the O/O 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 O/O 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 1 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 O/O.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2163b Allowable mechanisms and combinations of mechanisms.**

Rule 63b. Section 280.94 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.94. (a) Subject to the limitations of subsections (b) and (c) of this section, both of the following provisions apply:

(1) An O/O, including a local government O/O, may use any 1 or a combination of the mechanisms listed in sections 280.95 to 280.103 to demonstrate financial responsibility under this subpart for 1 or more USTs.

(2) A local government O/O may use any 1 or a combination of the mechanisms listed in sections 280.104 to 280.107 to demonstrate financial responsibility under this subpart for 1 or more USTs.

(b) An O/O may use a guarantee under section 280.96 or surety bond under section 280.98 to establish financial responsibility only if the attorney general of the state in which the USTs are located has 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 O/O 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 O/O are not consolidated with the financial statements of the guarantor.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2163c Financial test of self-insurance.**

Rule 63c. Section 280.95 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.95. (a) An O/O, and/or guarantor, may satisfy the requirements of section 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the O/O, and/or guarantor must meet the criteria of subsection (b)



or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b) (1) The O/O, and/or guarantor, shall have a tangible net worth of at least 10 times all of the following:

(i) The total of the applicable aggregate amount required by section 280.93, based on the number of USTs 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 C.F.R. part 281 (2015);

(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 C.F.R. 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (2015) or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271 (2015).

(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 C.F.R. part 144.63 (2015) or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145 (2015).

(2) The O/O, and/or guarantor, shall have a tangible net worth of at least \$10 million.

(3) The O/O, and/or guarantor, shall have a letter signed by the chief financial officer worded as specified in subsection (d) of this section.

(4) The O/O, and/or guarantor, shall do either of the following:

(i) File financial statements annually with the U.S. securities and exchange commission, the energy information administration, or the rural utilities service.

(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 O/O, and/or guarantor shall meet the financial test requirements of 40 C.F.R. part 264.147(f)(1) (2015), substituting the appropriate amounts specified in subdivisions 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 O/O, 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 O/O, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in subsection (d) of this section.

(5) If the financial statements of the O/O, 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 O/O, and/or guarantor, shall obtain a special report by an independent certified public accountant stating all of the following:

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

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

(d) To demonstrate that the test for self-insurance meets the financial test under subdivision (b) or (c) of this section, the chief financial officer of the O/O, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-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 “nonsudden accidental re-leases” or “accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) UST(s).

USTs 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 C.F.R. 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 C.F.R. part 281 by the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 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 C.F.R. parts 271 and 145:

#### *EPA Regulations*

##### *Amount*

Closure (section section 264.143 and 265.143) .....  
Post-Closure Care (section section 264.145 and 265.145).....  
Liability Coverage (section section 264.147 and 265.147) .....  
Corrective Action (section subsection 264.101(b)) .....  
Plugging and Abandonment (section 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 subsection (b) of section 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) of section 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 postclosure 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 postclosure 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 C.F.R. part 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an O/O 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 O/O shall 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 O/O, and/or guarantor. If the director finds, on the basis of such reports or other information, that the O/O, and/or guarantor, no longer meets the financial test requirements of subsections 280.95(b) or (c) and (d), the O/O shall obtain alternate coverage within 30 days after notification of such a finding.

(g) If the O/O 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 O/O shall notify the director of such failure within 10 days.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2163d Guarantee.**

Rule 63d. Section 280.96 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.96. (a) An O/O may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either of the following entities:

(1) A firm that meets 1 of the following:

(i) Possesses a controlling interest in the O/O.

(ii) Possesses a controlling interest in a firm described in paragraph (i) of this subdivision.

(iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the O/O.

(2) A firm that is engaged in a substantial business relationship with the O/O and that is issuing the guarantee as an act incident to the business relationship.

(b) Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of section 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 subsection 280.95(d) and shall deliver the letter to the O/O. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, then, within 120 days of the end of the financial reporting year, the guarantor shall send, by certified mail, before cancellation or nonrenewal of the guarantee, notice to the O/O. If the director of the implementing agency notifies the guarantor that the guarantor no longer meets the requirements of the financial test of subsections 280.95(b) or (c) and (d), then the guarantor shall notify the O/O within 10 days of receiving the notification from the director. In both cases, the guarantee shall terminate not less than 120 days after the date that the O/O receives the notification, as evidenced by the return receipt. The O/O shall obtain alternate coverage as specified in section 280.114.

(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 C.F.R. part 280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 C.F.R. part 280.96(b).

(2) [Owner or operator] owns or operates the following UST(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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. Part 280, Subpart H, 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 ~~from~~ for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified UST(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 UST covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. part 280.112, 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 C.F.R. Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 C.F.R. 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



"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 C.F.R. 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 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 C.F.R. parts 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 C.F.R. 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 C.F.R. Part 280, subpart H 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, 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 UST;

(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 C.F.R. Part 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [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 C.F.R. part 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~~ for notary: \_\_\_\_\_

(d) An O/O who uses a guarantee to satisfy the requirements of section 280.93 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director of the implementing agency under section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2163e Insurance and risk retention group coverage.**

Rule 63e. Section 280.97 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.97. (a) An O/O may satisfy the requirements of section 280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. This 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 subdivision (b)(1) of this section, or evidence by a certificate of insurance worded as specified in subdivision (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 USTs: [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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 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 UST(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 USTs or locations, indicate the amount of coverage for each type of coverage and/or for each UST 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) to (e) of this Paragraph 2 are hereby amended to conform with subsections (a) to (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 C.F.R. parts 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 nonpayment 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 1 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 ["Insured" or "Group"] within 6 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 C.F.R. part 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 1 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 Number:

Endorsement (if applicable):

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 UST(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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 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 UST(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 USTs or locations, indicate the amount of coverage for each type of coverage and/or for each UST or location], exclusive of the 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 C.F.R. parts 280.95 to 280.102 and 280.104 to 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 6 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 C.F.R. part 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 1 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 shall 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 1 or more states.

