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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9 VAC25-580 (primary) 9 VAC25-590 (secondary)
<b>Regulation title(s)</b>	Underground Storage Tanks: Technical Standards and Corrective Action Requirements (primary)  Petroleum Underground Storage Tank Financial Responsibility Requirements (secondary)
<b>Action title</b>	Final Exempt Action: Amendments required by changes made to the federal UST regulation, 40CFR280
<b>Final agency action date</b>	July 19, 2017
<b>Date this document prepared</b>	June 8, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

On July 15, 2015 EPA published in the Federal Register a final rule titled "Revising Underground Storage Tank Regulations - Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training." This federal rule modified regulatory requirements concerning

Underground Storage Tanks found in 40 CFR Part 280. These federal regulations were adopted in response to the federal Energy Policy Act (EPAAct) of 2005.

Prior to revising federal regulations, EPA issued guidance to states concerning the requirements found in the EPAAct of 2005. Pursuant to this guidance, the State Water Control Board promulgated amendments to Virginia's UST regulation that became effective on September 15, 2010 that addressed operator training, delivery prohibition and secondary containment requirements. These amendments were subsequently reviewed by EPA.

This regulatory action incorporates additional changes made by EPA to federal regulations (specifically 40 CFR Part 280) primarily in response to the federal EPAAct of 2005. The federal regulations addressed some topics previously detailed in guidance issued by EPA on the EPAAct of 2005. This regulatory action revises Virginia's Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) to include requirements found in 40 CFR Part 280.

Amendments to Virginia's Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) have been made to be consistent with the modifications in 40 CFR Part 280 as follows:

- Secondary containment requirements for new and replaced tanks and piping;
- Compatibility requirements;
- Notification changes;
- Periodic operation, inspection and maintenance requirements for UST systems;
- UST systems deferred in the 1988 UST regulation;
- Inclusion of new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial corrections and technical amendments.

As part of this regulatory action, Virginia is revising its secondary containment requirements to be consistent with EPA's regulatory requirements. Virginia is retaining (with minor revisions) its existing operator training and delivery prohibition requirements which were based on EPA's previous guidance.

Additionally, 40 CFR 280 Subpart H - Financial Responsibility requirements were also revised as part of EPA's July 15, 2015 final rule. In Virginia, financial assurance requirements for underground storage tanks are located in a separate regulation from the technical standards for underground storage tanks. Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) are being revised as part of this regulatory action. USTs previously deferred from regulation, airport hydrant fuel distribution systems, field constructed tanks and USTs that are temporarily closed are now required to comply with financial responsibility requirements.

## Acronyms and definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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DEQ- Department of Environmental Quality  
EPA- Environmental Protection Agency  
EPAAct of 2005- Energy Policy Act of 2005  
FR Regulation - 9VAC25-590  
SPA- State Program Approval  
UDC- underdispenser containment  
UST- Underground Storage Tank  
VA UST Regulation - 9VAC25-580

“§280” – 40 CFR 280 or the federal UST regulation  
 September 15, 2010 – The effective date of the most recent version of 9VAC25-580, which included operator training, delivery prohibition and secondary containment amendments.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

The State Water Control Board approved this amendment, Final Exempt Action: Amendments required by changes made to the federal UST regulation - 40CFR280, to Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) on July 19, 2017, as final regulations and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

**Family impact**

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride and the assumption of responsibility for oneself, one’s spouse and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the institution of the family or family stability.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

9 VAC 25-580

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale (Bold text indicates federal regulatory citation that corresponds to state regulation that is being amended)
Part 1		Title	Title changed to “Definitions, Applicability and Installation Requirements for Partially Excluded UST Systems.” This change was made to be consistent with the title found in 40 CFR 280 (hereafter referred to as “ <b>§ 280</b> ”).

10		Definitions	<p>Additional definitions have been added to the regulation, including definitions for the terms “airport hydrant fuel distribution system”, “containment sump”, “dispenser”, “dispenser system”, “field-constructed tank”, and “replaced.” Definitions of “motor fuel”, “pipe or piping”, “release detection”, “repair”, “secondary containment” and “under-dispenser containment” were modified to be consistent with definitions found in 40 CFR 280.12 and 280.250. Definitions for “community water system”, “existing community water system”, “motor fuel dispenser system”, “potable drinking water well”, “public water system” and “replace” were removed from the VA UST Regulation. These changes were made to be consistent with defined terms found in <b>§280.12 and 280.250.</b></p>
20 A	20 A 2	Applicability	<p>Last sentence in 20 A was moved and is now found in 20 A 2.</p>
	20 A 1 a, b and c and 20 A 2	Applicability	<p>New language added to reflect EPA requirements for previously deferred airport hydrant fuel distribution, field constructed tank and emergency generator systems. Airport hydrant fuel systems and field constructed tanks are addressed in Part X.</p> <p>EPA removed the deferral for UST systems storing fuel for use by emergency power generators from release detection requirements. Language was added to 20 A 1 b to clarify that the emergency power generators installed before September 15, 2010, must have met all requirements for USTs except those contained in Part IV (release detection). The EPA changes will require owners and operators to perform release detection pursuant to Part IV within three years of the effective date of the VA UST Regulation.</p> <p>20 A 1 c has been added to reflect EPA’s changes to require all emergency power generators installed on or after the effective date of the previous version of the state regulation (September 15, 2010), to meet all applicable requirements of the chapter (including release detection requirements contained in Part IV).</p>

			The VA UST Regulation is being amended to reflect the changes found in <b>§ 280.10(a)(1)(i)-(iii) and (a)(2)</b> .
20 B		Applicability	Added the title “Exclusions” to match EPA language found in <b>§ 280.10(b)</b> . Also, updated the federal statutory citation in B 1.
20 C 1- 5	20 C 1- 4	Applicability	Deleted the title “Deferrals” and replaced with “Partial Exclusions” to match EPA language. USTs that were previously categorized as “deferrals” are now “partially excluded.”  Updated to meet EPA requirements for previously deferred wastewater treatment tanks systems; aboveground storage tanks associated with airport hydrant fuel distribution systems and field constructed systems; and emergency generator systems at nuclear facilities.  Deleted 4 and 5 and renumbered to reflect EPA changes to separately regulate airport hydrant fuel distribution systems and UST systems with field constructed tanks. (Now found in Part X).  These changes reflect the changes made by EPA in <b>§ 280.10(c)</b> .
20 D		Applicability	Deleted subsection D to match EPA language. The federal regulation no longer uses the category “deferrals” and EPA deleted (d) of <b>§ 280.10</b> .
30	Interim prohibition for deferred UST systems	Installation requirements for partially excluded UST systems	Section title amended to “Installation requirements for partially excluded UST systems” and language reworded to reflect EPA change that certain systems that were previously deferred are now partially excluded but still must meet certain installation requirements.  Per EPA additions, added industry codes of practice that can be used as guidance for complying with this section. These changes reflect the changes made by EPA in <b>§280.11</b> .
40		Permitting and Inspection requirements	References to new sections 9VAC25-580-380 and 390 regarding airport hydrant fuel distribution systems and field constructed tanks were added to this section for clarity.
50	50 4 b	Performance standards	Moved the language contained in the first 3

