



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R06-UST-2018-0702; FRL-10008-89-Region 6]

Louisiana: 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 Louisiana'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 Louisiana'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: <https://www.regulations.gov>.* Follow the on-line instructions for submitting comments.

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

Instructions: Direct your comments to Docket ID No. EPA-R06-UST-2018-0702.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://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 <https://www.regulations.gov>, or e-mail. The Federal <https://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 <https://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. 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.

The index to the docket for this action is available electronically at www.regulations.gov.

You can view and copy the documents that form the basis for this codification and associated publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. The facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Audray Lincoln, Environmental Protection Specialist, at (214) 665-2239, before visiting the Region 6 office. 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. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Louisiana’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 October 2, 2018, in accordance with 40 CFR 281.51(a), Louisiana submitted a complete program revision application seeking approval for its UST program revisions which correspond to the EPA final rule published on July 15, 2015 (80 FR 41566). This rule 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 have determined that the revisions to Louisiana's UST program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281. Additionally, we have found that the Louisiana program provides for adequate enforcement of compliance as required by 40 CFR 281.11(b). Therefore, the EPA grants Louisiana 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 Louisiana Department of Environmental Quality (LDEQ) is the lead implementing agency for the UST

program in Louisiana, 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 Louisiana, 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. Louisiana did not receive any comments during its comment period when the rules and regulations being considered in this document 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 consider all comments received during the comment period and will address them in a later final rule. You will 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 Louisiana previously been approved?

On August 5, 1992, EPA finalized a rule approving the UST program submitted by

Louisiana to be implemented by LDEQ in lieu of the Federal program.¹ On January 18, 1996, EPA codified the approved Louisiana 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.²

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 and part 281, subpart D. The LDEQ has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under Louisiana Revised Statutes (La. R.S.), Title 30, Subtitle II, Environmental Quality; Chapter 1 – General, Chapter 2 – Department of Environmental Quality, Chapter 2-4 – Enforcement Procedure and Judicial Review, Chapter 4 – Louisiana Water Control Law, Chapter 9 – Hazardous Waste Control Law, and Chapter 12 – Liability for Hazardous Substance Remedial Action, Part I General Provisions.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Louisiana Administrative Code (LAC), Title 33, Part XI. Underground Storage Tanks, Chapter 15. Enforcement, Sections 1501.A, 1501.A.2, 1501.A.4, and 1501.B; LAC 33:XI. Chapter 5. General Operating Requirements, Section 509; LAC 33:XI. Chapter 1. Office of the Secretary, Chapter 7. Penalties; LAC 33:XI. Chapter 8. Expedited Penalty Agreement; and LAC 33:XI. Underground Storage Tanks, Chapter 4. Delivery Prohibition. The aforementioned regulations satisfy the requirements of 40 CFR 281.40 and

¹ 57 FR 34519 (August 5, 1992).

² 61 FR 1211 (January 18, 1996).

281.41.³

The LDEQ Enforcement Division requires that respondents provide 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 LDEQ Underground Storage Tank Division (USTD) investigates and provides responses to citizen complaints about violations. Additionally, the LDEQ Enforcement Division does not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation. Requirements for public participation can be found in the Louisiana Code of Civil Procedure, Article 1091; La.R.S.30:2025(E)(5), La.R.S.30:2026, La.R.S. 20:2050.4(B), La.R.S. 30:2050.7(B), (C), and (D); and LAC Title 33.XI.Chapter 7 at section 715(H). Louisiana 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 which was revised on July 15, 2015 (80 FR 41566).⁴ EPA added new operation and maintenance requirements and addressed UST systems which were deferred in the 1988 UST regulation. The changes also added secondary containment requirements for new and replaced tanks and piping, operator training requirements, periodic operation and maintenance requirements for UST systems, and requirements 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 LDEQ made updates to their regulations to ensure that they were no less stringent

³ Please see the TSD located in the docket for this rulemaking for a more in depth explanation of how the State's program satisfies the RCRA and its corresponding regulations.

⁴ See 40 CFR 281.11(b).

than the Federal regulations which were revised on July 15, 2015 (80 FR 41566). Title 40 CFR 281.30 through 281.39 contain 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 Louisiana 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:

Title 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. LAC 33:XI.101. Applicability, LAC 33:XI.301. Registration Requirements, LAC 33:XI.303. Standards for UST Systems, LAC 33:XI.305. Installation Requirements for Partially-Deferred UST Systems, LAC 33:XI.801. General Requirements, LAC 33:XI.509 Reporting and Recordkeeping, and LAC 33:XI.803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems 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.