(d) In the event of termination or nonrenewal of liability insurance coverage used to meet the financial responsibility requirements, the insurer shall notify the department of termination or nonrenewal not more than 20 days after the date of termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address of the facility previously insured.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2163f Surety bond.**

Rule 63f. Section 280.98 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.98. (a) An O/O may satisfy the requirements of section 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among the companies listed as acceptable sureties on federal bonds in the latest circular 570 of the United States Department of the Treasury.

(b) The surety bond shall be worded as follows, except that instructions in brackets shall 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)]

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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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 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 Present, 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 propose of allowing a joint action or actions against any or all of use, 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 cause by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases";, if coverage is different for different tanks or location, indicate the type of coverage applicable to each tank or location] arising from operating the USTs 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 C.F.R. Part 280, Subpart F and the Director of the state implementing agency's instructions for," and/or "compensate injured third parties for bodily injury and property damage cause by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden

accidental releases" or "accidental releases"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 40 C.F.R. 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 worker's 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 UST;

(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 C.F.R. part 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 C.F.R. Part 280, Subpart F, 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 C.F.R. 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 C.F.R. part 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 C.F.R. part 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 C.F.R. part 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Names and address]

[State of Incorporation]: \_\_\_\_\_

[Liability limit]:\$ \_\_\_\_\_

[Signature(s)]

[Name(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 O/O 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 O/O who uses a surety bond to satisfy the requirements of section 280.93 shall 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 section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

History: 2018 AACs.

### **R 29.2163g Letter of credit.**

Rule 63g. Section 280.99 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.99. (a) An O/O may satisfy the requirements of section 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall 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 shall 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 1 Director of a state implementing agency is a beneficiary, "by any 1 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, 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 UST(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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. part 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 worker's 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 UST;

(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 C.F.R. part 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 C.F.R. part 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 Internal Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An O/O who uses a letter of credit to satisfy the requirements of section 280.93 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid under 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 section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

(d) The letter of credit is irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at 120 days before the current expiration date, the issuing institution notifies the O/O 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 O/O receives the notice, as evidenced by the return receipt.

History: 2018 AACs.

#### **R 29.2164 Use of state-required mechanism.**

Rule 64. Section 280.100 is amended to read as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 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 O/O may use a state-required financial mechanism to meet the requirements of section 280.93 if the EPA regional administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this subpart.

(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 O/O, or any other interested party may submit to the regional administrator a written petition requesting that 1 or more of the state-required mechanisms be considered acceptable for meeting the requirements of section 280.93. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall 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 or her determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms are deemed to be in compliance with the requirements of section 280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

History: 1990 AACS; 2018 AACS.

#### **R 29.2165 State fund or other state assurance.**

Rule 65. Section 280.101 is amended to read as follows:

Section 280.101 Deleted.

History: 1998-2000 AACS; 2018 AACS.

#### **R 29.2165a Trust fund.**

Rule 65a. Section 280.102 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.102. (a) An O/O may satisfy the requirements of section 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 subdivision 280.103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in subdivision 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 O/O 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 subpart is substituted for all or part of the trust fund, the O/O 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 O/O for release of funds as specified in subsection (d) or (e) of this section, the director of the implementing agency shall instruct the trustee to release to the O/O such funds as the director specifies in writing.

History: 2018 AACCS.

#### **R 29.2165b Standby trust fund.**

Rule 65b. Section 280.103 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.103. (a) An O/O using any 1 of the mechanisms authorized by sections 280.96, 280.98, or 280.99 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by 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 UST 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 UST. 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 standby 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 USTs 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 UST;

(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 part 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 O/O 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 provision 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 1 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 here under. 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 here under. 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] here under 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 part 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 acknowledgment 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 O/O may establish 1 trust fund as the depository mechanism for all funds assured in compliance with this rule.

History: 2018 AACCS.

### **R 29.2166 Local government bond rating test.**

Rule 66. Section 280.104 is amended to read as follows:

Section 280.104. (a) A general purpose local government O/O, a local government, or any combination of owner, operator, or local government serving as a guarantor may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000.00 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa or a

Standard and Poor's rating of AAA, AA, A, or BBB. If a local government has multiple outstanding issues, or if a local government's bonds are rated by both Moody's and Standard and Poor's, then 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 O/O or local government serving as a guarantor that is not a general-purpose local government and that does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000.00 or more, excluding refunded issues, and having a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. If bonds are rated by both Moody's and Standard and Poor's, then 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 O/O, a guarantor, or any combination or owner, operator, or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard and Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general-purpose local government O/O, a guarantor, or any combination of owner, operator, or guarantor shall 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" or "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	Bond Rating Agency
				[Moody's or Standard and 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 and Poor's are rated as at least investment grade (Moody's Baa or Standard and 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 C.F.R. Part 280.104(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government O/O, a guarantor, or any other combination of owner, operator or guarantor, other than a general purpose government shall 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" or "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 Maturity Outstanding Bond Bond Rating Agency  
Date Date Amount Rating [Moody's or Standard and 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 and Poor's are rated as at least investment grade (Moody's Baa or Standard and 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 C.F.R. Part 280.104(e) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

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

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

(h) If the local government O/O 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 implanting agency that it no longer meets the requirements of the bond rating test, the O/O shall notify the director of this failure within 10 days.

