



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R06-UST-2018-0703; FRL-10011-49-Region 6]

New Mexico: 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 New Mexico'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 New Mexico'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 Subtitle I of RCRA sections 9005 and 9006 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 AFTER 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-2018-0703. 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 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.

The index to the docket for this action is available electronically at <https://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 <https://www.regulations.gov> or at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. This facility is open from 8:30 a.m. to 4:00 p.m. Monday through Friday excluding Federal holidays and facility closures. 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 New Mexico'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), 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 11, 2018, in accordance with 40 CFR 281.51(a), New Mexico 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 regulations and to the 1988 State program approval (SPA) regulations. 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 New Mexico's UST program and determined they are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and the New Mexico program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants New Mexico 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 New Mexico Environment Department (NMED) is the lead implementing agency for the UST program in New Mexico, 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 New Mexico, 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. New Mexico received comments during its comment period when the rules and regulations in this document were being considered and were proposed at the State level. All comments were addressed at the public hearing and/or are reflected in the adopted regulations. No opposing testimony was presented during the public hearing before the New Mexico Environmental Improvement Board on February 21 and 22, 2018.

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

Along with this direct final rule, 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 New Mexico previously been approved?

On September 17, 1990, EPA finalized a rule approving the UST program submitted by New Mexico in lieu of the Federal program. On January 18, 1996, EPA codified the approved New Mexico 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 NMED has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under the following New Mexico Statutes: Department of Environment Act, NMSA 1978, sections 9-7A-1 to 9-7A-15; Environmental Improvement Act, NMSA 1978 sections 74-1-1 to 74-1-17; Hazardous Waste Act, NMSA 1978, sections 74-4-1 to 74-4-14; Ground Water Protection Act, NMSA 1978, sections 74-6B-1 to 74-6B-14; Petroleum Products Loading Fee Act, NMSA 1978, sections 7-13A-1 to 7-13A-7; Tax Administration Act, NMSA 1978 sections 7-1-6; 7-1-6.1; 7-1-6.25; 7-1-6.39; 7-1-13.1; Gasoline Tax Act, NMSA 1978 sections 7-13-3; 7-13-4; and Special Fuels Supplier Tax Act, NMSA 1978 sections 7-16A-3.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Title 20 Chapter 5 of the New Mexico Administrative Code (NMAC), Parts 101 through 125 as amended effective July 24, 2018. The aforementioned

regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

New Mexico's Petroleum Storage Tank Bureau (PSTB) invites and encourages public participation. PSTB provides notice and opportunity for public comment on all proposed rules. The PSTB investigates and requires petroleum storage tank owners and operators to provide notice about contaminants and submissions of final remediation plans. Requirements for public participation and notification can be found in the New Mexico State Rules Act, NMSA 1978 section 14-4-5.2, and 20.1.1 NMAC, 20.1.9 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC. Additionally, the New Mexico Ground Water Protection Act, NMSA 1978 section 74-6B-4 created an advisory committee, the Storage Tank Committee, that may review corrective actions and payments from the corrective action fund. Storage Tank Committee meetings are public meetings, and information on upcoming meetings is provided through legal notices in local and statewide newspapers as well as notices on the PSTB website pursuant to New Mexico's Open Meetings Act, NMSA 1978 sections 10-15-1 to 10-15-4. The PSTB submits semi-annual information to EPA, and all records pertaining to NMED PSTB-regulated UST systems and release sites are available to the EPA upon request. New Mexico 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 regulations. 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, 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 NMED 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). Title 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 New Mexico Special Assistant 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 101, 102, 106, 113, and 114 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 requirements of 281.30, are upgraded to prevent releases for their operating life due to corrosion, spills, or

overfills, or are permanently closed. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 106, 113, and 114 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. Parts NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, 107, 108, 113, and 114 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 108, 113, and 114 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 118 contains 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 119 and 120 contain 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Parts 114 and 115 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 117 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 124 contains 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. NMAC Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, Part 104 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 scope than the Federal program:

At 20.5.103 NMAC, New Mexico assesses an annual fee of \$100 per tank and at 20.5.102.202 NMAC, requires that all regulated UST systems be registered within 60 days of placing a regulated substance in the tank.

At 20.5.509 NMAC, New Mexico requires UST Installers provide proof of two years out of the last three years of experience in the installation, modification, repair, and replacement of UST systems. The UST Installers must pass a New Mexico Laws and Rules exam, an on-site exam that includes the complete installation of a UST system in order to gain their certification, and provide proof of passing a national technical UST installer's test administered by an approved certification educator. New Mexico requires UST Junior Installers to provide proof of one year of experience in the last three years of field experience in the installation, modification, replacement, or repair of spill and overfill prevention equipment. Junior UST installers must pass a New Mexico Laws and Rules exam, and provide proof of passing a national technical UST installer's test administered by an approved certification educator.