Title 40 CFR 281.31 requires that most existing UST systems meet the design,

construction, installation, and notification requirements of §281.30, are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills, or are permanently closed. LAC 33:XI.303. Standards for UST Systems, LAC 33:XI.801. General Requirements, and LAC 33:XI.803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems contain the appropriate requirements that UST systems be upgraded to prevent releases during their operating life due to corrosion, spills, or overfills.

Title 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. These requirements are designed to prevent spills and overfills. LAC 33:XI.501. Spill and Overfill Control, LAC 33:XI.503. Operation and Maintenance of Corrosion Protection, LAC 33:XI.505. Compatibility, LAC 33:XI.507. Repairs Allowed, LAC 33:XI.509. Reporting and Recordkeeping, LAC 33:XI.511. Periodic Testing of Spill Prevention Equipment and Containment Sumps used for Interstitial Monitoring of Piping and Periodic Inspection of Overfill Prevention Equipment, LAX 33:XI.907.A. Assessing the Site at Closure or Change-in-Service, LAC 33:XI.705 Release Detection Recordkeeping, and LAC 33:XI.513. Periodic Operation and Maintenance Walkthrough Inspections contain the necessary general operating requirements required by 40 CFR 281.32.

Title 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. LAC 33:XI.701. Methods of Release Detection, LAC 33:XI.703. Requirements for Use of Release Detection Methods, and LAC 33:XI.803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems contain the necessary requirements for release detection as required by 40 CFR 281.33.

Title 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. LAC 33:XI.501. Spill and Overfill Control, LAC 33:XI.707. Reporting of Suspected Releases, LAC 33:XI.709. Investigation Due to Off-Site Impacts, LAC 33:XI.711 Release Investigation and Confirmation Steps, LAC 33:XI.715 Release Response and Corrective Action for UST Systems Containing Petroleum, Motor Fuel, or Hazardous Substances, and LAC 33:XI.713. Reporting and Cleanup of Spills and Overfills contain the necessary requirements as required by 40 CFR 281.34 for release reporting, investigation, and confirmation.

Title 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. LAC 33:XI.715. Release Response and Corrective Action for UST Systems Containing Petroleum, Motor Fuel, or Hazardous Substances contains the required provisions as listed in 40 CFR 281.35 for release response and corrective action.

Title 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. LAC 33:XI.803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems, LAC 33:XI.901. Applicability to Previously Closed UST Systems, LAC 33:XI.903. Temporary Closure, LAC 33:XI.905. Permanent Closure and Change-in-Service, and LAC 33:XI.907. Assessing the Site at Closure or Change-in-Service contain the necessary requirements as listed in 40 CFR 281.36 for out of service UST systems and closures.

Title 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. LAC 33:XI.Chapter 11. Financial Responsibility contains the necessary requirements as listed in 40 CFR 281.37 for financial responsibility for UST systems.

Title 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. LAC 33:XI.103. Definitions and La. R.S. 30:2277(4) contain the requirements for lender liability as listed in 40 CFR 281.38.

Title 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 LAC 33:XI.Chapter 6. Operator Training 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 than the Federal program:

Louisiana's definition of owner (LAC 33:XI.103. Definitions) includes the current owner of the land under which the tank is or was buried, any legal owner of the tank, any known operator of the tank, any lessee, and any lessor; and the definition provides that if one person defined as an owner complies it shall be deemed compliance by all persons defined as owners. The Federal definition does not include operators, lessees, or lessors as owners; thus, these elements of the State definition are broader in scope than the Federal program.

Louisiana provides definitions for on staff, registered tank, registration certificate, response action contractor and technical services in LAC 33:XI.103 that apply to state-specific program elements outside the scope of the Federal program.

Louisiana requires any person who acquires a UST system to pay all current and unpaid annual fees along with any late payment fees prior to receiving a registration certificate in LAC 33:XI.301.C.6. These fees are outside of the scope of the Federal program.

Louisiana requires annual fees for USTs in LAC 33:XI.307. These fees are outside of the scope of the Federal program.

Louisiana has specific regulations that pertain to the use of the Louisiana Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) (LAC 33:XI.1121). Louisiana requires the use of department-approved response action contractors for all assessment and remediation activities associated with UST releases that are covered by the MFUSTTF (LAC 33:XI. Chapter 12).