History: 1998-2000 AACS; 2018 AACS.

#### **R 29.2166a Local government financial test.**

Rule 66a. Section 280.105 is amended to read as follows:

Section 280.105. (a) A local government O/O may satisfy the requirements of section 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government O/O shall 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 O/O shall meet the criteria of subsection (b)(2) and (3) of this section based on year-end financial statements for the latest completed fiscal year.

(b) The local government O/O shall have all of the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(1) Total revenues: Consists of the sum of general fund operating and nonoperating revenues, including all of the following:

- (i) Net local taxes.
- (ii) Licenses and permits.
- (iii) Fines and forfeitures.
- (iv) Revenues from use of money and property.
- (v) Charges for services.
- (vi) Investment earnings.
- (vii) Sales (property, publications, and the like).
- (viii) Intergovernmental revenues (restricted and unrestricted).

(ix) 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.

(2) Total expenditures: Consists of the sum of general fund operating and nonoperating expenditures, including all of the following:

- (i) Public safety.
- (ii) Public utilities.
- (iii) Transportation.
- (iv) Public works.
- (v) Environmental protection.
- (vi) Cultural and recreational.
- (vii) Community development.
- (viii) Revenue sharing.
- (ix) Employee benefits and compensation.
- (x) Office management.
- (xi) Planning and zoning.
- (xii) Capital projects.
- (xiii) Interest payments of debt.
- (xiv) Payments for retirement of debt principal.

(xv) 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).

(3) Local revenues: Consists of total revenues, as defined in subsection (b)(1) of this section, minus the sum of all transfers from other governmental entities, including all moneys received from federal, state, or local government sources.

(4) 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 any of the following:

- (i) Non-interest-bearing short-term obligations.
- (ii) Interfund obligations.
- (iii) Amounts owed in a trust or agency capacity.
- (iv) Advances and contingent loans from other governments.

(5) 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.

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

(c) 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.

(d) The local government O/O shall have a letter signed by the chief financial officer worded as specified in subsection (e) of this section.

(e) To demonstrate that it meets the financial test under subsection (b) of this section, the chief financial officer of the local government O/O shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-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" or "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 C.F.R. 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 transfer (dollars) \$\_\_\_\_\_

(c) Total Revenues (dollars) \$\_\_\_\_\_

#### 2. Total Expenditures

(a) Expenditures (dollars) \$\_\_\_\_\_

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

(b) Subtract interfund transfers (dollars) \$\_\_\_\_\_

(c) Total expenditures (dollars) \$\_\_\_\_\_

#### 3. Local Revenues

(a) Total Revenues (from 1c) (dollars) \$\_\_\_\_\_

(b) Subtract total intergovernmental transfers (dollars) \$\_\_\_\_\_

(c) Local revenues (dollars) \$\_\_\_\_\_

4. Debt Service

(a) Interest and fiscal charges (dollars) \$\_\_\_\_\_

(b) Add debt retirement (dollars) \$\_\_\_\_\_

(c) Total debt service (dollars) \$\_\_\_\_\_

5. Total funds (dollars) \$\_\_\_\_\_

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

6. Population (persons)

PART II. APPLICATION OF TEST

7. Total Revenues to Population

(a) Total revenues (from 1c)

(b) Population (from 6)

(c) Divide 7a by 7b

(d) Subtract 417

(e) Divide by 5,212

(f) Multiply by 4.095

8. Total Expenses to Population

(a) Total expenses (from 2c)

(b) Population (from 6)

(c) Divide 8a by 8b

(d) Subtract 524

(e) Divide by 5,401

(f) Multiply by 4.095

9. Local Revenues to Total Revenues

- (a) Local Revenues (from 3c)
- (b) Total Revenues (from 1c)
- (c) Divide 9a by 9b
- (d) Subtract .695
- (e) Divide by .205
- (f) Multiply by 2.840

10. Debt Service to Population

- (a) Debt Service (from 4d)
- (b) Population (from 6)
- (c) Divide 10a by 10b
- (d) Subtract 51
- (e) Divide by 1,038
- (f) Multiply by -1.866

11. Debt Service to Total Revenues

- (a) Debt Service (from 4d)
- (b) Total Revenues (from 1c)
- (c) Divide 11a by 11b
- (d) Subtract .068
- (e) Divide by .259
- (f) Multiply by -3.533

12. Total Revenues to Total Expenses

- (a) Total Revenues (from 1c)

(b) Total Expenses (from 2c)

(c) Divide 12a by 12b

(d) Subtract .910

(e) Divide by .899

(f) Multiply by 3.458

13. Funds Balance to Total Revenues

(a) Total Funds (from 5)

(b) Total Revenues (from 1c)

(c) Divide 13a by 13b

(d) Subtract .891

(e) Divide by 9.156

(f) Multiply by 3.270

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 C.F.R. Part 280.105(c) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(f) If a local government O/O 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, then the O/O shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(g) The director of the implementing agency may require reports of financial condition at any time from the local government O/O. If the director finds, on the basis of the reports or other information, that the local government O/O no longer meets the financial test requirements of (b) to (e), then the O/O shall obtain alternate coverage within 30 days after notification of the finding.

