
This content is from the eCFR and is authoritative but unofficial.

Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter I —Solid Wastes

Part 281 Approval of State Underground Storage Tank Programs

Subpart A Purpose, General Requirements and Scope

- § 281.10 Purpose.
- § 281.11 General requirements.
- § 281.12 Scope and definitions.

Subpart B Components of a Program Application

- § 281.20 Program application.
- § 281.21 Description of state program.
- § 281.22 Procedures for adequate enforcement.
- § 281.23 Memorandum of agreement.
- § 281.24 Attorney General's statement.

Subpart C Criteria for No Less Stringent

- § 281.30 New UST system design, construction, installation, and notification.
- § 281.31 Upgrading existing UST systems.
- § 281.32 General operating requirements.
- § 281.33 Release detection.
- § 281.34 Release reporting, investigation, and confirmation.
- § 281.35 Release response and corrective action.
- § 281.36 Out-of-service UST systems and closure.
- § 281.37 Financial responsibility for UST systems containing petroleum.
- § 281.38 Lender liability.
- § 281.39 Operator training.

Subpart D Adequate Enforcement of Compliance

- § 281.40 Requirements for compliance monitoring program and authority.
- § 281.41 Requirements for enforcement authority.
- § 281.42 Requirements for public participation.
- § 281.43 Sharing of information.

Subpart E Approval Procedures

- § 281.50 Approval procedures for state programs.
- § 281.51 Revision of approved state programs.

Subpart F Withdrawal of Approval of State Programs

- § 281.60 Criteria for withdrawal of approval of state programs.
- § 281.61 Procedures for withdrawal of approval of state programs.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

Authority: 42 U.S.C. 6912, 6991(c), 6991(d), 6991(e), 6991(i), 6991(k).

Source: 80 FR 41677, July 15, 2015, unless otherwise noted.

Subpart A—Purpose, General Requirements and Scope

§ 281.10 Purpose.

- (a) This part specifies the requirements that state programs must meet for approval by the Administrator under section 9004 of the Solid Waste Disposal Act, and the procedures EPA will follow in approving, revising and withdrawing approval of state programs.
- (b) State submissions for program approval must be in accordance with the procedures set out in this part.
- (c) A state may apply for approval under this part at any time after the promulgation of release detection, prevention, and corrective action regulations under § 9003 of the Solid Waste Disposal Act.
- (d) Any state program approved by the Administrator under this part shall at all times be conducted in accordance with the requirements of this part.

§ 281.11 General requirements.

- (a) **State program elements.** The following substantive elements of a state program must be addressed in a state application for approval:
 - (1) Requirements for all existing and new underground storage tanks:
 - (i) New UST systems (design, construction, installation, and notification);
 - (ii) Upgrading of existing UST systems;
 - (iii) General operating requirements;
 - (iv) Release detection;
 - (v) Release reporting, investigation, and confirmation;
 - (vi) Out-of-service USTs and closure;
 - (vii) Release response and corrective action;
 - (viii) Financial responsibility for UST systems containing petroleum; and
 - (ix) Operator training.
 - (2) Provisions for adequate enforcement of compliance with the above program elements.
- (b) **Final approval.** The state must demonstrate that its requirements under each state program element for existing and new UST systems are no less stringent than the corresponding federal requirements as set forth in subpart C of this part. The state must also demonstrate that it has a program that provides adequate enforcement of compliance with these requirements.

- (c) States with programs approved under this part are authorized to administer the state program in lieu of the federal program and will have primary enforcement responsibility with respect to the requirements of the approved program. EPA retains authority to take enforcement action in approved states as necessary and will notify the designated lead state agency of any such intended action.

§ 281.12 Scope and definitions.

(a) *Scope.*

- (1) The Administrator may approve either partial or complete state programs. A “partial” state program regulates either solely UST systems containing petroleum or solely UST systems containing hazardous substances. If a “partial” state program is approved, EPA will administer the remaining part of the program. A “complete” state program regulates both petroleum and hazardous substance tanks.
- (2) EPA will administer the UST program in Indian country, except where Congress has clearly expressed an intention to grant a state authority to regulate petroleum and hazardous substance USTs in Indian country. In either case, this decision will not impair a state's ability to obtain program approval for petroleum or hazardous substances in non-Indian country in accordance with this part.
- (3) Nothing in this subpart precludes a state from:
 - (i) Adopting or enforcing requirements that are more stringent or more extensive than those required under this part; or
 - (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 40 CFR part 280 apply to this entire part except as described below.
 - (i) States may use the definitions associated with tank and piping secondary containment as defined in section 9003 of the Solid Waste Disposal Act.
 - (ii) States may use the definitions associated with operator training as described in § 9010 of the Solid Waste Disposal Act.
- (2) 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 Memorandum of Agreement outlining roles and responsibilities of EPA and the implementing agency;
- (e) An Attorney General's statement in accordance with § 281.25 certifying to applicable state authorities; and
- (f) Copies of all applicable state statutes and regulations.