The last sentence of LAC 33:XI.715.A which requires all investigations and corrective actions to be conducted in accordance with the state-specific out of scope LAC 33:I. Chapter 13. Risk Evaluation/Corrective Action Program.

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:

Louisiana requires that UST owners use a specific registration form (UST-REG) which is more detailed than the EPA registration form. For example, a to-scale site diagram must accompany the UST-REG form for all installations and renovations. An updated UST-REG form must be submitted to LDEQ any time any of the information on the previously submitted registration form changes, and the State requires a phase-in schedule to ensure that all UST owners have submitted a UST-REG form prior to September 20, 2021 (LAC 33:XI.301.C.1 through 301.C.3). Additionally, Louisiana requires UST owners to keep a current copy of their registration form and registration certificate (LAC 33:XI.301.C.8 and 9).

Louisiana requires all UST systems installed between December 22, 1988 and December 20, 2008 located within 50 feet of an active or abandoned water well to meet the secondary containment requirements for hazardous substance UST systems (LAC 33:XI.303.B).

Louisiana requires all underground storage tanks and piping installed after December 20, 2008 to be secondarily contained and use interstitial monitoring (LAC 33:XI.303.C.1).

Louisiana requires under-dispenser containment for dispensers installed or replaced (when certain conditions apply) after December 20, 2008 (LAC 33:XI.303.D.4).

Louisiana requires secondary containment for submersible turbine pumps installed under certain conditions after December 20, 2008 (LAC 33:XI.303.D.5).

Louisiana regulations require that only State certified installers may certify the installation of a UST in Louisiana (LAC 33:XI.303.D.6.b) whereas in the Federal regulations (§280.20(e)) there are other allowable options.

Louisiana requires annual tank tightness testing for tanks that have had corrosion protection installed when the tank was over 10 years old and when tank integrity assessment records cannot be provided (LAC 33:XI.303.E.3.b.vi).

Louisiana requires that UST owners inspect, by removal, overfill devices within seven days of an overfill event (LAC 33:XI.501.D). Tank overfills caused by tank or manifold piping issues are not allowed in Louisiana, and the UST system must be immediately taken out of service and repaired, replaced, permanently closed, or placed into temporary closure following the procedures outlined in LAC 33:XI.711.A.1.a.ii (LAC 33:XI.501.E).

Louisiana requires UST owners and operators to notify the department prior to a repair unless the repair is an emergency repair, then notification is provided to the department within 30 days of the emergency. (LAC 33:XI.507.A.1).

Louisiana requires that after January 20, 1992, only contractors certified by the department under LAC 33:XI.Chapter 13 can perform certain UST repairs (LAC 33:XI.507.A.2).

Louisiana requires that if 25% or more of a piping run is replaced or repaired, the entire piping run must be replaced with secondarily contained piping and interstitial monitoring must be conducted on the piping run (LAC 33:XI.303.D.2.g and LAC 33:XI.507.A.7).

Louisiana requires retaining walkthrough inspection records for three years (LAC 33:XI.513.B).

Louisiana requires annual testing of shear valves to ensure that they operate properly (LAC 33:XI.515).

At LAC 33:XI.609 the State requires retraining Class A and B operators every three years.

Louisiana requires that the annual line leak detector tests ensure that the submersible turbine pumps do not run continuously (LAC33:XI.701.B.1.c.).

Louisiana requires UST owners and operators of temporarily closed UST systems that have internal liners that are not inspected within 1 year of the inspection due date or cannot be repaired in accordance with a code of practice permanently close the UST system (LAC 33:XI.903.A.4.a).

Louisiana requires all UST systems that store fuel solely for use by emergency power generators installed on or after August 9, 2009, to be secondarily contained and use interstitial monitoring (LAC 33:XI.101.A.1.c).

Louisiana requires that failed equipment must be repaired or replaced within 30 days of failing the test or inspection unless an alternative timeframe is granted by the department in writing (LAC 33:XI.511.D.1).

Louisiana requires that failed spill prevention equipment or containment sumps used for interstitial monitoring be repaired or replaced within 30 days of failing an inspection unless an alternative timeframe is granted by the department in writing (LAC 33:XI.513.C.1).

Louisiana has a specific minimum recordkeeping requirement for each release detection method (LAC 33:XI.705.A.2.a – 1).

Louisiana requires UST owners submit records of results of the investigation at permanent closure (LAC 33:XI.509.A.5), results of temporary closure site assessments (LAC 33:XI.509.A.6), and notifications before and after repairs (LAC 33:XI.509.A.8) to the department.