(h) If the local government O/O 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, then the O/O shall notify the director of the failure within 10 days.

History: 1998-2000 AACCS; 2018 AACCS.

### **R 29.2167 Local government guarantee.**

Rule 67. Section 280.106 is amended to read as follows:

Section 280.106. (a) A local government O/O may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state in which the local government O/O 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 the relationship. A local government acting as the guarantor shall demonstrate 1 of the following:

(1) That it meets the bond rating test requirement of section 280.104 and shall deliver a copy of the chief financial officer's letter as contained in subsection 280.104(d) and (e) to the local government O/O.

(2) That it meets the worksheet test requirements of section 280.105 and shall deliver a copy of the chief financial officer's letter as contained in subsection 280.105(c) to the local government O/O.

(3) That it meets the local government fund requirements of section 280.107(a), (b), or (c) and shall deliver a copy of the chief financial officer's letter as contained in section 280.107 to the local government O/O.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c) at the end of the financial reporting year, then the guarantor shall send, by certified mail, before cancellation or nonrenewal of the guarantee, notice to the O/O. The guarantee will terminate not less than 120 days after the date the O/O receives the notification, as evidenced by the return receipt. The O/O shall obtain alternative coverage as specified in subsection 280.114(e).

(c) The guarantee agreement must be worded as specified in subsection (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 O/O, the guarantor guarantees to fund a standby trust as directed by the director of the implementing agency, then the guarantee must be worded as specified in subsection (d) of this section.

(2) If, in the default or incapacity of the O/O, 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, then the guarantee must be worded as specified in subsection (e) of this section.

(d) If the guarantor is a state, then the local government guarantee with standby trust must be worded as specified in subdivision (1) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, then the local government guarantee with standby trust must be worded as specified in subdivision (2) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. Subdivisions (1) and (2) of this subsection read as follows:

(1) 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

(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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification



submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. Part 280, subpart H, 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 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 provision of 40 C.F.R. 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 C.F.R. Part 280, subpart F, the guarantor upon written instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. 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 "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 C.F.R. Part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage 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 C.F.R. 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 C.F.R. Part 280, subpart H, 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.

(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 C.F.R. Part 280.93.

(viii) 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 C.F.R. 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:

(2) 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 1: the local bond rating test requirements of 40 C.F.R. Part 280.104, the local government financial test requirements of 40 C.F.R. Part 280.105, or the local government fund under 40 C.F.R. Part 280.107(a), (b), or (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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. Part 280, subpart H, 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:

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 C.F.R. 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 C.F.R. Part 280, subpart F, the guarantor upon written instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. 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 "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 C.F.R. Part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage 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 (i) of this subdivision, 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 C.F.R. 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 C.F.R. Part 280, subpart H, 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.

(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 UST;

(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 C.F.R. 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 C.F.R. 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

(e) If the guarantor is a state, the local government guarantee without standby trust shall be worded as specified in subdivision (1) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in subdivision (2) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. Subdivisions (1) and (2) of this subsection read as follows:

(1) 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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. Part 280, subpart H, 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 C.F.R. Part 280, subpart F, 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 C.F.R. 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 C.F.R. Part 280, subpart H, 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 C.F.R. Part 280.93.

(viii) 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 C.F.R. 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:

(2) 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 1: the local government bond rating test requirements of 40 C.F.R. Part 280.104, the local government financial test requirements of 40 C.F.R. Part 280.105, the local government fund under 40 C.F.R. Parts 280.107(a), (b), or (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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. Part 280, subpart H, 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 C.F.R. Part 280, subpart F, 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 (i) of this subdivision, 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 C.F.R. 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 C.F.R. Part 280, subpart H, 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 C.F.R. 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 C.F.R. 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:

History: 1998-2000 AACS; 2018 AACS.

#### **R 29.2168 Local government fund.**

Rule 68. Section 280.107 is amended to read as follows:

Section 280.107. A local government O/O may satisfy the requirements of section 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in subsection (b) of this section, 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 any of the following requirements:

(a) The fund is dedicated by state constitutional provision or by 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 section 280.93, or is funded for part of the required amount of coverage and is used in combination with another mechanism or mechanisms that provide the remaining coverage.

(b) The fund is dedicated by state constitutional provision or by 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 5 times the full amount of coverage required under section 280.93 or is funded for part of the required amount of coverage and is used in combination with another mechanism or mechanisms that provide the remaining coverage. If the fund is funded for less than 5 times the amount of coverage required under section 280.93, then the amount of financial responsibility demonstrated by the fund may not be more than 1/5 the amount in the fund.

(c) The fund is dedicated by state constitutional provision or by 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 7 years until the fund is fully funded. The 7-year period is hereafter referred to as the "pay-in period." The amount of each payment must be determined by the following formula:

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

Where TF is the total required financial assurance for the O/O, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in period, and either of the following provisions applies:

(1) The local government O/O has available bonding authority, approved through voter referendum if approval is necessary before 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. The 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.

