



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R06-UST-2017-0504; FRL-9968-29-Region 6]

Oklahoma: Final Approval of State Underground Storage Tank Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Oklahoma's Underground Storage Tank (UST) program submitted by the State. EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies EPA's approval of Oklahoma's state program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of **[INSERT**

DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* lincoln.audray@epa.gov.

3. *Mail:* Audray Lincoln, Region 6, Project Officer, LUST Prevention/Corrective Action Section (6MM-XU), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. *Hand Delivery or Courier:* Deliver your comments to Audray Lincoln, Region 6, Project Officer, LUST Prevention/Corrective Action Section (6MM-XU), Multimedia Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-UST-2017-0504.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will

be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733, phone number (214) 665-2239. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Audray Lincoln, (214) 665-2239, lincoln.audray@epa.gov. To inspect the hard copy materials, please schedule an appointment with Audray Lincoln at (214) 665-2239.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Oklahoma's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to

the EPA for approval. Changes to state UST programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by EPA.

B. What decisions has the EPA made in this rule?

On January 25, 2017, in accordance with 40 CFR 281.51(a), Oklahoma submitted a complete program revision application seeking approval for its UST program revisions corresponding to the EPA final rule published on July 15, 2015 (80 FR 41566) which finalized revisions to the 1988 UST regulation and to the 1988 state program approval (SPA) regulation. As required by 40 CFR 281.20, the State submitted the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the application and the revisions to Oklahoma's UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281 and the Oklahoma program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Oklahoma final approval to operate its UST program with the changes described in the program revision application, and as outlined below in Section I.G of this document. The Oklahoma Corporation Commission (OCC) is the lead implementing agency for the UST program in Oklahoma, except in Indian Country.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in the State of Oklahoma, and they are not changed by this action. This action merely approves the existing state regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. Oklahoma did not receive any comments during its comment period when the rules and regulations being considered today were proposed at the state level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final, the EPA is publishing a separate document in the “Proposed Rules” section of this Federal Register that serves as the proposal to approve the State’s UST program revision, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes on the proposal to approve after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Oklahoma previously been approved?

On October 14, 1992, EPA finalized a rule approving the UST program submitted by Oklahoma in lieu of the Federal program. On January 18, 1996, EPA codified the approved Oklahoma program that is subject to EPA’s inspection and enforcement authorities under RCRA

sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

In order to be approved, the program must provide for adequate enforcement of compliance as described in 40 CFR 40 CFR 281.11(b) and part 281, Subpart D. The OCC has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under Oklahoma Statutes (2016), Title 27A, Chapter 1, Article III, Section 1-3-101(E)(5)(b), Responsibilities and Jurisdiction of Environmental Agencies; Oklahoma Statutes (2016), Title 17, Chapter 3, Section 52(A)(k)(5) Corporation Commission Jurisdiction; Oklahoma Statutes (2016), Title 17, Chapter 14, Oklahoma Underground Storage Tank Regulation Act Sections 301 through 340; Oklahoma Statutes (2016), Title 17, Chapter 15, Oklahoma Petroleum Storage Tank Release Indemnity Program Sections 350 through 365; and Oklahoma Statutes (2016), Title 52, Chapter 5, Inspections Sections 321 through 347.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Oklahoma Administrative Code, as amended effective August 25, 2016, Chapter 5, Rules of Practice; Oklahoma Administrative Code, as amended effective August 25, 2016, Chapter 15, Fuel Inspection; Oklahoma Administrative Code Chapter 25, Underground Storage Tanks; Oklahoma Administrative Code, as amended effective August 25, 2016, Chapter 27, Indemnity Fund; and Oklahoma Administrative Code, as amended effective August 25, 2016, Chapter 29, Corrective Action of Petroleum Storage Tank Releases. The aforementioned regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