			paragraphs of 50 to 50 4 b because 50 4 b is a more suitable location to identify building code requirements within this section.
50		Performance standards-- Secondary containment.	New language added to address EPA's requirements that USTs and certain piping be secondarily contained, as reflected in <b>§280.20</b> . (The VA UST Regulation's effective date for secondary containment requirements was September 15, 2010, so this date is being used.)
50		Notes	Per EPA changes, throughout 9VAC25-580-50, updated industry codes of practice and titles of codes of practice and removed codes of practice that no longer exist. <b>§280.20</b> .
50 1 c		Performance Standards	Updated language to reflect new technology or industry standard changes per EPA changes to <b>§280.20(a)(3)</b> .
50 2 a		Performance Standards	Deleted "fiberglass-reinforced plastic" and inserted "a non-corrodible material" per EPA changes to <b>§280.20(b)(1)</b> .
50 3 a		Spill and overfill prevention equipment	Added "and c" to incorporate new subsection 3 c into the exceptions to overfill equipment requirements per EPA changes to <b>§280.20(c)(1)</b> .
50 3 a (2) (c)		Spill and overfill prevention equipment	Clarification adding "transfer" before "operator" to conform to EPA changes to <b>§280.20(c)(1)(ii)(C)</b> .
	50 3 c	Spill and overfill prevention equipment	New language added to reflect EPA requirement to prohibit the installation or replacement of flow restrictors (ball floats) as overfill devices after the effective date. <b>§280.20(c)(3)</b> .
	50 3 d	Spill and overfill prevention equipment	New language added to reflect EPA requirement for spill and overfill equipment to be periodically tested or inspected. <b>§280.20(c)(4)</b> .
50 4		Installation	Clarification to use a defined term "UST system" in place of "All tanks and piping" to conform to EPA changes in <b>§ 280.20(d)</b> .
50 4		Note	This note has been edited to remove a reference to NFPA 329 since it is no longer referenced in the VA UST Regulation.
50 5		Certification of installation	Clarification to remove the term "Certificate of use" and replace with the term "permit" to reflect the terminology used in the Virginia Uniform Statewide Building Code (13VAC5-63).
50 7		Secondary Containment	This section was deleted because additions were made in other sections of the VA UST Regulation to address and maintain consistency with EPA's updated Secondary Containment requirements.

	50 7	Secondary Containment/Dispenser systems	New language added to reflect EPA requirement that new dispenser systems be equipped with under-dispenser containment systems pursuant to <b>§280.20(f)</b> .
60		Upgrading of existing UST systems	New language added to reflect EPA requirements that certain USTs be closed if they do not meet the new UST system performance standards or previous upgrade requirements pursuant to <b>§280.21</b> .
60 1		Upgrading of existing UST systems	Removed date to reflect EPA's clarification that the subsection applies to all existing UST systems. <b>§280.21(a)</b> .
60 1 b		Upgrading of existing UST systems	Revised the upgrade requirements to include sections 2 thru 4 instead of 2 thru 5 as previously drafted. (5 addressed release detection). This comports with the federal regulation which does not include an upgrade requirement regarding release detection in section <b>§280.21(a)(2)</b> .
60 2 a		Upgrade-internal lining	Language changed to reflect EPA's clarification that tanks upgraded in the past by internal lining must meet the requirements contained in 60 2 a. <b>§280.21(b)(1)</b> .
60 2 a (2)		Upgrade-internal lining	New language added to reflect EPA's requirement that if the internal lining cannot perform or be repaired, the tank must be permanently closed. <b>§280.21(b)(1)(ii)</b> .
60 2 b (1) – (4)		Upgrade-cathodic protection	New language added to reflect EPA's requirement that tanks upgraded by cathodic protection must meet the requirements of 50 1 b (2), (3) and (4) and the integrity of the tank must have been ensured by one of the listed methods. Additional revisions were made to reflect EPA's changes to address the cathodic protection requirements in the past tense since the compliance deadlines have passed. <b>§280.21(b)(2)(i)-(iv)</b> .
60 2 c		Upgrade-internal lining and cathodic protection	Revised to reflect EPA's changes to address the internal lining combined with cathodic protection requirement in the past tense since the compliance deadlines have passed. <b>§280.21(b)(3)</b> . Also, updated per EPA changes to reflect changes to codes and practices.
60 4		Upgrade-Spill and Overfill	Reflects EPA's change to remove the word "new" since the compliance deadlines have passed. <b>§280.21 (d)</b> .
70 A		Notification	Reflects EPA's changes by rewording this section while retaining the original meaning. <b>§280.22(a)</b> .
	70 B	Notification	This subsection was separated from subsection A and renumbered. It reflects EPA's changes by rewording this section

			while retaining the original meaning. This section also requires new owners to submit a change of ownership form. <b>§280.22 (b).</b>
70 B	70 C	Note	Renumbered. Replaced “notification form contained in Appendix I of this chapter” with “UST Notification form approved by the board” because Appendix I has been removed from the VA UST Regulation.
70 C		Notification	Reflects EPA’s change to remove former <b>§280.22(d)</b> (formerly 70 C in the VA UST Regulation) because it is no longer applicable. Language in former section 70 C is being deleted. <b>§280.22.</b>
70 D		Notification	Addition of citation to the FR Regulation (9VAC25-590) for clarity and consistency. <b>§280.22(e)(3).</b>
70 F		Notification	Reflects EPA’s change to add “when used on shipping tickets and invoices” to clarify current practice. <b>§280.22(g).</b>
	70 Note	Notification	This Note was contained in the former Appendix II to this Chapter. This information is required by 70 F. Revisions reflect EPA’s changes to Appendix III to Part <b>§280.</b>
80		Note	Reflects EPA’s change to add an additional code of practice to the Note associated with section A to be consistent with <b>§280.30.</b>
	82	Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment	This section has been added in response to EPA adding new requirements to the federal regulation related to periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment. The requirements found in this section are the same as the requirements detailed in the federal UST regulations in <b>§280.35.</b>
	85	Periodic operation and maintenance walkthrough inspections	This section has been added to the VA UST Regulation in response to changes made to the federal UST regulations. The EPA added new requirements for periodic operation and maintenance walkthrough inspections. The requirements found in this section are the same as the requirements found in <b>§280.36.</b>
90		Operation and maintenance of corrosion protection	The federal UST regulation was revised to replace the term “steel” with “metal” to clarify that USTs may be manufactured with metals other than steel. Also, the federal UST regulation revised current language to clarify that corrosion prevention is required until the UST is permanently closed or undergoes a change in service. The VA UST Regulation is being amended to reflect these EPA changes. <b>§280.31.</b>
90 2 b		Note	EPA added additional codes of practice that