(2) The local government O/O 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 shall 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 O/O or guarantor shall 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 "nonsudden accidental releases" or "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 section 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 10 times the full amount of coverage required under section 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 "A payment is made to the fund once every year for 7 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 7 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 section 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 C.F.R. Part 280.107(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2168a Substitution of financial assurance mechanisms by owner or operator.**

Rule 68a. Section 280.108 is amended to read as follows:

Section 280.108. (a) An O/O may substitute any alternate financial assurance mechanisms as specified in this subpart if, at all times, the O/O maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an O/O may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2168b Cancellation or nonrenew by provider of financial assurance.**

Rule 68b. Section 280.109 is amended to read as follows:

Section 280.109. (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 O/O. 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 O/O receives the notice of termination, as evidenced by the return receipt. Termination of insurance or risk retention coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the O/O receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the O/O receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 280.114, then the O/O shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the O/O fails to obtain alternate coverage within 60 days after receipt of the notice of termination, then the O/O shall notify the director of the implementing agency of the failure and submit all of the following information:

- (1) The name and address of the provider of financial assurance.
- (2) The effective date of termination.



(3) Evidence of the financial assistance mechanism subject to the termination maintained in accordance with section 280.111(b).

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2168c Reporting by owner or operator.**

Rule 68c. Section 280.110 is amended to read as follows:

Section 280.110. (a) An O/O shall submit the appropriate forms listed in section 280.111(b) documenting current evidence of financial responsibility to the director of the implementing agency as follows:

(1) Within 30 days after the O/O identifies a release from an underground storage tank required to be reported under sections 280.53 or 280.61.

(2) If the O/O fails to obtain alternate coverage as required by this subpart, within 30 days after the O/O receives notice of the following:

(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.

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

(b) An O/O shall 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 section 280.22.

(c) The director of the implementing agency may require an O/O to submit evidence of financial assurance as described in section 280.111(b) or other information relevant to compliance with this subpart at any time.

History: 1998-2000 AACCS; 2018 AACCS.

**R 29.2168d Recordkeeping.**

Rule 68d. Section 280.111 is amended to read as follows:

Section 280.111. (a) O/Os shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under section 208.113. An O/O shall 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 O/O shall maintain the following types of evidence of financial responsibility:

(1) An O/O using an assurance mechanism specified in section 280.95 through section 280.100 or section 280.102 or section 280.104 through section 280.107 shall maintain a copy of the instrument worded as specified.

(2) An O/O using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An O/O using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government O/O using a local government guarantee under section 280.106 (d) shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government O/O using the local government bond rating test under section 280.104 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard and Poor's.

(6) A local government O/O using the local government guarantee under section 280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 280.104 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard and Poor's.

(7) An O/O using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An O/O covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under section 280.101(d).

(9) An O/O using a local government fund under section 280.107 shall maintain the following documents.

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

(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 section 280.107(c) 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 section 280.107(c) using incremental funding backed by bonding authority, the O/O shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 280.107(c)(1)), or attestation by the state attorney general as specified under section 280.107(c)(2).

(10) A local government O/O using the local government guarantee supported by the local government fund shall 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 O/O using an assurance mechanism specified in sections 280.95 through 280.107 shall 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

[Owners or operator] hereby certifies that it is in compliance with the requirements of subpart H of 40 C.F.R. Part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 C.F.R. 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).

History: 1998-2000 AACS; 2018 AACS.

### **R 29.2169 Drawing on financial assurance mechanisms.**

Rule 69. Section 280.112 is amended to read as follows:

Section 280.112. (a) Except as specified in subsection (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 either of the following provisions applies:

(1) The O/O 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 the director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and notifies the O/O of the determination or suspicion or the O/O has notified the director

under subpart E or F of these rules of a release from an underground storage tank covered by the mechanism.

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

(b) The director of the implementing agency may draw on a standby trust fund when in either of the following situations:

(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 O/O, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 C.F.R. Part 280, subpart F.

(2) The director has received either of the following:

(i) Certification from the O/O and the third-party liability claimant or claimants and from attorneys representing the O/O and the third-party liability claimant or claimants 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

(ii) A valid final court order establishing a judgment against the O/O for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the director determines that the O/O 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

subsection (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, then 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 subsection (b)(2)(i) of this section and valid court orders under subsection (b)(2)(ii) of this section.

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

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2170 Release from requirements.**

Rule 70. Section 280.113 is amended to read as follows:

Section 280.113. An O/O need not maintain financial responsibility under this subpart for an underground storage tank after the tank has been permanently closed, undergoes a change-in-service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change-in-service as required by 40 C.F.R. Part 280, subpart G.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2171 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

Rule 71. Section 280.114 is amended to read as follows:

Section 280.114. (a) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy) of the United States Code naming an O/O as debtor, the O/O shall notify the director of the implementing agency, by certified mail, of the commencement of a proceeding and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy) of the United States Code naming a guarantor providing financial assurance as debtor, the guarantor shall notify the O/O, by certified mail, of the commencement of a proceeding as required under the terms of the guarantee specified in section 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), of the United States Code naming a local government O/O as debtor, the local government O/O shall notify the director of the implementing agency, by certified mail, of the commencement of a proceeding and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), of the United States Code naming a guarantor providing a local government financial assurance as debtor, the guarantor shall notify the local government O/O, by certified mail, of the commencement of a proceeding as required under the terms of the guarantee specified in section 280.106.