Oklahoma's Petroleum Storage Tank Division (PSTD) provides notice and opportunity for public comment on all proposed settlements of civil enforcement actions, except where

immediate emergency action is necessary to adequately protect human health, safety, and the environment. The PSTD investigates and provides responses to citizen complaints about violations. Additionally, the PSTD does not oppose citizen intervention when permissive intervention is allowed by statute, rule or regulation. Requirements for public participation can be found in the OCC's Chapter 25 UST rules (165:25-1-26.2) and 17 Oklahoma Statute, Section 313 allows OCC to furnish information to EPA when requested. Oklahoma has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, a state's program must be "no less stringent" than the federal program in all elements of the revised EPA final rule published on July 15, 2015 (80 FR 41566). EPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulation. The changes also added secondary containment requirements for new and replaced tank and piping, operator training requirements, periodic operation and maintenance requirements for UST systems, requirement to ensure UST system compatibility before storing certain biofuel blends. It removed past deferrals for emergency generator tanks, field constructed tanks and airport hydrant systems.

The OCC made updates to their regulations to ensure that they were no less stringent than the federal regulations which were revised on July 15, 2015 (80 FR 41566). 40 CFR 281.30 through 281.39 contains the "no less stringent than" criteria that a state must meet in order to have its UST program approved. In the State's application for approval of its UST program, the Oklahoma Attorney General certified that it meets the requirements listed in 40 CFR 281.30 through 281.39. EPA has relied on this certification in addition to the analysis submitted by the State in making our determination. For further information on EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for

this rulemaking. The corresponding state regulations are as follows:

40 CFR 281.30 lists the federal requirements for new UST system design, construction, installation, and notification with which a state must comply in order to be found to be no less stringent than federal requirements. Parts 1 and 2 of Chapter 25 of Title 165 of the Oklahoma Administrative Code require that USTs be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion and 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. These parts also require UST system owners and operators to notify the implementing agency of any new UST systems, including instances where one assumes ownership of an existing UST.

40 CFR 281.31 requires that most 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. The rule lists two exceptions to these requirements. Parts 1 and 2 of Chapter 25 of Title 165 of the Oklahoma Administrative Code contain the appropriate requirements that UST systems be upgraded to prevent releases during their operating life due to corrosion, spills, or overfills.

40 CFR 281.32 contains the general operating requirements that must be met in order for the State's submission to be considered no less stringent than the federal requirements. Parts 1, 2, and 3 of Chapter 5 of Title 165 of the Oklahoma Administrative Code contain the necessary general operating requirements required by 40 CFR 281.32.

40 CFR 281.33 contains the requirements for release detection that must be met in order for the State's submission to be considered no less stringent than federal requirements. Parts 1

and 3 of Chapter 25 of Title 165 of the Oklahoma Administrative Code contain the necessary requirements for release detection as required by 40 CFR 281.33.

40 CFR 281.34 contains the requirements for release reporting, investigation, and confirmation that must be met in order for the State's submission to be considered no less stringent than federal requirements. Part 3 of Chapter 25 of Title 165 and Part 3 of Chapter 29 of Title 165 contain the necessary requirements as required by 40 CFR 281.34 for release reporting, investigation, and confirmation.

40 CFR 281.35 contains the requirements for release response and corrective action that must be met in order for the State's submission to be considered no less stringent than federal requirements. Part 3 of Chapter 29 of Title 165 of the Oklahoma Administrative Code contains the required provisions as listed in 40 CFR 281.35 for release response and corrective action.

40 CFR 281.36 contains the requirements for out of service UST systems and closures that must be met in order for the State's submission to be considered no less stringent than federal requirements. Parts 1 and 2 of Chapter 25 or Title 165 in the Oklahoma Administrative Code contain the necessary requirements as listed in 40 CFR 281.36 for out of service UST systems and closures.

40 CFR 281.37 contains the requirements for financial responsibility for UST systems containing petroleum that must be met in order for the State's submission to be considered no less stringent than federal requirements. Part 2 of Chapter 25 of Title 165 and Parts 1 and 7 of Chapter 27 of Title 165 of the Oklahoma Administrative Code contain the necessary requirements as listed in 40 CFR 281.37 for financial responsibility for UST systems.