			may be used to comply with inspection criteria for cathodic protection. These additional codes of practice are being included in 9VAC25-580-90 2 and are identical to the note found in <b>§280.31(b)(2)</b> .
	100 2 a and b	Compatibility	EPA added new requirements to the federal regulation requiring owners and operators to notify the board before switching to certain regulated substances. The owner/operator must demonstrate compatibility of the UST system to the substance stored. The requirements found in this subsection have been added in response and are the same as the EPA requirements. <b>§280.32(b)(1) and (2)</b> .
	100 3	Compatibility	EPA added new requirements to the federal regulation requiring owners and operators to maintain records documenting compliance with the compatibility requirements. The requirements found in this subsection have been added in response and are the same as the EPA requirements. <b>§280.32(c)</b> .
100		Note	EPA revised the codes of practice that may be used to comply with compatibility requirements found in section 100. The note in this section is identical to the note found in <b>§280.32</b> .
110 1		Note	EPA revised and added codes of practice that may be used to comply with requirements concerning repairs to UST systems found in section 110. The note in this section is identical to the note found in <b>§280.33(a)</b> .
110 3		Repairs	This section has been revised in response to EPA replacing the term “fiberglass” with “non-corrodible” to clarify that any non-corrodible material is sufficient for pipes and fittings. <b>§280.33(c)</b> .
110 4		Repairs	EPA added new requirements regarding repairs to secondary containment of tanks and piping under certain circumstances. The requirements found in this section have been added in response and are the same as the EPA requirements. <b>§280.33(d)</b> .
	110 5	Repairs	Separated from paragraph 4 to enhance readability. 5 b amended to reflect change to include §160 9 pertaining to other methods of release detection. This change was made to be consistent with <b>§280.33(d)(2)</b> .
110 4 & 5		Notes	EPA added codes of practice that may be used to comply with paragraphs 4 and 5. The note in this section is the same as the note found in <b>§280.33(d)</b> .
	110 6	Repairs- cathodic protection	Renumbered to accommodate addition of subsection 110 5.

	110 7	Repairs to spill or overflow	EPA added new language regarding testing and inspection requirements following repairs to spill and overflow equipment. The requirements found in this section have been added in response and are the same as the EPA requirements. <b>§280.33(f)</b> .
110 6	110 8	Repairs - recordkeeping	110 6 renumbered to 110 8 and revised to reflect EPA changes to clarify that repair records must be kept until the UST system is permanently closed or undergoes a change in service. <b>§280.33(g)</b> .
120 1 a		Reporting	Changes reflect EPA change to require notification when any person assumes ownership of a UST system. <b>§280.34(a)(1)</b> .
	120 1 b - d	Reporting	Changes reflect EPA language added to require notification prior to UST systems switching to certain regulated substances. Renumbering of subdivisions c-e. <b>§280.34(a)(2)</b> .
	120 2 a - h	Recordkeeping	Revised to renumber the subdivisions and update the citations to reflect EPA changes in <b>§280.34(b)(2)-(9)</b> .
	120 2 b	Recordkeeping	Changes reflect EPA language added to require owners and operators to maintain compatibility records. <b>§280.34(b)(3)</b> .
	120 2 c	Recordkeeping	Revised to reflect that the applicable paragraph number in section 110 has changed from 6 to 8.
	120 2 d	Recordkeeping	Changes reflect EPA language added to require owners and operators to maintain compliance records related to spill and overflow and containment sumps for interstitial piping. <b>§280.34(b)(5)</b> .
	120 2 e	Recordkeeping	Changes reflect EPA language added to require owners and operators to maintain records documenting periodic walkthrough inspections. <b>§280.34(b)(6)</b> .
	120 2 f	Documentation	Minor wording changes to reflect EPA language. <b>§280.34(b)(7)</b> .
	120 2 h	Documentation	Minor technical corrections. <b>§280.34(b)(9)</b>
125 B 2		Operator training	Deleted B 2 because this compliance date has passed. Also renumbered.
125 F 2		Operator training	Revised to reflect that the applicable paragraph number in section 120 has changed from e to h.
130 A		General requirements for all UST systems	Changes reflect EPA's changes to remove the terms "new and existing" to clarify that the requirements apply to all USTs. <b>§280.40(a)</b> .
130 A 2		General requirements for all UST systems	Changes reflect EPA's changes to remove the terms "operated and maintained" from <b>§280.40(a)(2)</b> .
	130 A 3 (a) to (e)	General requirements for all UST systems- testing	Changes reflect EPA language that includes an annual release detection equipment testing requirement and EPA language that

			expands and explains what the terms “operated and maintained” (formally contained in 130 A 2) means. EPA also added a code of practice (Note) that may be used to comply with this section. <b>§280.40(a)(3)(i)-(v).</b>
130 A 3	130 A 4	General requirements for all UST systems	Changed subdivision number due to addition of 130 A 3 and adopted EPA revisions in conformance with <b>§280.40(a)(4).</b>
130 B		General requirements for all UST systems	Amended to include a reference to the new Part X to conform to EPA changes in <b>§280.40(b).</b>
130 C		General requirements for all UST systems	Reflects EPA’s change to remove former <b>§280.40(c)</b> (formerly 130 C in the VA UST Regulation) because it is no longer applicable. Language in former section 130 C was related to outdated phase-in information. <b>§280.40.</b>
130 D	130 C	General requirements for all UST systems - closure	130 D renumbered to 130 C in response to EPA removing language previously found in 280.40(c) (formerly 130 C in the VA UST Regulations). Reflects EPA language removing the term “existing” which is a reference to outdated information. This change also clarifies that previously deferred USTs that cannot apply a method of release detection that complies with the requirements of this section must complete closure after stated effective dates. <b>§280.40(c).</b>
140 A, B and C		Requirements for petroleum UST systems	140 A and B have been deleted. Secondary containment provisions are now included in other sections of the VA UST Regulation.
140 1		Requirements for petroleum UST systems - tank release detection	Changes reflect EPA addition of the phrase “for releases as follows.” <b>§280.41(a).</b>
140 1 a		Requirements for petroleum UST systems - tank release detection	Changes reflect EPA clarification that tanks installed before September 15, 2010 must be monitored for releases every 30 days in accordance with the VA UST Regulation. <b>§280.41(a)(1).</b>
	140 1 a (1)	Requirements for petroleum UST systems - tank release detection	This change renumbers subdivision (1) and removes 140 1 b which included references to outdated information. Changes reflect EPA changes to remove references to 1998 upgrades and phase in schedules associated with the original upgrade deadlines because the upgrade deadlines passed more than ten years ago. <b>§280.41(a)(1).</b>
	140 1 a (2)	Requirements for petroleum UST systems - tank release detection	This change renumbers subdivision c to (2). Changes reflect EPA clarification as to when certain tanks with a capacity of 550 gallons or less and those with a capacity of 551 to 1000 gallons that meet tank diameter