§ 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 program is more stringent or broader in scope than the federal program, and in what ways; and
 - (3) Whether the state has any existing authority in Indian country 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 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.

§ 281.24 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 in Indian country, the statement must contain an appropriate analysis of the state's authority.

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. Unless the state requires manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act, then the state must meet the following:
 - (1) New or replaced tanks and piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act except as follows:
 - (i) Underground piping associated with: Airport hydrant systems or field-constructed tanks greater than 50,000 gallons or
 - (ii) Underground suction piping that meets § 281.33(d)(2)(ii).
 - (2) New motor fuel dispenser systems installed and connected to an UST system must be equipped with under-dispenser containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act.

Note to paragraph (a). 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. Flow restrictors used in vent lines are not allowable forms of overfill prevention when overfill prevention is installed or replaced.
- (c) All UST system owners and operators must notify the implementing agency of the existence of any new UST system and notify the implementing agency within a reasonable timeframe when assuming ownership of an UST system using a process designated by the implementing 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 meet the requirements of § 281.30; are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills; or are permanently closed with the following exceptions:

- (a) Upgrade requirements for previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems and UST systems with field-constructed tanks must within three years of the effective date of its state requirements meet the requirements of § 281.30 or be permanently closed. This provision would not apply, however, to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing requirements with specified compliance periods for these types of UST systems.
- (b) Upgrade requirements for other UST systems. States may allow UST systems to be upgraded if the state determines that the upgrade is appropriate to prevent releases for the operating life of the UST system due to corrosion and spills or overfills.

§ 281.32 General operating requirements.

In order to be considered no less stringent than the corresponding federal general operating requirements, the state must have requirements that ensure all new and existing UST systems conform to the following:

- (a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly;
- (b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system;

Note to paragraph (b). Codes of practice developed by nationally recognized organizations and national independent testing laboratories may be used to demonstrate the state program requirements are no less stringent.

- (c) Be made of or lined with materials that are compatible with the substance stored; in order to ensure compatibility, the state requirements must also include provisions for demonstrating compatibility with new and innovative regulated substances or other regulated substances identified by the implementing agency or include other provisions determined by the implementing agency to be no less protective of human health and the environment than the provisions for demonstrating compatibility;
- (d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives;
- (e) Have spill and overfill prevention equipment periodically tested or inspected in a manner and frequency that ensures its functionality for the operating life of the equipment and have the integrity of containment sumps used for interstitial monitoring of piping periodically tested in a manner and frequency that prevents releases during the operating life of the UST system;
- (f) Have operation and maintenance walkthrough inspections periodically conducted in a manner and frequency that ensures proper operation and maintenance for the operating life of the UST system; and

- (g) Have records of monitoring, testing, repairs, and inspections. These records must be made readily available when requested by the implementing agency.

§ 281.33 Release detection.

In order to be considered no less stringent than the corresponding federal requirements for release detection, the state must have requirements that at a minimum ensure all UST systems are provided with release detection that conforms to the following:

- (a) **General methods.** Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:
 - (1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances—as effectively as any of the methods allowed under this part—for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.
 - (2) Designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;
 - (3) Operated and maintained, and electronic and mechanical components and other equipment are tested or inspected periodically, in a manner and frequency that ensures proper operation to detect releases for the operating life of the release detection equipment.
- (b) **Phase-in of requirements.** Release detection requirements must, at a minimum, be applied at all UST systems immediately, except for UST systems previously deferred under § 280.10(a)(1). Release detection requirements must, at a minimum, be scheduled to be applied to those previously deferred UST systems as follows:
 - (1) Immediately when a new previously deferred UST system is installed; and
 - (2) For any previously deferred UST system within three years of the effective date of its state requirements. This provision would not apply, however, to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing release detection requirements with specified compliance periods for these types of UST systems.
- (c) **Requirements for petroleum tanks.** All petroleum tanks must meet the following requirements:
 - (1) All petroleum tanks must be sampled, tested, or checked for releases at least monthly, except that tanks installed before October 13, 2015 or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) in combination with tightness testing (or its equivalent) conducted every five years for the first 10 years after the tank is installed; and
 - (2) New or replaced petroleum tanks must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act except when the state requires manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act.
- (d) **Requirements for petroleum piping.** All underground piping attached to the tank that routinely conveys petroleum must conform to the following:
 - (1) If the petroleum is conveyed under greater than atmospheric pressure:

- (i) The piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and
 - (ii) The piping must have monthly monitoring applied or annual tightness tests conducted.
- (2) If suction lines are used:
 - (i) Tightness tests must be conducted at least once every three years, unless a monthly method of detection is applied to this piping; or
 - (ii) The piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.
- (3) Except as provided for in § 281.30(a)(1) new or replaced petroleum piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act except when the state requires evidence of financial responsibility and certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act.
- (e) **Requirements for hazardous substance UST systems.** All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank. For hazardous substance UST systems installed prior to October 13, 2015, owners and operators can use another form of release detection if the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.