(e) An O/O 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 the 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 O/O shall obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of an event specified in this subsection. If the O/O does not obtain alternate coverage within 30 days after notification, the O/O shall 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 O/O shall obtain alternate financial assurance.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2172 Replenishment of guarantees, letters of credit, or surety bonds.**

Rule 72. Section 280.115 is amended to read as follows:

Section 280.115. (a) If at any time after a standby trust is funded, on 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 if the amount in the standby trust is reduced below the full amount of coverage required, then the O/O shall, by the anniversary date of the financial mechanism from which the funds were drawn, do either of the following:

(1) Replenish the value of financial assurance to equal the full amount of coverage required.

(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 section 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds that were drawn upon, then replenishment must occur by the earliest anniversary date among the mechanisms.

History: 1998-2000 AACCS; 2018 AACCS.

#### **R 29.2173 Suspension of enforcement.**

Rule 73. Section 280.116 is deleted.

Section 280.116. Deleted.

History: 1998-2000 AACCS.

#### **R 29.2174 Adoption of standards by reference.**

Rule 74. Section 280.117 is amended to read as follows:

Section 280.117. The following standards are adopted in these rules by reference and are available at the address and cost specified:



(a) United States Environmental Protection Association, 5403 W. Street, Washington, DC 20460 available for free download at [www.epa.gov/oust](http://www.epa.gov/oust).

(1) SW-846 entitled "Test Methods for Evaluating Solid Waste Physical/Chemical Methods."

(b) American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005.

(1) Recommended practice 1631, entitled "Interior Lining of Underground Storage Tanks," at a cost as of the time of adoption of these rules of \$86.00 for secure pdf or \$146.00 printed edition and pdf.

(c) National Leak Prevention Association (NLPA), 7685 Fields Ertel Road, Cincinnati, OH 45241.

(1) NLPA standard 631(2009) entitled "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection," at a cost as of the time of adoption of these rules of \$28.00 secure pdf or \$36.50 printed edition and pdf.

(d) American Society for Nondestructive Testing (ASNT), 1711 Arlington Lane, P.O. Box 28518, Columbus, OH 43228-0518.

(1) ASNT recommended practice ANSI/ASNT-CP-189-2011 entitled "ASNT Standard for Qualification in Nondestructive Testing Personnel," at a cost as of the time of adoption of these rules of \$72.00 for pdf.

(e) Steel Structures Painting Council, 4400 Fifth Avenue, Pittsburgh, PA 15213

(1) Standard practice SP 5 entitled "White Metal Blast Cleaning," at a cost as of the time of adoption of these rules of \$25.00 for pdf.

(f) National Association of Corrosion Engineers (NACE) International, P.O. Box 218340, Houston, TX, 77218.

(1) NACE standard practice SP0285-2011 entitled "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," at a cost as of the time of adoption of these rules of \$37.00 for pdf.

(g) Underwriters Laboratories Inc., 333 Pfingsten Rd, Northbrook, IL 60062-2096.

(1) Standard 58 (1996), "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," at a cost as of the time of adoption of these rules of for \$502.00 for printed edition.

SUBPART I—LENDER LIABILITY: Delete

SUBPART J – OPERATOR TRAINING

History: 1998-2000 AACS; 2018 AACS.

### **R 29.2175 General requirements for all UST systems.**

Rule 75. Section 280.240 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.240 General requirement for all UST systems. Upon the effective date of these rules all owners and operators of UST systems shall ensure they have designated class A, class B, and class C operators who meet the requirements of this subpart.

History: 2018 AACS.

**R 29.2176 Designation of class A, B, and C operators.**

Rule 76. Section 280.241 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.241 Designation of class A, B, and C operators. UST system owners and operators shall designate both of the following:

- (a) At least 1 class A and 1 class B operator for each UST or group of USTs at a facility.
- (b) Each individual who meets the definition of class C operator at the UST facility as a class C operator.

History: 2018 AACCS.

**R 29.2177 Requirements for operator training.**

Rule 77. Section 280.242 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.242 Requirements for operator training. UST system owners and operators shall ensure class A, class B, and class C operators meet the requirements of this section. Any individual designated for more than 1 operator class shall successfully complete the required training program or comparable examination according to the operator class in which the individual is designated.

(a) Class A operators. Each designated class A operator shall either be trained in accordance with paragraphs (a)(1) and (2) of this section or pass a comparable examination in accordance with paragraph (e) of this section.

(1) At a minimum, the training program for the class A operator shall provide general knowledge of the requirements in this paragraph (a). At a minimum, the training shall teach the class A operators, as applicable, about the purpose, methods, and function of all of the following:

- (i) Spill and overfill prevention.
- (ii) Release detection.
- (iii) Corrosion protection.
- (iv) Emergency response.
- (v) Product and equipment compatibility and demonstration.
- (vi) Financial responsibility.
- (vii) Notification and storage tank registration.
- (viii) Temporary and permanent closure.
- (ix) Related reporting, recordkeeping, testing, and inspections.
- (x) Environmental and regulatory consequences of releases.
- (xi) Training requirements for class B and class C operators.

(2) At a minimum, the training program shall evaluate class A operators to determine that these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subdivision (a)(1) of this section.

(b) Class B operators. Each designated class B operator shall either receive training in accordance with subdivisions (b)(1) and (2) of this section or pass a comparable examination, in accordance with subsection (e) of this section.

(1) At a minimum, the training program for the class B operator shall cover either: general requirements that encompass all regulatory requirements and typical equipment used at UST facilities; or, site-specific requirements that address only the regulatory requirements and equipment specific to the facility. At a minimum, the training program for class B operators shall teach the class B operator, as applicable, about the purpose, methods, and function of all of the following:

- (i) Operation and maintenance.
- (ii) Spill and overfill prevention.
- (iii) Release detection and related reporting.
- (iv) Corrosion protection.
- (v) Emergency response.
- (vi) Product and equipment compatibility and demonstration.
- (vii) Reporting, recordkeeping, testing, and inspections.
- (viii) Environmental and regulatory consequences of releases.
- (ix) Training requirements for class C operators.