			requirements may use manual tank gauging as sole method (without tank tightness testing) as release detection. <b>§280.41(a)(2).</b>
	140 1 b	Requirements for petroleum UST systems - tank release detection	Changes reflect EPA addition to clarify that tanks installed on or after September 15, 2010 must be monitored for releases at least every 30 days in accordance with 9VAC25-580-160 7. <b>§280.41(a)(2).</b>
	140 2 a	Requirements for petroleum UST systems - piping release detection	Changes reflect EPA clarification that piping installed before September 15, 2010 must meet one of the listed requirements for release detection. <b>§280.41(b)(1).</b>
	140 2 a & 2 b and subdivisions	Requirements for petroleum UST systems - piping release detection	Requirements for piping release detection have not changed but have been renumbered.
	140 2 b	Requirements for petroleum UST systems - piping release detection	Changes reflect EPA additions that piping installed or replaced on or after September 15, 2010 must meet certain requirements. <b>§280.41(b)(2).</b>
	140 2 b (1)	Requirements for petroleum UST systems - piping release detection	Changes reflect EPA additions that pressurized piping must be monitored for releases at least every 30 days in accordance with 9VAC25-580-160 7 and be equipped with an automatic line leak detector in accordance with 9VAC25-580-170 1. <b>§280.41(b)(2)(i).</b>
	140 2 b (2)	Requirements for petroleum UST systems- piping release detection	Changes reflect EPA additions that suction piping must be monitored for releases at least every 30 days in accordance with 9VAC25-580-160 7 and no release detection is required for suction piping that meets the requirements found in 9VAC25-580-140 2 a (2) (a) – (e). <b>§280.41(b)(2)(ii).</b>
150		Requirements for hazardous substance UST systems	Changes reflect EPA changes to replace the term “release detection” with “containment” for hazardous substance USTs, and to require owners and operators to monitor these systems every 30 days in accordance with 9VAC25-580-160 7. Also extensive renumbering throughout the section. <b>§280.42.</b>
150 1		Requirements for hazardous substance UST systems - secondary containment	Changes reflect EPA changes to remove references to 1998 upgrades and phase in schedules associated with the original upgrade deadlines because the upgrade deadlines passed more than ten years ago. <b>§280.42(a).</b>
	150 1 a	Requirements for hazardous substance UST systems	Changes reflect EPA clarification that this subdivision refers to “leaks” and not “releases” from the “primary containment” not the “tank system.” <b>§280.42(a)(1).</b>
150 1		Note	Changes reflect EPA clarifications that the Note applies to tanks installed before September 15, 2010. <b>§280.42(a).</b>
	150 2 a	Requirements for	Changes reflect EPA clarifications to use the

		hazardous substance UST systems	term “leak” in place of “release.” Also subdivisions have been renumbered. <b>§280.42(b)(1).</b>
	150 3 - 5	Requirements for hazardous substance UST systems	Requirements have not been changed but have been renumbered.
	150 4	Requirements for hazardous substance UST systems	Changes reflect EPA deletions of “subdivision 2 a” and the term “jacketing.” <b>§280.42(d).</b>
	150 5	Requirements for hazardous substance UST systems - other methods of release detection	This section has been revised in response to revisions to the federal UST regulation to clarify that only those hazardous substance USTs installed before September 15, 2010 may use “other methods of release detection.” <b>§280.42(e).</b>
160		Methods of release detection for tanks	Minor clarifications made concerning Virginia building code permit requirements. (Clarifications are consistent with the requirements of 13VAC5-63.) Also a citation was corrected in response to 9VAC25-580-160 9 being renumbered.
160 1		Note	Changes reflect EPA revisions to update industry code of practice. <b>§280.43(a).</b>
160 2 a		Methods of release detection for tanks - manual tank gauging	Changes reflect EPA revisions to manual tank gauging requirements and chart amendments. Replaced the terms “of at least 36 hours” with “using the appropriate minimum duration of test value in the table below.” <b>§280.43(b)(1).</b>
160 2 d		Methods of release detection for tanks	Changes reflect EPA amendments to change the manual tank gauging chart to provide a minimum test duration, differentiate testing requirements based on tank diameter; and address periodic tank tightness testing. <b>§280.43(b)(4).</b>
160 2 e		Methods of release detection for tanks	Changes reflect EPA amendments to clarify that owners and operators may use manual tank gauging for certain USTs based on tank gallonage and diameter. <b>§280.43(b)(5).</b>
160 4 b		Methods of release detection for tanks - Automatic tank gauging	Changes reflect EPA amendments to clarify that automatic tank gauging must meet certain requirements. <b>§280.43(d)(2).</b>
	160 4 c (1) and (2)	Methods of release detection for tanks - Automatic tank gauging	Changes reflect EPA’s new testing requirements that add new technologies for automatic tank gauging systems. This section has been revised to be consistent with the federal UST regulation. <b>§280.43(d)(3)(i) and (ii).</b>
160 7 a		Note	Changes reflect EPA deletion of this Note. <b>§280.43(g)(1).</b>
	160 8 a, b and c	Methods of release detection for tanks - Statistical Inventory reconciliation	The VA UST Regulation has been modified to include the addition of statistical inventory reconciliation as a release detection method in response to EPA including this method in the federal UST regulation. <b>§280.43(h)(1)-</b>

			<b>(3).</b>
	160 9	Methods of release detection for tanks	Section renumbered to accommodate new subsection 8.
170		Methods of release detection for piping	Minor clarifications made concerning Virginia building code permit requirements. (Clarifications are consistent with the requirements of 13VAC5-63.)
170 1		Methods of release detection for piping	Changes reflect EPA's replacement of the statement "the manufacturer's requirements" with a reference to the automatic line leak detection section of the VA UST Regulation, 9VAC25-580-130 A 3 c. <b>§280.44(a).</b>
170 3		Methods of release detection for piping	Edits reflect EPA's changes that except as required in the tank release detection section of 9VAC25-580-140 1, any of the methods in 9VAC25-580-160 5 through 9 may be used for piping. <b>§280.44(c).</b>
180 1		Release detection recordkeeping	Regulatory language has been revised to reflect EPA's changes regarding site assessment recordkeeping. The recordkeeping requirements conform to the requirements found in <b>§280.45(a).</b>
	180 2 a, b and c	Release detection recordkeeping	Regulatory language has been revised to reflect EPA's changes and clarifications regarding the length of time that release detection testing records must be kept. Requirements have been renumbered. <b>§280.45(b)(1)-(3).</b>
	190 2 a, b and c	Reporting of suspected releases	Regulatory language has been revised to reflect EPA's changes and clarifications regarding what constitutes a reportable "suspected release." Requirements have been renumbered. <b>§280.50(b)(1)-(3).</b>
	190 3 b (1) – (2)	Reporting of suspected releases	Regulatory language has been revised to reflect EPA's additions regarding leaks to secondary containment. Requirements have been renumbered. <b>§280.50(c)(2)(i)-(ii).</b>
	190 3 c	Reporting of suspected releases	Regulatory language has been revised to reflect EPA's changes and clarifications regarding release detection monitoring results. <b>§280.50(c)(3).</b>
	190 3 d	Reporting of suspected releases	Regulatory language has been revised to reflect EPA's additions regarding release detection alarm investigations. <b>§280.50(c)(4).</b>
210 1		Release investigation and confirmation steps	Regulatory language has been revised to reflect EPA's additions regarding release detection secondary containment testing. <b>§280.52(a).</b>
	210 1 a (1) - (2)	Release investigation and confirmation steps	Regulatory language has been revised to reflect EPA's additions regarding the system test required for release investigation and confirmation. <b>§280.52(a)(1)(i)-(ii).</b>
	210 1 b - d	Release investigation and confirmation steps	Regulatory language has been revised to reflect EPA's clarifications and additions