40 CFR 281.38 contains the requirements for lender liability that must be met in order for the State's submission to be considered no less stringent than federal requirements. Part 1 of

Chapter 25 of Title 165 of the Oklahoma Administrative Code contains the requirements for lender liability as listed in 40 CFR 281.38.

40 CFR 281.39 contains the requirements for operator training that must be met in order for the State's submission to be considered no less stringent than federal requirements. Part 1 of Chapter 25 of Title 165 of the Oklahoma Administrative Code contains the requirements for operator training as required by 40 CFR 281.39.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in coverage than the federal program:

Oklahoma requires that all regulated UST systems currently in use must have a valid permit issued by the Oklahoma Corporation Commission (OCC) Petroleum Storage Tank Division (PSTD) before fuel can be dispensed. Permits are issued after the UST system is installed and the PSTD Registration Form, containing the original signatures of the Licensed UST Installer and the owner has been submitted and approved by PSTD, and the registration permit fee is paid. In order for owners to comply with the law and gain access to the Oklahoma Petroleum Storage Tank Release Indemnity Fund ("Indemnity Fund") should a release occur during the installation of a regulated UST, a scheduling form must be submitted and a temporary authorization letter allowing fuel to be placed in the UST for testing purposes only must be issued before fuel can be delivered into the UST. If a release occurs during installation and a temporary authorization letter was not issued, the owner will not be eligible for access to the Indemnity Fund. (17 Okla. Stat. Section 308; OAC 165:25-1-42)

Oklahoma requires UST Installers, Removers, and Groundwater and Vapor Monitoring Technicians must provide proof of at least 2 years of work experience in *active participation* installing, removing or monitoring storage tanks and must pass a written examination in order to be licensed by PSTD.

Environmental Consultants must have 7 years environmental experience with at least 2 of those years of experience at regulated storage tank facilities, provide evidence of attending 40 hours of OSHA HAZWOPER training, provide evidence of successful completion of a PSTD-approved Risk Based Corrective Action course (16 hours of risk assessment/risk analysis and 8 hours hands on computer training with appropriate software); and pass an examination in order to be licensed by PSTD.

Oklahoma requires UST Installers, UST Removers, Monitor Well Technicians, and UST Environmental Consultants must be licensed by PSTD (17 Okla. Stat. Section 318; OAC 165:25-1-101; OAC 165:25-1-102; OAC 165:25-1-103; OAC 165:29-3-90).

The State issues an authorization letter giving temporary approval to receive fuel. The statute found at 17 O.S. Section 308 B states that “no person shall deposit a regulated substance into a storage tank system unless the system is operating pursuant to a permit issued by the Commission.” The definition of a permit at 17 O.S. Section 303.22 states that it can be a registration, permit, license, or other authorization issued by the Commission to operate a storage tank system. In order to register a tank and obtain a “valid permit” the installation testing of the tank, lines, and leak detectors must be submitted with the OCC Registration Form (OAC 165:25-1-42(b)).

In order for tank owners to be eligible for access to the indemnity fund, the Compliance and Inspection Department must receive documentation of the required installation testing. The

OCC requires submittal of a tank installation scheduling form and the issuance of a temporary fuel authorization letter before fuel can be placed in a tank. This is required at any facility installing a new tank. The temporary fuel authorization letter will be sent to the tank owner giving 90-day approval for fuel to be placed in the tank before an official tank permit is obtained. This letter is site specific and must be received for each new installation. At the completion of the new tank installation and within 30 days, an OCC tank registration form containing the original signatures of the licensed tank installer and tank owner must be submitted along with the required installation testing, photographs of the tank and piping system components before they are covered, as-built drawing of the entire tank system and manufacturer installation checklists. Once these items are received, a tank registration invoice will be issued and mailed to the owner address provided on the registration form.

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. 40 CFR 281.12(a)(3)(ii).