Louisiana requires that UST owners maintain records of corrosion expert's design documentation for field-installed corrosion protection systems (LAC 33:XI.509.B.1), most current registration forms (LAC 33:XI.509.B.5), type and construction of tank, piping, leak detection equipment, corrosion protection equipment, and spill and overfill equipment in use (LAC 33:XI.509.B.6), and shear valve inspection and testing (LAC 33:XI.509.B.11).

Louisiana prohibits the use of monthly inventory control or manual tank gauging (for certain size tanks) in combination with tightness testing (or its equivalent) conducted every five years as an acceptable form of monthly release detection after December 20, 2018 (LAC 33:XI.703.B.1.a.i).

Louisiana requires UST owners, operators, employees, agents, contractors, or assigns having knowledge of any of the listed conditions to notify the department and owners and operators to follow the release investigation and confirmation steps outlined in LAC 33:XI.711 whenever released substances are discovered at the UST site or surrounding area (LAC 33:XI.707.A.1), whenever an unusual operating condition is discovered (LAC 33:XI.707.A.2), and whenever a release detection method indicates that a release may have occurred or the interstitial space may have been compromised (LAC 33:XI.707.A.3).

Louisiana requires UST owners and operators of temporarily closed UST systems with galvanic systems that are not tested within 1 year of the test due date or are not repaired within 1 year of failing a CP test permanently close the UST system (LAC 33:XI.903.A.3.a).

Louisiana requires UST owners and operators submit a notification to the department whenever UST systems have been temporarily closed (LAC 33:XI.903.C.3).

Louisiana specifies that UST systems that do not meet new tank standards, have not been upgraded, and have been in temporary closure for more than 6 months must be permanently closed (LAC 33:XI.903.D).

Louisiana requires UST owners and operators conduct the release investigation and confirmation steps outlined in LAC 33:XI.711.A.1 in the event that the UST owner or operator goes directly into corrective action after a release occurs (LAC 33:XI.715.C.1.g).

Louisiana requires UST owners and operators to conduct a site assessment whenever all UST systems located in the same tank hold at a facility have been in temporary closure for 24 months under certain conditions (LAC 33:XI.903.E).

Louisiana requires UST owners and operators conduct tank, line, and leak detector testing within 5 days of bringing a temporarily closed UST system back into service (LAC 33:XI.903.F).

Louisiana requires that UST owners and operators to notify the department prior to UST system installation in LAC 33:XI.303.D.6.c.

Louisiana requires UST owners and operators submit a notification to the department within 30 days of bringing a temporarily closed UST system back into service (LAC 33:XI.903.G).

Louisiana requires UST owners and/or certified workers notify the department prior to any UST system closure-critical junctures (LAC 33:XI.905.A.2).

Louisiana requires use of DEQ-approved certified workers for all UST system closure-critical junctures (LAC 33:XI.905.A.3).Louisiana prohibits the re-use of single-walled piping that was attached to a tank that is permanently closed (LAC 33:XI.905.B).

Louisiana requires UST owners and operators of temporarily closed UST systems with impressed current systems that are inoperative for more than 6 months or not repaired within 9 months of failing a CP test have the CP system repaired, re-tested, and recommissioned under supervision of a corrosion expert within 90 days or permanently close the UST system (LAC 33:XI.903.A.1.a).

Louisiana requires conducting UST system closure site assessments in accordance with the department's UST closure guidance document in order to determine if there are any present or any past releases, does not allow the use of release detection device sampling to satisfy the closure assessment requirement, and requires UST owners and operators submit the results of the closure site assessment to the department within 60 days following permanent closure or change-in-service (LAC 33:XI.907.A).

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

Louisiana 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 Louisiana's UST program?

The EPA incorporated by reference Louisiana's then approved UST program effective March 18, 1996 (61 FR 1211; January 18, 1996). In this document, the EPA is revising 40 CFR 282.68 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 Louisiana 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 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 Louisiana'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 Louisiana UST program addressed in this direct final rule become final. The document incorporates by reference Louisiana's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Louisiana 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 Louisiana program.

The EPA is incorporating by reference the Louisiana approved UST program in 40 CFR 282.68. Section 282.68(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.68 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 Louisiana'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 Louisiana procedural and enforcement authorities. Section 282.68(d)(1)(ii) of 40 CFR lists those approved Louisiana 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. Title 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 282.68(d)(1)(iii) of the codification simply lists for reference and clarity the Louisiana 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 Louisiana'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 Louisiana'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 DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

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: April 30, 2020.