			regarding requirements if a release or leak is confirmed. Requirements have been renumbered. <b>§280.52(a)(2)-(4).</b>
310 1		Temporary closure	Regulatory language has been revised to reflect EPA's clarifications regarding temporary closure requirements if a tank is empty. <b>§280.70(a).</b>
320 3		Permanent Closure and changes-in-service	Regulatory language has been revised to reflect EPA's clarifications regarding permanent closure requirements. <b>§280.71(b).</b>
320		Note	EPA revised and added codes of practice that may be used to comply with this section. The note in this section is identical to the note found in <b>§280.71.</b>
370 E		Delivery Prohibition	Added Part "X" to this section to clarify that delivery prohibition applies to the USTs covered in Part X.
	Part X, sections 380 and 390	UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems	This Part has been added to reflect EPA's new requirements addressing UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems. The requirements found in this section conform to the requirements detailed in the federal UST regulations found in Part 280, Subpart K, except the definitions contained in §280.250 have been included in the VA UST Regulation's definition section: 9VAC25-580-10. Additional language not found in Part K of the federal regulation has been added to Part X to clarify that delivery prohibition applies to USTs regulated under Part X. Additional language has also been included in Part X to clarify that subsection 390 D 1 applies to field-constructed tanks that are part of airport hydrant systems and shop fabricated USTs that are part of airport hydrant systems. This language has been included to avoid confusion concerning how these previously deferred USTs are now regulated. <b>§280.250 to 252.</b>
Throughout			EPA is replacing "Resource Conservation and Recovery Act" with the "Solid Waste Disposal Act" in order to encompass all amendments to federal law. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			EPA's regulation describes the effective date of the requirements as either "on or before" the effective date of the amendment or "after" the effective date of the amendment. Throughout the VA UST Regulation, the effective date of the regulatory requirements is described as "before" or "on or after" the effective date of

			the regulation. The effective date becomes the first date the regulated community must comply which corresponds with the implementation of the agency's regulatory programs. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			EPA is replacing the term "ground water" with "groundwater" in 40 CFR 280. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			EPA has clarified use of the terms "release" and "leak" in 40 CFR 280. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			EPA is replacing the term "noncorrodible" with "non-corrodible" in 40 CFR 280. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			EPA has renamed the term "industry codes" to "codes of practice" throughout the federal UST regulation for clarification. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			Removed references to Appendix I and II.
Throughout			EPA has renamed the term "codes and standards" to "codes of practice" for clarification. <b>These changes are reflected throughout the VA UST Regulation.</b>
Throughout			The words "one-eighth" are being replaced with "1/8" to be consistent with the Virginia Register's style manual. <b>These changes are reflected throughout the VA UST Regulation.</b>
Appendix I			Appendix I is being deleted. The form previously contained in this Appendix has been revised and moved to the form section of the VA UST Regulation.
Appendix II			Appendix II is being deleted. This information is now contained in a Note to §70 of the VA UST Regulation.

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Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale (Bold text indicates federal regulatory citation that corresponds to state regulation that is being amended)
10		Definitions	The definition of "Accidental Release" was modified to be consistent with definitions found in 40 CFR 280.92. The definitions for "Petroleum marketing firms" and "Responsible Person" were removed from the FR Regulation. The definition of "Chief



			Financial Officer” was added to the FR Regulation. These changes were made to be consistent with defined terms found in <b>§280.92.</b>
	15	Applicability of Incorporated References Based on the Dates That They Became Effective.	This new section has been added to specify the applicable date of federal regulations that are incorporated by reference into the FR Regulation. All references to 40 CFR will be the version of the CFR as of the date specified in this section.
20 B		Applicability	Regulatory language has been changed to reflect EPA’s deletion of the compliance date language in this section. <b>§280.90(b).</b>
20 D		Applicability	Regulatory language has been changed to update applicable code sections to correspond to EPA changes made to <b>§280.90(d).</b>
30		Compliance dates	Regulatory language has been changed to reflect EPA’s minor language changes and EPA’s changes to address requirements for previously deferred UST systems. Subsections 1-6 have been deleted to reflect EPA changes in <b>§280.91.</b>
40 A		Amount and Scope of FR	Regulatory language has been changed to add the phrase “at least” to conform to existing federal requirements. <b>§280.93(a).</b>
40 F		Amount and Scope of FR	Regulatory language has been changed to add subsection “B” to conform to existing federal requirements. <b>§280.93(d)(3).</b>
160 B 6		Recordkeeping	Regulatory language has been changed to update applicable code sections to correspond to EPA changes made to <b>§280.111(b)(9)(iii).</b>
160 B 8 a		Recordkeeping	Regulatory language has been changed to add the citation to “9VAC25-580-210” to conform to existing federal requirements. <b>§280.111(b)(11)(i).</b>
180		Release from FR requirements	Regulatory language has been changed to reflect EPA’s requirement that financial responsibility must be maintained until the UST has been permanently closed or undergoes a change-in-service. <b>§280.113.</b>
260		Word or phrase substitutions	This section was renamed “Modifications to language incorporated by reference” to be

			more descriptive of the section. The section identifies places where the language incorporated by reference has been modified to reference specific terms or citations to Virginia’s regulations. One reference to a citation was removed since it was no longer applicable. A reference to an additional citation mentioned in the federal regulation was added and an existing citation was corrected.
Appendix I		Letter from chief financial officer	Appendix I language has been changed to reflect EPA’s minor language changes. <b>§280.95.</b>
Appendix I		Alternative II	The text “9VAC25-590” was inserted as a technical correction to reference a specific regulation.
Appendix II (7)		Guarantee	Appendix II (7) language has been changed to replace “shall” with “must” to conform to existing federal requirements. <b>§280.96(c)(7).</b>
Appendix VII		Trust Agreement	Technical corrections were made to sections 11 and 14 to correct previous errors in section number references.
Appendix XI		Letter from chief financial officer- short form	Appendix XI language has been changed to be consistent with Appendix I changes noted above. <b>§280.95.</b>
Throughout			EPA is replacing the term “ground water” with “groundwater” in 40 CFR 280. <b>These changes are reflected throughout the FR Regulation.</b>
Throughout			EPA is replacing “Resource Conservation and Recovery Act” with the “Solid Waste Disposal Act” in order to encompass all amendments to federal law. <b>These changes are reflected throughout the FR Regulation.</b>
Throughout			References to the year (1997) following 40 CFR citations have been removed. A new section was added to the FR Regulation (§15) to reference the version of the federal CFR that is being incorporated into the FR Regulation.

