

**Grant Guidelines To States
For Implementing The
Financial Responsibility And Certification Provision
Of The Energy Policy Act Of 2005**

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Office of Underground Storage Tanks
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Overview Of Financial Responsibility And Installer Certification Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, underground storage tank owners, and the tank industry, has developed these grant guidelines to implement the financial responsibility and installer certification provision in Section 9003(i) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1530 of the Energy Policy Act amends Section 9003 in Subtitle I of the Solid Waste Disposal Act to add requirements for additional measures to protect groundwater from contamination. In order to be in compliance with statutory requirements applicable to Subtitle I, state underground storage tank (UST) programs must, at a minimum, implement *either* the financial responsibility and installer certification requirements in these guidelines *or* the secondary containment and under-dispenser containment requirements described in separate guidelines. EPA must require each state that receives funding under Subtitle I meet, at a minimum, *one* of the following:

1. *Tank And Piping Secondary Containment* – Each new underground storage tank, or piping connected to any such new tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, the secondary containment and monitoring shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system. In addition, each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. These requirements do not apply to repairs meant to restore an underground storage tank, piping, or dispenser to operating condition.

Or,

2. *Evidence Of Financial Responsibility And Certification* – A person that manufactures an underground storage tank or piping for an underground storage tank system or installs an underground storage tank system must maintain evidence of financial responsibility under Section 9003(d) of Subtitle I in order to

provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under Section 9003 of Subtitle I. In addition, installers must be certified, or they must certify the installation of underground storage tank systems they install. These provisions do not affect or alter the liability of any owner or operator of an underground storage tank. Owners and operators must still comply with all technical regulations. For example, they must comply with the requirements to report a release and perform all necessary corrective action and to maintain financial responsibility to pay for corrective action and compensate third parties.

EPA's Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements states must meet in order to comply with the financial responsibility and installer certification requirements in the Energy Policy Act.

What Is In These Guidelines?

These guidelines describe the minimum requirements for financial responsibility and installer certification that a state's underground storage tank program must contain in order for a state to comply with statutory requirements for Subtitle I. These guidelines include definitions, requirements, criteria, and options for states choosing to implement the financial responsibility and installer certification provisions.

When Do These Guidelines Take Effect?

States must implement *either* the financial responsibility and installer certification requirements described in these guidelines *or* the secondary containment requirements (described in separate guidelines) by February 8, 2007.

Requirements For Financial Responsibility And Installer Certification

What Tanks Do These Guidelines Apply To?

For purposes of this document, the term “underground storage tank” means those tanks that store petroleum products that satisfy the definition of underground storage tank in 40 Part 280.12, except for those tanks identified in 40 Part 280.10(b) and 280.10(c) as excluded or deferred underground storage tanks.

What Provisions Must A State Program Include To Meet These Requirements?

State requirements must, at a minimum, include the following provisions. States may choose to be more stringent than the minimum requirements described in these guidelines.

A. Persons Affected

State requirements must clearly define who will be covered. At a minimum, the following persons must be covered.

- A person that manufactures an underground storage tank or piping for an underground storage tank system that is installed in the state.
- A person that installs an underground storage tank system in the state.
- A person that installs tank components that modify the existing underground storage tank system (if different from the installer described above).

For the purposes of these guidelines, an “underground storage tank system” is defined as “an underground storage tank (defined above), connected underground piping, underground ancillary equipment, and containment system, if any”; “ancillary equipment” is defined as “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 underground storage tank.” These definitions are the same as those contained in 40 CFR Part 280.12.

In states where a single installer of an underground storage tank system is required to obtain an installation permit, that person is the one required to maintain financial responsibility for that installation. Where there is not a single installer of record, states must define those who must maintain evidence of

financial responsibility and meet the certification requirements described in these guidelines.

B. Amount And Scope Of Coverage

States must require a minimum of \$1 million per occurrence and \$2 million annual aggregate for manufacturers to cover the costs of corrective action of a release from a regulated underground storage tank caused by improper manufacture and \$1 million per occurrence and \$2 million annual aggregate for installers to cover the costs of corrective action of a release from a regulated tank system due to improper installation. These limits do not include legal defense costs.

C. Length Of Coverage

States must require that manufacturers and installers maintain evidence of financial responsibility for as long as their existing component(s) is (are) still in service.

Note: EPA is seeking input from commenters on an alternative time frame for coverage. Please provide any input you might have on this alternative:

State requirements must indicate how long manufacturers and installers must maintain evidence of financial responsibility for a specific tank, piping, or installation.