§ 281.34 Release reporting, investigation, and confirmation.

In order to be considered no less stringent than the corresponding federal requirements for release reporting, investigation, and confirmation, the state must have requirements that ensure all owners and operators conform with the following:

- (a) Promptly investigate all suspected releases, including:
 - (1) When unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised; and
 - (2) When required by the implementing agency to determine the source of a release having an impact in the surrounding area; and
- (b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.
- (c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.

§ 281.35 Release response and corrective action.

In order to be considered no less stringent than the corresponding federal requirements for release response and corrective action, the state must have requirements that ensure:

- (a) All releases from UST systems are promptly assessed and further releases are stopped;
- (b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);
- (c) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists.
- (d) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;
- (e) Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment; and
- (f) In accordance with § 280.67, the state must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

§ 281.36 Out-of-service UST systems and closure.

In order to be considered no less stringent than the corresponding federal requirements for temporarily closed UST systems and permanent 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 occurrence 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) 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.
- (c) 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.

§ 281.38 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:
 - (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 § 280.10 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]

§ 281.39 Operator training.

In order to be considered no less stringent than the corresponding federal requirements for operator training, the state must have an operator training program that meets the minimum requirements of section 9010 of the Solid Waste Disposal Act.

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, or 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 UST 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 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.
- (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 UST 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 states 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 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.

§ 281.41 Requirements for enforcement authority.

- (a) Any state administering a program must have the authority to implement the following remedies for violations of state program requirements:

- (1) To restrain immediately and effectively any person by order or by suit in state court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment;
- (2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;
- (3) To assess or sue to recover in court civil penalties as follows:
 - (i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to \$5,000 or more per violation.
 - (ii) Civil penalties for failure to comply with any state requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to \$5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to \$5,000 or more for each day of violation.
- (4) To prohibit the delivery, deposit, or acceptance of a regulated substance into an underground storage tank identified by the implementing agency to be ineligible for such delivery, deposit, or acceptance in accordance with section 9012 of the Solid Waste Disposal Act.
- (b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this section, must be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the Solid Waste Disposal Act.
- (c) A civil penalty assessed, sought, or agreed upon by the implementing agency(ies) under paragraph (a)(3) of this section must be appropriate to the violation.

§ 281.42 Requirements for public participation.

Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options:

- (a) Authority that allows intervention analogous to Federal Rule 24(a)(2) from Title IV of the Federal Rules of Civil Procedure, and assurance by the state that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the state.
- (b) Authority that allows intervention of right in any civil action to obtain the remedies specified in § 281.41 by any citizen having an interest that is or may be adversely affected; or
- (c) Assurance by the appropriate state agency that:
 - (1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);
 - (2) It will investigate and provide responses to citizen complaints about violations; and
 - (3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

§ 281.43 Sharing of information.

- (a) States with approved programs must furnish EPA, upon request, any information in state files obtained or used in the administration of the state program. This information includes:
 - (1) Any information submitted to the state under a claim of confidentiality. The state must submit that claim to EPA when providing such information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with federal regulations in 40 CFR part 2; and
 - (2) Any information that is submitted to the state without a claim of confidentiality. EPA may make this information available to the public without further notice.
- (b) EPA must furnish to states with approved programs, upon request, any information in EPA files that the state needs to administer its approved state program. Such information includes:
 - (1) Any information that is submitted to EPA without a claim of confidentiality; and
 - (2) Any information submitted to EPA under a claim of confidentiality, subject to the conditions in 40 CFR part 2.

Subpart E—Approval Procedures

§ 281.50 Approval procedures for state programs.