**Regulatory flexibility analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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The amendments to Virginia's Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Virginia's Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) have been made to include recent changes to 40 CFR Part 280. The agency analyzed the following alternative regulatory methods: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The federal standards are protective of human health and the environment and minimize the regulatory burden on companies to comply with this regulation, therefore the agency rejected including alternative regulatory methods in this rulemaking. The federal standards are appropriate for all companies, including small businesses; therefore small businesses were not exempted from any requirements or provided different standards.

## Public Comment

Prior to adopting the exempt final action on the Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC25-580) and Petroleum Underground Storage Tank Financial Responsibility Requirements (9VAC25-590) regulations, an informal comment period was held from March 27, 2017 to May 1, 2017. Comments received and the Agency's responses to comments are listed below.

**The following comments were received from the Virginia Petroleum, Convenience and Grocery Association (VPCGA). Many of the issues raised in these comments have been or will be addressed through implementation guidance.**

### **Comment 1:**

Thank you for allowing VPCGA the opportunity to comment on the proposed Underground Storage Tank Rules. We also appreciate the Department's decision to extend the comment period on this rule until May 1, to allow the membership to review in detail this initiative

The Federal UST rule permits implementation of this rule thru EPA or by recognized industry standards. There are currently only two industry standards, Petroleum Equipment Institute (PEI) RP-900 for walk through inspections, and PEI RP-1200 for testing. Each is more burdensome than the EPA amendments. We are concerned that if the PEI standards are the only ones found acceptable, an undue administrative burden may be imposed on our membership. Further, both of the aforementioned PEI standards are currently under revision. Our national association, Petroleum Marketers Association of America (PMAA)

sits on both the RP-900 Committee and the RP-1200 Committee and has proposed changes we believe would make the regulations more flexible and less burdensome for marketers. The key areas PMAA proposed are below. Since there are two years remaining before these changes are mandated, we believe there is no reason to rush their adoption.

VPCGA also believes that the Department should take advantage of all state deadline flexibility in the 2015 UST amendments so that small business petroleum marketers are able to comply with this complicated and expensive regulatory framework in the most orderly and cost effective manner possible.

*Comment 1 response: The Board's adoption of the proposed regulatory changes will provide some certainty to the regulated community regarding what new requirements will be effective in Virginia and when those requirements will become effective. It will reduce confusion by specifying the new requirements and the deadlines to comply, thus giving tank owners time to plan and prepare. The proposed amendment allows tank owners 3 years from the effective date of this amendment to comply with many of the new requirements. No changes were made to the regulatory language in response to this comment.*

**Comment 2:**

VPCGA urges that any references to PEI standards in Virginia regulations should state that they "may" be used and not "shall" be used to implement the EPA UST amendments.

*Comment 2 response: DEQ staff have reviewed the amendment and in reference to PEI standards, the amendment uses the term "may" not "shall." No changes were made to the regulatory language in response to this comment.*

**STATE PROGRAM IMPLEMENTATION**

**Comment 3:**

**30-Day Walkthrough Inspections** – The only national industry technical standard to perform UST system walkthrough inspections is PEI RP-900. The RP-900 walkthrough requirements are more frequent and extensive than the EPA requirements.

First, PEI RP-900 calls for weekly walkthrough inspections while the EPA calls for monthly walkthrough inspections (which we support). VPCGA requests that Virginia regulations do not expand walkthrough requirements beyond the provisions specifically required in the 2015 EPA UST amendments.

The EPA walkthrough provisions were developed in close consultation with small business petroleum marketers and represent a consensus on how to adequately prevent potential releases into the environment while keeping retail employees safe from physical injury and overall compliance costs down. If the expansive and overly broad RP-900 walkthrough provisions are adopted, small business tank owners represented by VPCGA would be forced to hire costly private third party vendors to do the inspections which otherwise would be performed by in-house Class A, B or C employees. In addition, third party inspection vendors are often involved in UST equipment sales and installation, creating a potential conflict of interest that could drive up maintenance costs and undermine the walkthrough inspection process itself. The Department should adopt the EPA walkthrough inspection requirements and not incorporate PEI RP-900 into Virginia regulations as affirmative requirements.

*Comment 3 response: 9 VAC25-580-85 A provides a UST owner/operator with 3 options to comply with walkthrough inspection requirements. Specifically, a UST owner/operator may: (1) conduct a walkthrough inspection that meets the minimum requirements of the regulation; (2) conduct a walkthrough inspection that complies with a standard code of practice or (3) conduct a walkthrough inspection that conforms to an inspection protocol developed by DEQ. DEQ intends to create a checklist or other user friendly protocol based on the minimum requirements of the regulation (identical to the minimum federal requirements) to include in its implementation guidance. UST owners/operators will be able to use this protocol to meet the walkthrough inspection requirements. No changes were made to the regulatory language in response to this comment.*

**Comment 4:**

**Containment Sump Testing** - The EPA regulations require integrity testing on containment sumps used for interstitial monitoring of pipes. PEI RP-1200 is the only performance standard extant for containment sump testing. Since it is impossible to make containment sumps airtight, pressure testing to check for leaks is not a viable option. Hydraulic testing is the only practical and accurate method to ensure containment sumps are liquid tight. The hydraulic test method in RP-1200 requires containment sump to be filled with water to the top and above the penetration points in the sump wall. VPCGA finds this testing to be problematic due cost, the excessive amount of hazardous waste water generated by the test, and the potential risk of water intrusion into piping interstice should the penetration points in the sump wall fail to be liquid tight. To prepare a containment sump for testing according to RP-1200 the following steps must be taken:

1. Clean any dirt, debris or liquid out of the sump.
2. Inspect the sump for cracks or damage.
3. Test boots or secondary containment isolation fittings must be installed on all double-wall piping penetrations in tank sump and under dispenser sumps as well. (These types of boots and fittings are required for hydraulic testing. However they were not added during original installation of the UST system because sumps were not designed to be tested in this way). Fill containment sump area to the top of the sump wall with test fluid and check for leaks.
4. Properly remove, handle and dispose of hazardous test fluid.