D. Allowable Mechanisms

States may allow manufacturers and installers to use a variety of financial mechanisms as long as these mechanisms meet the following criteria:

1. The mechanism must be valid and enforceable;
2. The mechanism must be issued by a provider that is legally authorized to provide such coverage in the state;
3. The mechanism must pay for the costs of corrective action (up to the coverage limits described above) of a release from a regulated underground storage tank or tank system caused by improper manufacture or installation, as appropriate; and
4. Within a time frame determined to be reasonable by each state, the mechanism must require that the provider notify the insured and the state of cancellation or nonrenewal of the mechanism.

These mechanisms may include the ones currently used by tank owners and operators to meet their financial responsibility requirements under 40 Part 280.94 to 280.103. Not all of these mechanisms may be appropriate for use to meet the manufacturer and installer financial responsibility requirement, and some may have to be modified to meet this new requirement.

EPA is aware that state funds (funds created by states to provide financial responsibility coverage for tank owners and operators) have historically taken very different approaches to situations where releases may have been caused by improper manufacture or installation. In some states, the state fund has subrogated against the manufacturer or installer to recover costs when the state believes improper manufacture or installation caused or contributed to the release that was covered by the state fund. In a few other states, the state fund is already providing coverage to installers by charging them a fee similar to an insurance premium for that coverage.

If a state is going to allow manufacturers and/or installers to meet their financial responsibility requirements by using its state fund, the state must ensure that the state fund has adequate revenue to cover this added risk and should charge manufacturers and installers an appropriate and separate fee in return for this coverage. Unless this is done, EPA is concerned that a loss of potential revenue by the state fund can negatively affect the fund's ability to pay for cleanups and jeopardize the fund's viability as a financial responsibility mechanism.

E. Notification And Record Keeping

State requirements must contain a provision or provisions requiring a system of notification and record keeping to and by the manufacturer, installer, owner, operator, and/or the state program.

These provisions should reasonably address, at a minimum, the following questions:

- To whom and when must the evidence of financial responsibility be provided?
- How and where must manufacturers and installers maintain the evidence of financial responsibility?
- If an event (for example, if the underground storage tank system is taken out of service and no leak is discovered) negates a manufacturer or installer's financial responsibility for a certain component or installation, who will notify the manufacturer and installer of that fact?
- If the manufacturer or installer files for bankruptcy or ceases operation for any other reason, whom should they notify and when?
- Other questions that the state may deem appropriate.

F. Installer Certification

The requirements found in the Act [described under Section 1530(a)(2)(B)] are identical to the requirements already found under 40 Part 280.20(e) and Part 280.33(a) of the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks promulgated on September 23, 1988. Most, if not all, state underground storage tank regulations already cover these requirements in these two provisions. If a state does not have such provisions, that state must modify its regulations to include these two provisions.

However, when a state expands its definition of "installer" to include persons who replace or add equipment at a point of time after the initial installation of the underground storage tank system (stated above), then state regulations regarding the certification of such persons will have to be amended and expanded to include such persons. In other words, under the Energy Policy Act of 2005, all persons who are subject to the "installer financial responsibility requirement" are also subject to the "installer certification requirement," and a state's regulations regarding certification must apply to that universe of persons.

What Enforcement Authority Must States Have For Financial Responsibility And Installer Certification?

At a minimum, states must have the same enforcement authorities for violations of their financial responsibility and installer certification requirements as they have for violations of current underground storage tank requirements.

How Will States Demonstrate Compliance With These Guidelines?

After February 8, 2007, the effective date of the financial responsibility requirements, and before receiving future grant funding, states must provide one of the following to EPA:

- For a state that has met the requirements for financial responsibility, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for financial responsibility, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
 - A description of the state's activities to date to meet the requirements in the guidelines;
 - A description of the state's planned activities to meet the requirements; and
 - The date by which the state expects to meet the requirements.

How Will EPA Enforce States' Compliance With These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with the underground storage tank requirements of the Energy Policy Act. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available under the 2007 Appropriations Act for certain purposes authorized by the Energy Policy Act, and EPA will condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

***For More Information On The Financial Responsibility
And Installer Certification Grant Guidelines***

Visit the EPA Office of Underground Storage Tanks' web site at www.epa.gov/oust or call 703-603-9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. This new law significantly affects federal and state underground storage tank programs, will require major changes to the programs, and is aimed at reducing underground storage tank releases to our environment.

The underground storage tank provisions of the Energy Policy Act focus on preventing releases. Among other things, it expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: http://www.epa.gov/oust/fedlaws/nrg05_01.htm