At 20.5.106.614 NMAC, New Mexico requires owners and operators who install loading racks to design and construct them in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

NMED requires that all corrective action activities be performed by a qualified firm in accordance with 20.5.122 NMAC. All corrective action activities must be pre-approved in writing prior to any work being completed pursuant to 20.5.119.1900.G NMAC and 20.5.120.2000.G NMAC and be performed by a qualified firm pursuant to 20.5.119.1900.H NMAC and 20.5.120.2000.H NMAC.

At 20.5.115.1501.C(3), 1501.E and 1501.G [for field-erected AST systems only] NMAC New Mexico includes multiple requirements specific to aboveground storage tanks (ASTs) that are broader in scope than the Federal program which does not regulate these types of tanks systems.

At 20.5.115.1501.F(3) NMAC the State requires that owners/operators of temporarily closed tanks to pay all annual tank fees and accrued late fees prior to bringing a tank back into service. All fees are broader in scope.

At NMSA 1978 section 74-4-4.4 New Mexico requires registration, certification, and fee payment for classes of individuals defined as tank installers and testers that are not included in the Federal program.

At NMSA 1978 section 74-6B-9 the State assesses a storage tank fee to be paid by tank owners and operators.

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 regulatory provisions are considered more stringent in coverage than the Federal program:

20.5.102.206.A(20) NMAC requires that new registrations must be submitted on a PSTB approved registration form and include specific tank details including whether any part of the system is within 1,000 feet of a water supply well, certified installer signature, and owner signature. Registration certificates are valid for one year and issued upon payment of tank fees due July 1 of each year and/or upon registration of a new tank system. Owners and operators

may not operate tanks without a valid registration certificate and may be found out of substantial compliance when a release has occurred and may be denied access to the corrective action fund (CAF) if a valid registration has not been obtained.

At 20.5.115.1500 NMAC New Mexico requires that owners and operators of regulated UST systems must notify PSTB at least 30 days prior to a permanent closure, temporary closure, return to service, change in service, or removal of a tank and/or lines by submitting to PSTB a 30-Day Notification Form. Federal regulations require that owners and operators of regulated underground storage tank systems provide 30-day notification if their intent is to permanently close or make the change-in-service, unless such action is in response to corrective action.

At 20.5.115.1501.G NMAC, the State requires owners and operators of field-constructed UST systems that have been in temporary closure for 3 months or more to perform an internal inspection, perform a tightness test on all piping, and perform functionality testing.

New Mexico requires all UST systems installed on or after April 4, 2008 to be double walled and use interstitial monitoring for release detection for tanks and/or piping (20.5.106.606(B) and 205.107.702(C) NMAC).

New Mexico requires a mechanism to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity or automatically stops the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity (20.5.106.613.A(2) NMAC). In addition to these options, Federal regulations also allow UST owners to meet this requirement by restricting the flow 30 minutes prior to overfilling, alerting the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product due to overfilling. New Mexico does not allow the use of this additional option.

New Mexico requires owners and operators to perform inspections of containment sumps as part of their monthly walk-through inspections (20.5.107.707(A)(3) NMAC).

New Mexico requires owners and operators of UST systems that have been in temporary closure for 12 months or more to perform a site assessment, empty the tank(s) to less than one inch of a regulated substance, and pay all outstanding tank fees. Also, UST systems that have been in delivery prohibition for more than 12 months are required to permanently close in accordance with the requirements in 20.5.115 NMAC (20.5.115.1501(D) and (F) NMAC).

New Mexico requires owners and operators who use Statistical Inventory Reconciliation (SIR) for release detection on underground pressurized piping to conduct an annual line tightness test, whereas in Federal owners may choose to use another form of monthly monitoring instead. The line tightness test must be able to detect a release of 0.1 gallons per hour at one and half times the operating pressure (20.5.108.810.B NMAC).

New Mexico requires owners and operators to submit a written report within 14 days of the discovery or confirmations of a release (20.5.119.1903.B NMAC and 20.5.120.2003.B NMAC).

New Mexico also regulates underground storage tank systems at marinas (20.5.106.611 NMAC).

New Mexico regulates hybrid storage tank systems in the same manner as airport hydrant systems and UST systems with field-constructed tanks. (See specifically, 20.5.114 NMAC at sections 1403(D), 1404, 1405, 1407, 1408(C), 1409, 1410, 1412, 1413, and 1414.)

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

New Mexico 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 RCRA sections 9005 and 9006 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 New Mexico's UST program?

The EPA incorporated by reference New Mexico's then approved UST program effective March 18, 1996 (61 FR 1216; January 18, 1996). In this document, the EPA is revising 40 CFR 282.81 to include the approved revisions.

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 New Mexico 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 <https://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 New Mexico'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 New Mexico UST program addressed in this direct final rule become final. The document incorporates by reference New Mexico's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved New Mexico 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 New Mexico program.

The EPA is incorporating by reference the New Mexico approved UST program in 40 CFR 282.81. Section 282.81(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.81 also references the Attorney General's Statement, the Demonstration of Procedures for Adequate Enforcement, 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 New Mexico's codification on enforcement?