The cost for a repair of an isolation grommet (if they can be used) is about \$600 - \$800. A repair grommet if needed for a tank sump costs an additional \$500. Under dispenser containment (UDC) sump replacement grommets cost between \$3,200 - \$4,800 per sump. If the dispenser must be removed to gain access to the sump, installation costs for these grommets can range from \$1,000 to \$2,000 per dispenser. In a worst case scenario where isolation grommets cannot be used on sumps to prepare for hydraulic testing, the entire sump may have to be replaced at a cost of \$10,000 per dispenser. These costs are extremely burdensome for Virginia's small business petroleum marketers and would likely force a good number of them out of business.

A better sump test method that is far less costly to small business tank owners, "equally protective of the environment" and "no less stringent than the federal regulations" is to test containment sumps only to the level where a liquid sensor audible alarm is engaged that automatically triggers a positive shut down of the product turbine. California and Idaho are among states that recognize this alternative test method. The U.S. EPA OUST is currently considering whether to issue agency guidance on the alternative test method as well. The alternative test method is superior to RP-1200 because it generates far less hazardous waste water, actuates a positive shutdown of the system which stops a potential leak before it reaches the penetration points and sump cover where it could be released into the environment. In this way, the alternative containment sump test method is actually more protective of the environment than RP-1200.

*Comment 4 response: 9VAC25-580-82 A.1.b provides a UST owner/operator with 3 options to comply with containment sump test requirements: (1) the owner/operator may utilize testing criteria developed by the containment sump manufacturer; (2) the owner/operator may utilize testing criteria developed by a nationally recognized Code of Practice; or (3) the owner/operator may test according to criteria determined by the board to be as protective as the previous two options. The RPI 1200 is identified in the proposed amendments as a Code of Practice that may be used to comply with option 2.*

*As a practice, DEQ will evaluate any alternative testing criteria proposed to meet the requirements of option 3 discussed above. Because DEQ's UST regulatory interpretations typically mirror EPA's regulatory interpretations, if EPA permits an alternate method of containment sump testing, DEQ anticipates approving the testing method, as well. Since the regulation allows for the board to approve the use of other methods, no change is needed to the regulatory language in response to this comment.*

**VPCGA Supports the U.S. EPA Clarifications on Several Key Provisions in the 2015 UST Amendments that Offer Small Business Petroleum Marketers Cost Saving Regulatory Flexibility.****Comment 5:**

**Under Dispenser Containment Sump Testing** – Under the federal UST amendments, only sumps that are used for interstitial monitoring of piping are required to be tested once every three years for integrity. The EPA has clarified that under dispenser containment sumps do not require testing if they are not connected to the interstitial monitoring system for piping. One way to remove UDC from the interstitial monitoring system leading back to the tank sump is to reconfigure piping so that it bypasses UDC. This is typically done with a small jumper hose that runs from one secondary termination grommet across the UDC and connects to the pipe on the other side.

This would allow any fuel leaked from piping to bypass UDC and flow directly to the tank sump where the sensor alarm is located. VPCGA urges the Department to adopt this method into the state regulations as equally protective of the environment while avoiding significant regulatory burden for small businesses that would otherwise be faced with testing as many as 9 sumps per site at an extraordinary cost.

*Comment 5 response: The proposed amendments address testing requirements for underdispenser containment (UDC) that is used for interstitial monitoring. Determining whether specific system configurations trigger UDC testing will be addressed on a case-by-case basis using criteria developed in DEQ's implementation guidance. DEQ is in the process of developing this guidance. No changes were made to the regulatory language in response to this comment.*

**Comment 6:**

**Under Dispenser Containment Requirement** - With regard to under dispenser containment, the EPA has clarified that UDC is *only required* when ALL of the equipment under the dispenser must be replaced down to the vertical pipe, not when any one of these components are replaced, and we believe that that standard should be adopted for Virginia as well.

*Comment 6 response: Regulatory requirements prescribing when underdispenser containment (UDC) must be installed on a UST system became effective on September 15, 2010. The proposed amendments do not modify these installation requirements. DEQ's current regulatory guidance further clarifies when UDC must be installed. Guidance document number [LPR-SRR-2016-03](#) addresses this situation and may be found on the Virginia Town Hall website under [Guidance Documents](#). Section 12.1.4 of the guidance document addresses VPCGA's concern. No changes were made to the regulatory language in response to this comment.*

**Comment 7:**

**Overfill Inspection Equipment Inspection** – It is well known that overfill protection equipment that is otherwise in perfect working order, can become seized in place and impossible to remove for inspection without destroying most components. Requiring removal for visual inspection of this equipment would amount to a replacement mandate in most cases. Instead, VPCGA believes that the Department should allow for in-place visual inspection of these components for 3 years provided that the system is equipped with an automatic tank gauge set at 95% and connected to an audible alarm sufficient to immediately alert the driver to terminate product drop. The three year delay in the removal for inspection requirement would provide the time needed for an orderly replacement of this equipment.

*Comment 7 response: The proposed amendment specifies that the requirement for testing overfill prevention devices will become effective three years after the effective date of the amendment, providing UST owners/operators the maximum amount of time to plan and implement. No changes were made to the regulatory language in response to this comment.*

**Comment 8:**

**Interstitial Monitoring for Pipes** – The 2005 Energy Act requires tank owners using secondarily contained piping to include interstitial monitoring. States adopted the provisions of the 2005 Energy Act at different times. The EPA has clarified that tank owners with UST systems equipped with interstitial

monitoring *before* the date states adopted the provisions of the 2005 Energy Act could discontinue interstitial monitoring in favor of annual precision line testing. This essentially treats piping as single walled rather than double walled for purposes of the interstitial monitoring requirements. The EPA made this clarification because it does not believe that tank owners who upgraded their piping *before* it was required to do so should be punished while other tank owners who did not be rewarded for their inaction. In this way, tank owners will be more willing to make upgrades voluntarily in the future if they know there will not be any unforeseen regulatory burdens down the line as a result of those upgrades. VPCGA asks the Department to adopt this clarification as well.

*Comment 8 response: DEQ agrees that UST owners/operators of existing UST systems installed prior to September 15, 2010 and equipped with interstitial monitoring do not need to test their containment sumps if they use another approved method of release detection instead of interstitial monitoring. DEQ intends to address this in implementation guidance. No changes were made to the regulatory language in response to this comment.*

**The following comments were submitted by EPA and are placed in context with the applicable regulatory citation.**

**Comment 9:**

9VAC25-580-10. Definitions

Implementing agency-- Does VADEQ want to add a definition of "implementing agency"?