Kenley McQueen,
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 § 282.68 to read as follows:

§ 282.68 Louisiana State-Administered Program.

(a) *History of the approval of Louisiana's program.* The State of Louisiana 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 Louisiana Department of Environmental Quality, 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 Louisiana underground storage tank base program effective on September 4, 1992. A subsequent program revision application was approved effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Louisiana 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) *Retaining program approval.* To retain program approval, Louisiana 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 Louisiana 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) *Final program approval.* Louisiana has final approval for the following elements of its program application originally submitted to EPA and approved effective September 4, 1992, and the program revision application approved by EPA effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations—(i) Incorporation by reference.* The provisions cited in this paragraph (d)(1)(i) 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 Louisiana UST regulations that are incorporated by reference in this paragraph (d)(1)(i) from the Louisiana Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804-9095; Phone number: (225) 342-5015; website:

<https://www.doa.la.gov/Pages/osr/lac/LAC-33.aspx>; or Louisiana Department of Environmental Quality’s website: <http://www.deq.louisiana.gov/resources/category/regulations-lac-title-33>.

You may inspect all approved material at the EPA Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270 (phone number (214) 665-2239) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email fedreg.legal@nara.gov or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “Louisiana Regulatory Requirements Applicable to the Underground Storage Tank Program, September 2019”. Those provisions are listed in appendix A to this part.

(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:

(I) Louisiana Revised Statutes, Title 30, Subtitle II, Environmental Quality

(Environmental Quality Act):

(i) Chapter 2. Department of Environmental Quality, Section 2011. Department of Environmental Quality created; duties; powers; structure, paragraphs (A) through (C), (D) introductory paragraph through (D)(10), (D)(13) through (D)(15), (D)(17) through (D)(23), (D)(25), and (E) through (G); Section 2012. Enforcement inspections; Section 2025.

Enforcement; Section 2026. Citizen suits; Section 2030. Confidential information; restricted access via the Internet; Section 2043. Public records; forms and methods; electronic signatures.

(ii) Chapter 2-A. Enforcement Procedure and Judicial Law, Section 2050.4. Enforcement; final action; Section 2050.7. Enforcement; settlement or compromise; Section 2050.8.

Enforcement; cease and desist orders.

(iii) Chapter 4. Louisiana Water Control Law, Section 2077. Remediation of pollution;

(iv) Chapter 9. Hazardous Waste Control Law, Section 2194. Underground Storage Tanks; registration, paragraphs (C) introductory paragraph, (B)(6), (B)(8), (B)(9), (B)(15), and (C) through (E); Section 2194.1. Prohibitions; Section 2195.9 Financial responsibility; 2195.10 Financial responsibility for noncompliance; 2195.11 Voluntary cleanup; private contracts; exemptions.

(v) Chapter 12, Liability for Hazardous Substance Remedial Action, Part I. General provisions, Section 2277. Defenses, Subsection (4).

(2) Louisiana Code of Civil Procedure Section 4 Intervention, Article 1091 Third person may intervene.

(B) The regulatory provisions include:

(I) Louisiana Administrative Code, Title 33; effective September 20, 2018:

(i) Part I. Office of the Secretary, Chapter 7 – Penalty Regulations, Chapter 8 – Expedited Penalty Regulations, Chapter 13 – Risk Evaluation/Corrective Action Program Regulations, Chapter 39 – Notification Regulations and procedures for Unauthorized Discharges, section 3915 Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions and section 3923 Notification Requirements for Other Regulatorily Required Reporting.

(ii) Part XI. Underground Storage Tanks, Chapter 3, section 301.C.9 through C.12; Chapter 4 Delivery Prohibition, section 401 purpose and section 403 delivery prohibition of regulated substances to underground storage tank systems; Chapter 7. Methods of Release Detection and Release reporting, Investigation, Confirmation, and Response, section 715.H public participation; Chapter 15. Enforcement.

(2) [Reserved]

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

(A) Louisiana Revised Statutes, Title 30, Subtitle II, Environmental Quality (Environmental Quality Act).

(B) Louisiana Administrative Code, Title 33, Part XI. Underground Storage Tanks, Chapter 1, Section 103, definitions of *owner (as it refers to operators, lessees, or lessors as owners), on staff, registered tank, registration certificate, response action contractor, and technical services*; Chapter 3, Sections 301. C.6, Section 307; Chapter 7, Section 715.A; Chapter 11, Section 1121; Chapter 12; Chapter 13.