(2) At a minimum, the training program shall evaluate class B operators to determine that these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems or, as applicable, site-specific equipment used at an UST facility in accordance with subdivision (b)(1) of this section.

(c) Class C operators. Each designated class C operator shall either be trained by a class A or class B operator in accordance with subdivisions (c)(1) and (2) of this section; complete a training program in accordance with subdivisions (c)(1) and (2) of this section; or pass a comparable examination, in accordance with subsection (e) of this section.

(1) At a minimum, the training program for the class C operator shall teach the class C operators to take appropriate actions, including notifying appropriate authorities, in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

(2) At a minimum, the training program shall evaluate class C operators to determine if these individuals have the knowledge and skills to take appropriate action, including notifying appropriate authorities, in response to emergencies or alarms caused by spills or releases from an UST system.

(d) Training program. Any training program shall meet the minimum requirements of this section and include an evaluation through testing, a practical demonstration, or another approach acceptable to the implementing agency. The implementing agency shall approve training programs and the evaluation that can be administered by a third-party and do not exceed a 4-hour time period, including evaluation.

(e) Comparable examination. A comparable examination shall, at a minimum, test the knowledge of the class A, class B, or class C operators in accordance with the requirements of subsection (a), (b), or (c) of this section, as applicable. Class A and B operators with a current certificate shall seek training or recertification by an approved testing authority no more than 5 years from the certificates original issue date.

History: 2018 AACCS.

**R 29.2178 Timing of operator training.**

Rule 78. Section 280.243 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.243 Timing of operator training.

(a) An owner and operator shall ensure that designated class A, class B, and class C operators meet the requirements in section 280.242.

(b) Class A and class B operators shall meet requirements in section 280.242 within 30 days of assuming duties.

(c) Class C operators designated after the effective date of these rules must be trained before assuming duties of a class C operator.

History: 2018 AACCS.

**R 29.2178a Retraining.**

Rule 78a. Section 280.244 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.244 Retraining. Class A and class B operators of UST systems determined by the implementing agency to be out of compliance due to an immediate threat to human health and safety and result in an emergency red-tag enforcement action shall complete a training program or comparable examination in accordance with requirements in section 280.242. The training program or comparable examination must be developed or administered by an approved independent organization, the implementing agency, or a recognized authority. At a minimum, the training must cover the area(s) determined to be out of compliance. UST system owners and operators must ensure class A and class B operators are retrained pursuant to this section no later than 30 days from the date the implementing agency determines the facility is out of compliance except in either of the following situations:

(a) Class A and class B operators take annual refresher training. Refresher training for class A and class B operators shall cover all applicable requirements in section 280.242.

(b) The implementing agency, at its discretion, waives this retraining requirement for either the class A or class B operator, or both.

History: 2018 AACCS.

**R 29.2179 Documentation.**

Rule 79. Section 280.245 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.245 Documentation. Owners and operators of UST systems shall maintain a list of designated class A, class B, and class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 280.34 as follows:

- (a) The list must include all of the following:
- (1) Identify all class A, class B, and class C operators currently designated for the facility.
  - (2) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.
- (b) Records verifying completion of training or retraining, a paper or electronic record for class A, class B, and class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators shall maintain these records for as long as class A, class B, and class C operators are designated. The following requirements also apply to the following types of training:
- (1) Records from classroom or field training programs (including class C operator training provided by the class A or class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner.
  - (2) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if internet based.
  - (3) Records of retraining shall include those areas on which the class A or class B operator has been retrained.

History: 2018 AACCS.

#### **R 29.2180 Class A, B and C operator responsibilities.**

Rule 80. Section 280.246 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.246 Class operator responsibilities. (a) Class A operator responsibilities.

(1) If an UST facility has a person(s) routinely on-site, at least 1 person on-site must be a trained class C operator whenever the facility is operating. If an UST facility does not have a person(s) routinely on-site, that UST facility shall have a class B operator, but is not required to have a class C operator on-site whenever the facility is operating. At locations configured for unattended self-serve, as defined in section 9.5 of R 29.5651 to R 29.5917, the department will determine the need for a class C operator based on the best interests of public health, safety, and welfare and the environment.

(2) Class A operator may elect to replace a class B operator at any time providing proper notice of a replacement on an amended registration form submitted to the department.

(3) It is unlawful to operate a regulated UST facility without a class B operator assigned to the facility.

(4) Class A operator shall maintain a list of all current employees who are trained class C operator and produce documentation verifying training at time of inspection.

(5) Class A operator shall maintain inspection records required in section C of this subsection and provide them to the department upon request. These records must be maintained for a minimum of 3 years by the class A operator.

(6) At unmanned facilities, fuel delivery personnel will be considered class C operator solely for the purpose of fuel deliveries. The owner shall ensure that the fuel

delivery personnel servicing such locations have received appropriate site-specific spill and overfill training for the delivery process and are familiar with all applicable safety and emergency precautions that must accompany fuel deliveries.

(7) All new class A operators, as defined, shall be class A certified within 30 days of purchase of a regulated UST facility. A class B operator must be identified immediately before a facility may operate.