*Comment 9 response: This change is not needed. Virginia's regulation specifies the State Water Control Board as the implementing agency and defines and utilizes the term "board" throughout the regulation. No change was made to the regulation in response to this comment.*

**Comment 10:**

Pipe or Piping: EPA strongly recommends revising this definition to be consistent with the federal definition at 40 CFR 280.12. We acknowledge that Virginia's definition is identical to that set forth in "EPA's Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005." Nevertheless, we are concerned that Virginia's definition could be interpreted to exclude:

-Pressurized piping connected to infrequently used or non-high-throughput tanks (e.g., tanks in remote areas or that are only operated seasonally) that could be construed to not routinely convey product;

-Suction piping (that does not meet the definition of safe suction) connected to tanks such as emergency generator tanks that could be construed as neither routinely containing nor conveying product; and

We are also concerned that Virginia may not be able to ensure that the requirements of 40 CFR 281.36(a)(1), (2), and (4) will be met for temporarily closed UST systems that have piping that does not "routinely convey" regulated substances.

We believe that the definitional language could cause an issue for enforcing corrosion protection, release detection, and temporary-out-of-service requirements. In order to ensure a level playing field and clear expectations for the regulated community, we strongly recommend revising this definition to be consistent with the federal definition.

*Comment 10 response: DEQ agrees with EPA and has amended the proposed regulation so that the definition of "Pipe or piping" matches EPA's definition.*

**Comment 11:**

"Underground storage tank" or "UST"

Virginia initially proposed revising this definition to be identical to the federal definition, but subsequently determined this definition comes from Virginia statute. EPA strongly recommends that Virginia revise this definition to be consistent with the federal definition.

*Comment 11 response: Initial draft amendments edited the definition of UST to be consistent with the definition of UST in the federal regulation. Upon further review, DEQ identified that the revised federal definition of "UST" was inconsistent with the definition of "UST" found in Virginia law (VA Code 62.1-44.34:8.). The definition of UST in this regulation needs to remain consistent with the term as defined in state law. No change was made to the regulation in response to this comment.*

**Comment 12:**

9VAC25-580-40. Permitting and inspection requirements for all UST systems.

EPA strongly recommends that Virginia provide more detailed information about the training, communication, and coordination between VADEQ and the local permitting/inspecting officials in the Program Description.

*Comment 12 response: This issue will be addressed through the State Program Approval process (SPA) in the Program Description. EPA made this same comment in reference to sections 580-120 and 580-320. No change was made to the regulation in response to these comments.*

**Comment 13:**

9VAC25-580-50. Performance standards for new UST systems.

EPA recommended adding "manufacturing defects" to this list per 281.30(a). EPA strongly recommends meeting this expectation through the Demonstration of Enforcement Authority.

*Comment 13 response: The language in 9VAC25-580-50 is consistent with the language in the corresponding federal regulation: 280.20, Performance standards for new UST systems. This issue will be addressed through the SPA process in the Demonstration of Enforcement Authority section. No change was made to the regulation in response to this comment.*

**Comment 14:**

9VAC25-580-125. Operator training.

Does Virginia want to add "inspections and testing requirements" to this list?

*Comment 14 response: The operator training section was added to the UST regulation effective September 15, 2010. DEQ drafted the language contained in this section based on EPA guidance that did not include "inspections and testing requirements." This issue may be addressed through implementation guidance. No change was made to the regulation in response to this comment.*

**Comment 15:**

9VAC25-580-370. Requirements for delivery prohibition.

EPA strongly recommends that Virginia revise this language or otherwise clarify that, in order to authorize removal of a delivery prohibition tag, Virginia will confirm that the UST is in compliance with those regulations that caused the tank to be out of compliance.



For example, if a tank does not have appropriate release detection and is given a delivery prohibition tag, this language could be interpreted as allowing the tank owner to demonstrate compliance with financial responsibility requirements in order to have the tag removed.

Our records indicate that, in 2009, VA agreed to clarify this language and we strongly recommend making such revisions.

*Comment 15 response: DEQ requires that UST owners/operators correct the compliance issues identified in the delivery prohibition decision (Appendix I) before staff can deem the facility to be in compliance and remove the tags. DEQ's delivery prohibition guidance, [LPR-SRR-2014-02](#), is located on the Virginia Town Hall website under Guidance Documents and addresses these issues in sections 5.4.12 through 5.4.14 and Appendix I. No change was made to the regulation in response to this comment.*

**Comment 16:**

9VAC25-590-10. Definitions.

"Responsible Person"

EPA recommends that Virginia revisit the statutory language from which this definition comes.

*Comment 16 response: This comment is not applicable to the regulatory language being revised.*

**Comment 17:**

"Release"

EPA recommended revising this definition to be consistent with 580-10. The definition here matches the Virginia statutory definition for the Petroleum Storage Tank Fund, the definition in 580-10 matches the federal definition (which does not include "upon lands" or "storm drains"). Virginia may still want to consider making the definitions verbatim.

*Comment 17 response: This definition has always been broader than the EPA definition or the definition in 580-10 in order to encompass the types of "releases" that are covered by the Petroleum Storage Tank Fund. No change was made to the regulation in response to this comment.*

**Comment 18:**

"Underground storage tank" or "UST"

Virginia initially proposed revising this definition to be identical to the federal definition, but subsequently determined this definition comes from Virginia statute. EPA strongly recommends that Virginia revise this definition to be consistent with the federal definition.

*Comment 18 response: Initial draft amendments edited the definition on UST to be consistent with the definition of UST in the federal regulation. Upon further review, DEQ identified that the revised federal definition of "UST" was inconsistent with the definition of "UST" found in Virginia law (VA Code 62.1-44.34:10.). The definition of UST in this regulation needs to remain consistent with the term as defined in state law. No change was made to the regulation in response to this comment.*

**Comment 19:**

9VAC25-590-40. Amount and scope of financial responsibility requirement.

Does Virginia want to add a requirement for periodic review of FR documents (per 280.93(f))?

*Comment 19 response: Virginia's financial responsibility regulatory scheme is different from EPA's and this recommendation will not improve or affect Virginia's current financial responsibility process. No change was made to the regulation in response to this comment.*

**Comment 20:**

9VAC25-590-160. Recordkeeping.

B.6.b EPA recommends updating this citation to 280.107(c), citation as is does not exist.

*Comment 20 response: This citation has been corrected.*

**Comment 21:**

Does VADEQ want to add an "or" at the end of this paragraph to be consistent with the clarification in the federal regs? (EPA is essentially asking DEQ to add an "or" after every item listed in a series. EPA made this comment in several sections throughout the regulation.)

*Comment 21 response: The "Form, Style and Procedure Manual for Publication of Virginia Regulations" issued by the Virginia Code Commission provides guidance to Virginia agencies concerning the style of regulations. EPA's suggested edit is inconsistent with Virginia's regulatory style guidelines. No change was made to the regulation in response to this comment.*

NOTE: In addition to these specific comments, EPA provided suggestions concerning typographical corrections and noted instances where DEQ had addressed previous EPA comments.