More Stringent Provisions

The following statutory and regulatory provisions are considered more stringent in coverage than the federal program:

Oklahoma requires all UST systems installed after July 1, 2008, must be double walled and use interstitial monitoring for release detection for tanks and/or piping. (OAC 165:25-3-6.21)

Oklahoma states a drop tube with overfill device is required on all UST systems installed after July 1, 2001. Tanks installed prior to July 1, 2001 must be upgraded to meet this standard before July 1, 2002, unless equipped with an operational ball float overfill device. A demonstration to prove an existing ball float device is operational and functioning properly is required annually. If found inoperable it must be replaced with a drop tube with flapper valve. (OAC 165:25-2-39)

Oklahoma requires a mechanism to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and automatically stops the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity. (OAC 165:25-2-39)

Oklahoma requires new product lines must be hydrostatically tested by a NWGLDE approved testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or 1½ times the operating pressure, whichever is greater. The product lines must be tested for a minimum of one hour regardless of the test method. (OAC 165:25-2-40)

Oklahoma requires that owners and operators of all underground storage tank systems must notify PSTD at least 14 days prior to the removal or closure of underground storage tanks and/or lines by submitting a PSTD scheduling form and receiving confirmation of the scheduled removal from PSTD. An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and surrounding environment prior to backfilling. A PSTD Licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete. (OAC 165:25-2-131)

Oklahoma requires owners and operators who use Statistical Inventory Reconciliation (SIR) for release detection for their UST must also conduct inventory control to detect a release of at least 1.0 percent of flow-through plus 130 gallons every 30 days. Deliveries, withdrawals and balance remaining must be recorded each operating day on a PSTD Inventory Reconciliation Form or an electronic equivalent and must be reconciled. The regulated substance inputs must be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery. Statistical Inventory Reconciliation analysis reports must include a summary report of the quantitative results and must include copies of all inventory reconciliation forms. (OAC 165:25-3-6.28)

Oklahoma does not allow vapor monitoring, groundwater monitoring, or Statistical Inventory Reconciliation as a method of release detection for product lines (OAC 165:25-3-6.29)

Oklahoma requires submittal of an Initial Site Characterization Report within 20 days of release confirmation (OAC 165:29-3-75)

Oklahoma ensures owners and operators of regulated UST systems have \$1,500,000 per occurrence for corrective action and third-party claims (17 Okla. Stat. Section 356; OAC 165:27-7-2).

I. How does this action affect Indian Country (18 U.S.C. 1151) in Oklahoma?

Oklahoma is not authorized to carry out its Program in Indian Country (18 U.S.C. 1151) within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Oklahoma's UST program?

The EPA incorporated by reference Oklahoma's then approved UST program effective March 18, 1996 (61 FR 1220; January 18, 1996). In this document, the EPA is revising 40 CFR 282.86 to include the approval revision actions.

C. What codification decisions have we made in this rule?

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Oklahoma rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and/or in hard copy at the EPA Region 6 office (see the **ADDRESSES** section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Oklahoma's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Oklahoma UST program addressed in this direct final rule become final. The document incorporates by reference Oklahoma's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Oklahoma program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally-approved requirements of the Oklahoma program.

The EPA is incorporating by reference the Oklahoma approved UST program in 40 CFR 282.86. Section 282.86(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.86 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of Oklahoma's codification on enforcement?

The EPA retains the authority under sections 9003(h), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular,

approved Oklahoma procedural and enforcement authorities. Section 282.86(d)(1)(ii) of 40 CFR lists those approved Oklahoma authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in coverage than the federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are "broader in coverage" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.86(d)(1)(iii) of the codification simply lists for reference and clarity the Oklahoma statutory and regulatory provisions which are "broader in coverage" than the federal program and which are not, therefore, part of the approved program being codified today. Provisions that are "broader in coverage" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Oklahoma's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821,

January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Oklahoma's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or

the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by

examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective [*insert date 60 days after the date of publication in the Federal Register*] because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: November 3, 2017.

Samuel Coleman,
Acting Regional Administrator, EPA Region 6.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.86 to read as follows:

§ 282.86 Oklahoma State-Administered Program.