(8) For a class A operator who has multiple facilities and multiple class B operators, the class A operator shall not be responsible for more than 60 facilities per class B operator. The class A operator shall provide the department with a list of all class B operators.

(b) Class B operator responsibilities. The class B operator shall conduct all of the following activities for each UST facility for which he or she is responsible:

(1) Conduct a site visit inspection in accordance with section 280.36 to determine the operational compliance status of each regulated UST system at the facility.

(A) Notice must be given to the class A operator of any deficiencies or noncompliance as noted in paragraph 280.36(a)(3)(i) and any recommendations made to remedy any deficiencies or noncompliance discovered during the site visit, including any prior recommendations that have not been addressed.

(2) The number of facilities that any 1 class B operator can be responsible for must not exceed 60 facilities.

(3) Notify the department within 15 days if he or she is no longer acting as the class B operator for a certain facility.

(c) Class C operator.

(1) Each O/O shall maintain a list of trained class C operators for each facility and the date(s) of the training. This list must be maintained, kept up to date, and available to the department upon request. Training shall include all of the following:

(i) The operation of the UST system.

(ii) The class C operator's role with regard to monitoring equipment.

(iii) The class C operator's role with regard to spills and overfills.

(iv) Recognition of, and appropriate response to, site hazards.

(v) Recognition of, and response to, any unusual operating conditions of the UST system.

(vi) Establish a procedure to notify the appropriate parties in a timely manner of site hazards and/or unusual operating conditions.

(vii) Training for any person designated as a class C operator shall be documented, at the facility where the individual is employed, and be suitable for site-specific conditions.

(2) At least 1 trained class C operator must be present during facility operating hours.

(3) Each class C operator must be provided with documentation indicating that the employee has completed training covering, at a minimum, all the items required in paragraphs (d)(1)(i) to (d)(1)(vi) of this subsection.

(4) A class B operator shall not designate any responsibilities listed in subdivisions (b)(1) to (b)(3) of this section to any individual who is not a class B operator.

History: 2018 AACCS.



## **SUBPART K—UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS**

### **R 29.2190 Definitions.**

Rule 90. Section 280.250 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.250 Definitions. For purposes of this subpart, 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 1 or more hydrants (fill stands). The airport hydrant system begins where fuel enters 1 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.

History: 2018 AACs.

### **R 29.2191 General requirements.**

Rule 91. Section 280.251 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.251 General requirements.

(a) Implementation of requirements. Owners and operators shall 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 13, 2015 the requirements are effective according to the following schedule:

Requirement	Effective date
Upgrading UST systems; general operating requirements; and operator training	October 13, 2018
Release detection	October 13, 2018
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph (b) of this section).	October 13, 2015

(2) For UST systems installed after October 13, 2015, the requirements apply at installation.

(b) Not later than October 13, 2018, all owners of previously deferred UST systems shall submit a one-time notice of tank system existence to the implementing



agency, using the form in appendix I of these rules or a state form in accordance with subsection 280.22(c). Owners and operators of UST systems in use as of October 13, 2015 shall demonstrate financial responsibility at the time of submission of the notification form.

(c) Except as provided in section 280.252, owners and operators shall comply with the requirements of subparts A through H and J of these rules.

(d) Owners and operators may use nationally recognized codes of practice and 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.

History: 2018 AACs.

**R 29.2192 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.**

Rule 92. Section 280.252 is added as adopted from the July 15, 2015, EPA-UST rules as follows:

Section 280.252. 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 shall meet the secondary containment requirement when installed or replaced.

(b) Upgrade requirements. Not later than October 13, 2018, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before October 13, 2015 shall meet the following requirements or be permanently closed pursuant to subpart G of these rules.

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

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

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

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

(B) Tanks greater than 10 years old without cathodic protection shall be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment shall 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 overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems shall comply with new UST system spill and overfill prevention equipment requirements specified in subsection 280.20(c).

(c) Walkthrough inspections. In addition to the walkthrough inspection requirements in section 280.36, owners and operators shall 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 subsection 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 subpart not later than October 13, 2018.

(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 shall meet the release detection requirements in subpart D of these rules. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons shall meet either the requirements in subpart D (except subsections 280.43(e) and (f) shall be combined with inventory control as stated below) or use 1 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 1 gallon per hour. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every 3 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 2 gallons per hour. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every 2 years.

(iv) Perform vapor monitoring (conducted in accordance with subsection 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 2 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 complete either of the following:

(A) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every 2 years.

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

(vi) Use 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 shall meet the release detection requirements in subpart D of these rules. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons shall follow either the requirements in subpart D (except subsections 280.43(e) and (f) shall be combined with inventory control as stated below) or use 1 or a combination of the following alternative methods of release detection:

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

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

(B) 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 PIPINIG SEGMENTS ≥100,000 GALLONS IN VOLUME	
First test	Not later than October 13, 2018 (may use up to 6.0 gph leak rate).
Second test	Between October 13, 2018 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.

(ii) Perform vapor monitoring (conducted in accordance with subsection 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 2 years.

(iii) 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 flowthrough and complete either of the following:

(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 2 years.

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

(iv) 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 shall maintain release detection records according to the recordkeeping requirements in section 280.45.

(e) Applicability of closure requirements to previously closed UST systems. When directed by the implementing agency, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before October 13, 2015 shall assess the excavation zone and close the UST system in accordance with subpart G of these rules 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.

History: 2018 AACS.