

Environmental Protection Agency

§ 281.23

(ii) Operating a program with a greater scope of coverage than that required under this part. Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

(b) *Definitions.* (1) The definitions in part 280 apply to all subparts of this part.

(2) For the purpose of this part, the term *interim approval* means the approval received by a state program that meets the requirements in § 281.11(c) (1) and (2) for the time period defined in § 281.11(c)(3).

(3) For the purposes of this part the term *final approval* means the approval received by a state program that meets the requirements in § 281.11(b).

Subpart B—Components of a Program Application

§ 281.20 Program application.

Any state that seeks to administer a program under this part must submit an application containing the following parts:

(a) A transmittal letter from the Governor of the state requesting program approval;

(b) A description in accordance with § 281.21 of the state program and operating procedures;

(c) A demonstration of the state's procedures to ensure adequate enforcement;

(d) A schedule for obtaining needed authorities under interim approval, where applicable;

(e) A Memorandum of Agreement outlining roles and responsibilities of EPA and the implementing agency;

(f) An Attorney General's statement in accordance with § 281.25 certifying to applicable state authorities; and

(g) Copies of all applicable state statutes and regulations.

NOTE: EPA has designed an optional application form that is available for use by state applicants.

§ 281.21 Description of state program.

A state seeking to administer a program under this part must submit a description of the program it proposes to administer under state law in lieu of the federal program. The description of

a state's existing or planned program must include:

(a) The scope of the state program:

(1) Whether the state program regulates UST systems containing petroleum or hazardous substances, or both;

(2) Whether the state is applying for interim or final approval;

(3) Whether the state program is more stringent or broader in scope than the federal program, and in what ways; and

(4) Whether the state has any existing authority over Indian lands or has existing agreements with Indian tribes relevant to the regulation of underground storage tanks.

(b) The organization and structure of the state and local agencies with responsibility for administering the program. The jurisdiction and responsibilities of all state and local implementing agencies must be delineated, appropriate procedures for coordination set forth, and one state agency designated as a "lead agency" to facilitate communications between EPA and the state.

(c) Staff resources to carry out and enforce the required state program elements, both existing and planned, including the number of employees, agency where employees are located, general duties of the employees, and current limits or restrictions on hiring or utilization of staff.

(d) An existing state funding mechanism to meet the estimated costs of administering and enforcing the required state program elements, and any restrictions or limitations upon this funding.

§ 281.22 Procedures for adequate enforcement.

A state must submit a description of its compliance monitoring and enforcement procedures, including related state administrative or judicial review procedures.

§ 281.23 Schedule for interim approval.

For a state program that must modify its statutory or regulatory requirements for release detection, release reporting and investigation, and out-of-service or closed UST systems in order to be no less stringent than the federal

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requirements, the plan must include a schedule for making such changes and for submitting an amendment to the state application in accordance with § 281.51.

§ 281.24 Memorandum of agreement.

EPA and the approved state will negotiate a Memorandum of Agreement (MOA) containing proposed areas of coordination and shared responsibilities between the state and EPA and separate EPA and state roles and responsibilities in areas including, but not limited to: Implementation of partial state programs; enforcement; compliance monitoring; EPA oversight; and sharing and reporting of information. At the time of approval, the MOA must be signed by the Regional Administrator and the appropriate official of the state lead agency.

§ 281.25 Attorney General's statement.

(a) A state must submit a written demonstration from the Attorney General that the laws and regulations of the state provide adequate authority to carry out the program described under § 281.21 and to meet other requirements of this part. This statement may be signed by independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the state Agency in court on all matters pertaining to the state program. This statement must include citations to the specific statutes, administrative regulations, and where appropriate, judicial decisions that demonstrate adequate authority to regulate and enforce requirements for UST systems. State statutes and regulations cited by the state Attorney General must be fully effective when the program is approved.

(b) If a state currently has authority over underground storage tank activities on Indian Lands, the statement must contain an appropriate analysis of the state's authority.

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Subpart C—Criteria for No-Less-Stringent

§ 281.30 New UST system design, construction, installation, and notification.

In order to be considered no less stringent than the corresponding federal requirements for new UST system design, construction, installation, and notification, the state must have requirements that ensure all new underground storage tanks, and the attached piping in contact with the ground and used to convey the regulated substance stored in the tank, conform to the following:

(a) Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion.

NOTE: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate that the state program requirements are no less stringent in this area.

(b) Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time.

(c) All UST system owners and operators must notify the implementing state agency of the existence of any new UST system using a form designated by the state agency.

§ 281.31 Upgrading existing UST systems.

In order to be considered no less stringent than the corresponding federal upgrading requirements, the state must have requirements that ensure existing UST systems will be replaced or upgraded before December 22, 1998, to prevent releases for their operating life due to corrosion, and spills or overfills.