(a) *History of the approval of Oklahoma's Program.* The State of Oklahoma is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 et seq. The State's program, as administered by the Oklahoma Corporation Commission, was approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this Chapter. EPA published the notice of final determination approving the Oklahoma underground storage tank base program effective on October 14, 1992. A subsequent program revision application was approved effective on **[insert date 60 days after the date of publication in the Federal Register]**.

(b) *Enforcement authority.* Oklahoma has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Oklahoma must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Oklahoma obtains

approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

(d) Oklahoma has final approval for the following elements of its program application originally submitted to EPA and approved effective October 14, 1992, and the program revision application approved by EPA effective on **[insert date 60 days after the date of publication in the Federal Register]**:

(1) *State statutes and regulations—(i) Incorporation by reference.* The Oklahoma provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain copies of the Oklahoma regulations that are incorporated by reference in this paragraph from the State’s Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152-3390; Phone number: 405-521-4911; Website: <https://www.sos.ok.gov/oar/Default.aspx>. You may inspect all approved material at the EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665-2239 or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) The binder entitled “Oklahoma Regulatory Requirements Applicable to the Underground Storage Tank Program, October 2017. Those provisions are listed in Appendix A to Part 282.

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which provide the legal basis for the State’s implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *Oklahoma Statutes (2016), Title 17, “Corporation Commission”:* Chapter 3, “*Oil and Gas*”, Section 52(A)(k)(5); Chapter 14, “*Oklahoma Storage Tank Regulation Act*”, Sections 301, 302, 303 (except 303.22”Permit”), 305, 306, 307, 309 through 316, 319, 321 through 325, 330 and 340; Chapter 15, “*Oklahoma Petroleum Storage Tank Release Indemnity Program*”, Sections 350 through 365.

(2) *Oklahoma Statutes (2016), Title 27A, “Environmental and Natural Resources”:* Chapter 1, Article III, “*Jurisdiction of Environmental Agencies*”, Section 1-3-101(E)(5)(a) – (c).

(3) *Oklahoma Statutes (2016), Title 52, “Oil and Gas”:* Chapter 5, “*Inspections*”, Sections 321 through 347.

(B) The regulatory provisions include:

(1) *Oklahoma Administrative Code, Title 165, effective August 25, 2016:*

(i) Chapter 5, “*Rules of Practice*”: Subchapter 1, “*General Provisions*”, Sections 165:5-1-4(b) and 165:5-1-25; Subchapter 5, “*Dockets*”: Sections 165:5-5-1(a)(9) and (a)(10); Subchapter 21, “*Procedure for the Petroleum Storage Tank Docket*”: Sections 165:5:21-1 through 165:5-21-5, 165:5:21-8 through 165:5:21-10;

(ii) Chapter 15, “*Fuel Inspection*”: Subchapter 3, “*Fuel Specialists, Testing, Accessibility, and Assistance*”, Sections 165:15-3-1, through 165:15-3-3, 165:15-3-16, 165:15-3-21, 165:15-3-21 through 165:15-3-24.1; Subchapter 19, “*Violations and Contempt*”, Sections 165:15-19-1 through 165:15-19-5.

(iii) Chapter 25, “Underground Storage Tanks”: Subchapter 1, “General Provisions”: Part 5, “Scope of Rules”, Section 165:25-1-24.1; Part 6, “Administrative Provisions”, Sections 165:25-1-26.1 through 165:25-1-30.1; Part 15, “Shutdown of Operations”, Section 165:25-1-67; Part 17, “Licensing Procedures”, Sections 165:25-1-107; Part 19 “Operator Training”, Section 165:25-1-126; Subchapter 2, “General Requirements for Underground Storage Tank Systems”: Subchapter 18, “Inspections, Notices of Violations and Citations”: Part 1, “Inspections”, Sections 165:25-18-1 through 165:25-18-4; Part 3, “Notices of Violation and Citations”, Sections 165:25-18-10 through 165:25-18-13; Part 5, “Penalties”, Section 165:25-18-19; Appendix Q and Appendix S.