- (a) The following procedures are required for all applications, regardless of whether the application is for a partial or complete program, as defined in § 281.12.
- (b) Before submitting an application to EPA for approval of a state program, the state must provide an opportunity for public notice and comment in the development of its underground storage tank program.
- (c) When EPA receives a state program application, EPA will examine the application and notify the state whether its application is complete, in accordance with the application components required in § 281.20. The 180-day statutory review period begins only after EPA has determined that a complete application has been received.
- (d) The state and EPA may by mutual agreement extend the review period.
- (e) After receipt of a complete program application, the Administrator will tentatively determine approval or disapproval of the state program. EPA shall issue public notice of the tentative determination in the FEDERAL REGISTER and other mechanisms to attract state-wide attention. Notice of the tentative determination must also:
 - (1) Afford the public 30 days after the notice to comment on the state's application and the Administrator's tentative determination; and
 - (2) Include a general statement of the areas of concern, if the Administrator indicates the state program may not be approved; and
 - (3) Note the availability for inspection by the public of the state program application; and
 - (4) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination unless insufficient public interest is expressed, at which time the Regional Administrator may cancel the public hearing.

- (f) Within 180 days of receipt of a complete state program application, the Administrator must make a final determination whether to approve the state program after review of all public comments. EPA will give notice of its determination in the FEDERAL REGISTER and codify the approved state program. The notice must include a statement of the reasons for this determination and a response to significant comments received.

§ 281.51 Revision of approved state programs.

- (a) Either EPA or the approved state may initiate program revision. Program revision may be necessary when the controlling federal or state statutory or regulatory authority is changed or when responsibility for the state program is shifted to a new agency or agencies. The state must inform EPA of any proposed modifications to its basic statutory or regulatory authority or change in division of responsibility among state agencies. EPA will determine in each case whether a revision of the approved program is required. Approved state programs must submit a revised application within three years of any changes to this part that requires a program revision.
- (b) Whenever the Administrator has reason to believe that circumstances have changed with respect to an approved state program or the federal program, the Administrator may request, and the state must provide, a revised application as prescribed by EPA.
- (c) The Administrator will approve or disapprove program revisions based on the requirements of this part and Subtitle I of the Solid Waste Disposal Act pursuant to the procedures under this section, or under § 281.50 if EPA has reason to believe the proposed revision will receive significant negative comment from the public.
 - (1) The Administrator must issue public notice of planned approval or disapproval of a state program revision in the FEDERAL REGISTER and other mechanisms to attract state-wide attention. The public notice must summarize the state program revision, indicate whether EPA intends to approve or disapprove the revision, and provide for an opportunity to comment for a period of 30 days.
 - (2) The Administrator's decision on the proposed revision becomes effective 60 days after the date of publication in the FEDERAL REGISTER in accordance with paragraph (c)(1) of this section, unless significant negative comment opposing the proposed revision is received during the comment period. If significant negative comment is received, EPA must notify the state and within 60 days after the date of publication, publish in the FEDERAL REGISTER either:
 - (i) A withdrawal of the immediate final decision, which will then be treated as a tentative decision in accordance with the applicable procedures of § 281.50(e) and (f); or
 - (ii) A notice that contains a response to significant negative comments and affirms either that the immediate final decision takes effect or reverses the decision.
- (d) Revised state programs that receive approval must be codified in the FEDERAL REGISTER.

Subpart F—Withdrawal of Approval of State Programs

§ 281.60 Criteria for withdrawal of approval of state programs.

The Administrator may withdraw program approval when the Agency determines that a state no longer has adequate regulatory or statutory authority or is not administering and enforcing an approved program in accordance with this part. The state must have adequate capability to administer and enforce the state program. In evaluating whether such capability exists, the Agency will consider whether the state is implementing an adequate enforcement program by evaluating the quality of compliance monitoring and enforcement actions.

§ 281.61 Procedures for withdrawal of approval of state programs.

- (a) The following procedures apply when a state with an approved program voluntarily transfers to EPA those program responsibilities required by federal law.
 - (1) The state must give EPA notice of the proposed transfer, and submit, at least 90 days before the transfer, a plan for the orderly transfer of all relevant program information necessary for EPA to administer the program.
 - (2) Within 30 days of receiving the state's transfer plan, EPA must evaluate the plan and identify any additional information needed by the federal government for program administration.
 - (3) At least 30 days before the transfer is to occur, EPA must publish notice of the transfer in the FEDERAL REGISTER and other mechanisms to attract state-wide attention.
- (b) The following procedures apply when the Administrator considers withdrawing approval.
 - (1) When EPA begins proceedings to determine whether to withdraw approval of a state program (either on its own initiative or in response to a petition from an interested person), withdrawal proceedings will be conducted in accordance with procedures set out in 40 CFR 271.23(b) and (c), except for § 271.23(b)(8)(iii) to the extent that it deviates from requirements under § 281.60.
 - (2) If the state fails to take appropriate action within a reasonable time, not to exceed 120 days after notice from the Administrator that the state is not administering and enforcing its program in accordance with the requirements of this part, EPA will withdraw approval of the state's program.