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closure, the state must have requirements that ensure UST systems conform with the following:

(a) Removal from service. All new and existing UST systems temporarily closed must:

(1) Continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;

(2) Continue to comply with release detection requirements if regulated substances are stored in the tank;

(3) Be closed off to outside access; and

(4) Be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the state approves an extension after the owner and operator conducts a site assessment.

(b) Permanent closure of UST systems. All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and any future releases. The owner or operator must notify the state of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.

(c) All UST systems taken out of service before the effective date of the federal regulations must permanently close in accordance with paragraph (b) of this section when directed by the implementing agency.

§ 281.37 Financial responsibility for UST systems containing petroleum.

(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility for petroleum UST systems must ensure that:

(1) Owners and operators have \$1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(2) Owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have \$500,000 per occur-

rence for corrective action and third-party claims in a timely manner to protect human health and the environment;

(3) Owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of \$1 million; and

(4) Owners and operators of 101 or more petroleum USTs must have an annual aggregate of \$2 million.

(b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR 280.91.

(c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: Be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.

(d) States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.

[53 FR 43382, Oct. 26, 1988; 53 FR 51274, Dec. 21, 1988; 54 FR 38788, Sept. 20, 1989, as amended at 55 FR 46025, Oct. 31, 1990]

§ 281.38 Financial responsibility for USTs containing hazardous substances. [Reserved]

§ 281.39 Lender liability.

(a) A state program that contains a security interest exemption will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state's exemption:

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(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or

(2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under § 280.210 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(b) of this chapter is not:

(A) An “owner” of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or

(B) An “operator” of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(ii) [Reserved]

(b) [Reserved]

[60 FR 46715, Sept. 7, 1995]

Subpart D—Adequate Enforcement of Compliance

§ 281.40 Requirements for compliance monitoring program and authority.

(a) Any authorized representative of the state engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.

(b) Any authorized representative of the state must have authority to require an owner or operator to conduct monitoring or testing.

(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain

samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).

(d) State programs must have procedures for receipt, evaluation, retention and investigation of records and reports required of owners or operators and must provide for enforcement of failure to submit these records and reports. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their state program.

(e)(1) State programs must have inspection procedures to determine, independent of information supplied by regulated persons, compliance with program requirements, and must provide for enforcement of failure to comply with the program requirements. States must maintain a program for systematic inspections of facilities subject to regulations in a manner designed to determine compliance or non-compliance, to verify accuracy of information submitted by owners or operators of regulated USTs, and to verify adequacy of methods used by owners or operators in developing that information.

(2) When inspections are conducted, samples taken, or other information gathered, these procedures must be conducted in a manner (for example, using proper “chain of custody” procedures) that will produce evidence admissible in an enforcement proceeding, or in court.

(f) Public effort in reporting violations must be encouraged and the state enforcement agency(ies) must make available information on reporting procedures. State programs must maintain a program for investigating information obtained from the public about suspected violations of UST program requirements.

(g) The state program must maintain the data collected through inspections and evaluation of records in such a manner that the implementing agency can monitor over time the compliance status of the regulated community. Any compilation, index, or inventory of such facilities and activities shall be made available to EPA upon request.

[53 FR 37241, Sept. 23, 1988, as amended at 70 FR 59889, Oct. 13, 2005]