(iv) Chapter 27, “Indemnity Fund”. Subchapter 1, “General Provisions”: Sections 165:27-1-1 and 165:27-1-3 through 165:27-1-6; Subchapter 3, “Eligibility Requirements”, Sections 165:27-3-1 and 165:27-3-2; Subchapter 5, “Qualifications for Reimbursement”, Sections 165:27-5-1 and 165:27-5-3. Subchapter 7, “Reimbursement”, Sections 165:27-7-1, 165:27-7-7, 165:27-7-8, 165:27-7-9, 165:27-7-9.1, 165:27-7-10 and 165:27-7-11; Subchapter 9, “Administrative Provisions”, Sections 165:27-9-1 through 165:27-9-4.

(v) Chapter 29, “Corrective Action of Petroleum Storage Tank Releases”, Subchapter 1, “General Provisions”, Part 1, “Purpose and Statutory Authority”, Section 165:29-1-3; Subchapter 3, “Release Prevention, Detection and Correction”, Part 5, “Corrective Action Requirements”, Section 165:29-3-81. Subchapter 5 “Administrative Provisions”: Sections 165:29-5-1 and 165:29-5-4.

(2) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified sections and rules applicable to the Oklahoma underground storage tank program that are broader in coverage than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) *Oklahoma Statutes (2016), Title 17, "Corporation Commission"*: Chapter 14, "Oklahoma Storage Tank Regulation Act", Section 303.22 "Permit", 306.1, 308, 308.1 and 318.

(B) *Oklahoma Administrative Code, Title 165, effective August 25, 2016*: Chapter 25, "Underground Storage Tanks". Subchapter 1, "General Provisions": Part 9, "Notification and Reporting Requirements", Sections 165:25-1-41, and 165:25-1-42; Part 13, "Fees", Section 165:25-1-64; Chapter 29, "Corrective Action of Petroleum Storage Tank Releases", Part 7, "Licensing of Environmental Consultants", Section 26-3-90.

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of Oklahoma on June 21, 1990 and November 14, 2016, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application on June 25, 1989 and as part of the program revision application for approval on January 25, 2017 though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on June 25, 1989 and as part of the program revision application

on January 25, 2017, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the Oklahoma Corporation Commission, signed by the EPA Regional Administrator on September 19, 2017 though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for Oklahoma as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Oklahoma

(a) The regulatory provisions include:

Oklahoma Administrative Code, Title 165, effective August 25, 2016:

1, Chapter 25 “Underground Storage Tanks”.

Subchapter 1, General Provisions: Part 1, “Purpose”, Section 165:25-1-1; Part 3, “Definitions”, Section 165:25-1-11; Part 5, “Scope of Rules”, Sections 165:25-1-21, 165:25-1-23.1, and 165:25-1-24; Part 9, “Notification and Reporting Requirements”, Sections 165:25-1-41, 165:25-1-42, 165:25-1-48, 165:25-1-51; Part 11, “Recordkeeping”, 165:25-1-53 through

165:25-1-58, and 165:25-1-60; Part 19, “Operator Training”, Sections 165:25-1-120, 165:25-1-122 and 165:25-1-124.

Subchapter 2, “General Requirements for Underground Storage Tank Systems”, Part 1, “Codes and Standards”, Sections 165:25-2-1, 165:25-2-2 and 165:25-2-4, Part 3, “Design and Installation”, Sections 165:25-2-31 through 165:25-2-33, 165:25-2-35 through 165:25-2-41, Part 5, “Protection Against Corrosion”, Sections 165:25-2-51, 165:25-2-52, 165:25-2-53 and 165:25-2-53.1, Part 6, “Piping”, Sections 165:25-2-55.1 and 165:25-2-55.2, Part 7, “Dispensers”, Sections 165:25-2-71, 165:25-2-72, 165:25-2-73, 165:25-2-75 and 165:25-2-76; Part 9, “Electrical”, Section 165:25-2-91; Part 11, “Repairs to Underground Storage Tank Systems”, Section 165:25-2-111; Part 13 “Removal and Closure of Underground Storage Tank Systems”, Sections 165:25-2-131, and 165:25-2-133 through 165:25-2-138.