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of Louisiana on September 12, 1991 and September 27, 2018, 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 October 9, 1991 and as part of the program revision application for approval on October 2, 2018 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 October 9, 1991 and as part of the program revision application on October 2, 2018, 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 Louisiana Department of Environmental Quality, signed by the EPA Regional

Administrator on May 8, 2019 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 Louisiana to read as follows:

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

* * * * *

Louisiana

(a) The regulatory provisions include:

Louisiana Administrative Code, Title 33, Part XI. Underground Storage Tanks; effective September 20, 2018:

1. Chapter 1. Program Applicability and Definitions

Section 101. Applicability

Section 103. Definitions except for sections a.i, iv, and v of the definition of *owner*; and the definitions of *on staff*, *registered tank*, *response action contractor*, and *technical services*

2. Chapter 3. Registration Requirements, Standards, and Fee Schedule

Section 301. Registration Requirements, all sections except 301.C.6

Section 303. Standards for UST Systems

Section 305. Installation Requirements for Partially-Deferred UST Systems

3. Chapter 5. General Operating Requirements

Section 501. Spill and overfill Control

Section 503. Operation and Maintenance of Corrosion Protection

Section 505. Compatibility

Section 507. Repairs Allowed

Section 509. Reporting and Recordkeeping

Section 511. Periodic Testing of Spill Prevention Equipment and Containment Sumps
used for Interstitial Monitoring of Piping and Periodic Inspection of Overfill Prevention
Equipment

Section 513. Periodic Operation and Maintenance Walkthrough Inspection

4. Chapter 6. Training Requirements for Underground Storage Tank System Operators

Section 601. Purpose

Section 603. Underground Storage Tank Operator Classes

Section 605. Acceptable UST Operator Training and Certification Processes

Section 607. Underground Storage Tank Operator Training Deadlines

Section 609. Underground Storage Tank Operator Training Frequency

Section 611. Documentation of Underground Storage Tank Operator Training

5. Chapter 7. Methods of Release Detection and Release Reporting, Investigation,
Confirmation, and Response

Section 701. Methods of Release Detection

Section 703. Requirements for Use of Release Detection Methods

Section 705. Release Detection Recordkeeping

Section 707. Reporting of Suspected Releases

Section 709. Investigation Due to Off-Site Impacts

Section 711. Release Investigation and Confirmation Steps

Section 713. Reporting and Cleanup of Spills and Overfills

Section 715. Release Response and Corrective Action for UST Systems Containing Petroleum, Motor Fuel, or Hazardous Substances, all sections except the last sentence of 715.A, and 715.H

6. Chapter 8. UST Systems with Field-Constructed tanks and Airport Hydrant Fuel Distribution Systems

Section 801. General Requirements

Section 803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems

7. Chapter 9. Out-of-Service UST Systems and Closure

Section 901. Applicability to Previously Closed UST Systems

Section 903. Temporary Closure

Section 905. Permanent Closure and Changes-in-Service

Section 907. Assessing the Site at Closure or Change-in-Service

8. Chapter 11. Financial responsibility

Section 1101. Applicability

Section 1103. Compliance Dates

Section 1105. Definition of Terms

Section 1107. Amount and Scope of Required Financial Responsibility

Section 1109. Allowable Mechanisms and Combinations of Mechanisms

Section 1111. Financial Test of Self-Insurance

Section 1113. Guarantee

Section 1115. Insurance and Risk Retention Group Coverage

Section 1117. Surety Bond

Section 1119. Letter of Credit

Section 1123. Trust Fund

Section 1125. Standby Trust Fund

Section 1127. Substitution of Financial Assurance Mechanisms by Owner or Operator

Section 1129. Cancellation or Nonrenewal by a Provider of Financial Assurance

Section 1131. Reporting by Owner or Operator

Section 1133. Recordkeeping

Section 1135. Drawing on Financial Assurance Mechanisms

Section 1137. Release from the Requirements

Section 1139. Bankruptcy or Other Incapacity of Owner or Operator or provider of
Financial Assurance

Section 1141. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

(b) Copies of the Louisiana UST regulations that are incorporated by reference are available from the Louisiana Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804-9095; Phone number: (225) 342-5015; website:

<https://www.doa.la.gov/Pages/osr/lac/LAC-33.aspx>; or Louisiana Department of Environmental Quality's website: *<http://www.deq.louisiana.gov/resources/category/regulations-lac-title-33>*.

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