Subchapter 3, “Release Prevention and Detection Requirements”: Part 1, Release Prohibition Requirements”, Section 165:25-3-1; Part 2, “Release Detection Requirements and Methods”, Sections 165:25-3-6.20 through 165:25-3-6.29; Part 3, “Release Investigation Requirements”, Sections 165:25-3-7.1 and 165:25-3-8; Part 15, “Corrective Action Requirements”, Section 165:25-3-70.

Subchapter 5, “Upgrades”, Sections 165:25-5-1 through 165:25-5-4.

Subchapter 6, “Special Requirements for Underground Storage Tank Systems Utilized by Airports Open to the Public”, Part 1, “General Application and Compliance Provisions”, Section 165:25-6-1; Part 3, “Codes and Standards”, Section 165:25-6-7; Part 5, “Dispense Requirements”, Sections 165:25-6-13, 165:25-6-14, 165:25-6-15 and 165:25-6-17; Part 7, “Tank

Filling Procedures”, Section 165:25-6-21; Part 9, “Dispensing Procedures”, Sections 165:25-6-27 and 165:25-6-28; Part 11, “Miscellaneous Safety Requirements”, Sections 165:25-6-34 and 165:25-6-35.

Subchapter 8, “Special Requirements for Underground Storage Tanks Utilized by Marinas”: Part 1, “General Application and Compliance Provisions”, Sections 165:25-8-1 and 165:25-8-2; Part 3, “Over-water Piping Requirements”, Sections 165:25-8-3 and 165:25-8-4; Part 5, “Dispenser Requirements”, Sections 165:25-8-14 through 165:25-8-17; Part 9, “Dispensing Procedures”, Section 165:25-8-29; Part 11, “Miscellaneous Safety Requirements, Sections 165:25-8-35 and 165:25-8-36.

Subchapter 14, “Special Requirements for Underground Storage Tank Systems Utilized by Bulk Plant Facilities”: Part 1, “General Application and Compliance Provisions”, Section 165:25-14-1; Part 3, “Dispenser Requirements”, Section 165:25-14-7; Part 5, “Loading Facilities”, Sections 165:25-14-13 and 165:25-14-14; Part 7, “Tank Filling Procedures”, Section 165:25-14-20; Part 9, “Dispensing Procedures”, Sections 165:25-14-26 and 165:25-14-27.

2. Chapter 27 “Indemnity Fund. Subchapter 1, “General Provisions”, Section 165:27-1-2; Subchapter 5, “Qualifications for Reimbursement”, Section 165:27-5-2; Subchapter 7, “Reimbursement”, Sections 165:27-7-2 and 165:27-7-6.

3. Chapter 29 “Corrective Action of Petroleum Storage Tank Releases”:

Subchapter 1, “General Provisions”: Part 1, “Purpose and Statutory Authority”, Sections 165:29-1-1 and 165:29-1-2; Part 3, “Definitions”, Section 165:29-1-11; Part 5, “Scope of Rules”, Section 165:29-1-21; Part 7, “National Industry Codes”, Sections 165:29-1-31 and 165:29-1-32;.

Subchapter 3, “Release Prevention, Detection and Correction”: Part 1, “Release Prohibition, Reporting and Investigation”, Sections 165:29-3-1, 165:29-3-2 and 165:29-3-3; Part 3, “Removal and Closure of Petroleum Storage Tank Systems”, Section 165:29-3-65; Part 5, “Corrective Action Requirements”, Sections 165:29-3-71 through 165:29-3-76, Sections 165:29-3-78, 165:29-3-79, 165:29-3-80, 165:29-3-82 and 165:29-3-83.

(b) Copies of the Oklahoma regulations that are incorporated by reference are available from the State’s Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152-3390; Phone number: 405-521-4911; Website:

<https://www.sos.ok.gov/oar/Default.aspx>.

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[FR Doc. 2018-00039 Filed: 1/8/2018 8:45 am; Publication Date: 1/9/2018]