The EPA retains the authority under Subtitle I of RCRA sections 9003(h), 9005 and 9006, 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 New Mexico procedural and enforcement authorities. Section 282.81(d)(1)(ii) of 40 CFR lists those approved New Mexico 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 scope 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 282.81(d)(1)(iii) of the codification simply lists for reference and clarity the New Mexico statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified today. Provisions that are "broader in scope" 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 New Mexico'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 New Mexico'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.

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.

Dated: July 20, 2020.

Kenley McQueen,
Regional Administrator, 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 § 282.81 to read as follows:

§ 282.81 New Mexico State-Administered Program.

(a) *History of the approval of New Mexico's Program.* The State of New Mexico 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 New Mexico Environment Department, 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 New Mexico underground storage tank base program effective on November 16, 1990. 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.* New Mexico 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 Subtitle I of RCRA sections 9003(h), 9005 and 9006, 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, New Mexico must revise its approved program to adopt new changes to the Federal subtitle I program which make it more stringent, in accordance with RCRA section 9004, 42 U.S.C. 6991c, and 40 CFR part 281,

subpart E. If New Mexico obtains approval for the revised requirements pursuant to RCRA section 9004, 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.* New Mexico has final approval for the following elements of its program application originally submitted to EPA and approved effective November 16, 1990, 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 New Mexico 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 New Mexico regulations that are incorporated by reference in this paragraph from New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number: (505)-476-7941; Website <http://164.64.110.134/nmac/>. 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) “EPA-Approved New Mexico Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program”, June 2020. Only those provisions that have been approved by EPA are incorporated by reference. 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: New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018:

(1) *Tax Administration Act*, section 7-1-6.25;

(2) *Department of Environment Act*, sections 9-7A-2(A) through (C), 9-7A-3 through 9-7A-12;

(3) *Open Meetings Act*, sections 10-15-1 through 10-15-4;

(4) *Inspection of Public Records Act*, sections 14-2-1 through 14-2-12;

(5) *State Rules Act*, section 14-4-5.2;

(6) *Environmental Improvement Act*, sections 74-1-2, 74-1-3(A), (B), (D), and (F), 74-1-4 through 74-1-6, 74-1-7(A) introductory paragraph and (A)(13), 74-1-8(A) introductory paragraph and (A)(13), 74-1-8.1, 74-1-9, 74-1-10;

(7) *Hazardous Waste Act*, sections 74-4-2, 74-4-3(A) through (D), (F), (M), (N), (Q), and (V), 74-4-4 (except (A), (J), and (K)), 74-4-4.3, 74-4-4.8, 74-4-5, 74-4-7, 74-4-8, 74-4-10, 74-4-11(C), 74-4-12 through 74-4-14; and

(8) *Groundwater Protection Act*, sections 74-6B-2 through 74-6B-8, 74-6B-13, 74-6B-14.

(B) The regulatory provisions include: New Mexico Administrative Code (NMAC) Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, as amended effective July 24, 2018: Part 107 General Operating Requirements for Underground Storage Tank Systems, section

20.5.107.712 Department Review and Approval of Plans, Installation, Operation, and Maintenance;

Part 116 Delivery Prohibition; Part 123 Corrective Action Fund Administration; and Part 125 Administrative Review.

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

(A) New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018: Hazardous Waste Act, section 74-4-4.4; and Groundwater Protection Act, section 74-6B-9 and 74-6B-10.

(B) New Mexico Administrative Code (NMAC) Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks, as amended effective July 24, 2018: Part 102, section 202 New Storage Tank Systems; Part 103 Annual Fee; Part 105 Certification of Tank Installers and Junior Installers; Requirements for Testers, section 509 Experience Requirements; Part 106 New and Upgraded Underground Storage Tank Systems: Design, Construction, and Installation, section 20.5.106.614 Loading Racks; Part 115 Out-of-Service Storage Tank Systems and Closure, sections 1501.C(3), 1501.E, 1501.F(3), and 1501.G [for field-erected AST systems only]; Part 119 Corrective Action for Storage Action Tank Systems Containing Petroleum Products, sections 20.5.119.1900.G and 20.5.119.1900.H; Part 120 Corrective Action for UST Systems Containing Other Regulated Substances, sections 20.5.120.2000.G and 20.5.120.2000.H; and Part 122 Qualification of Persons Performing Corrective Action.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed by the Special Assistant Attorney General of New Mexico June 25, 1990, and revisions to that Statement dated October 5, 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 “Adequate Enforcement of Compliance” submitted as part of the original application on September 25, 1989 and as part of the program revision application for approval on October 11, 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 September 25, 1989 and as part of the program revision application October 11, 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 New Mexico Environment Department, signed by the EPA Regional Administrator on July 29, 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 New Mexico to read as follows:

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

* * * * *

New Mexico

(a) The statutory provisions include: New Mexico Statutes Annotated (NMSA) 1978, as amended through May 16, 2018 (2018 Cumulative Supplement): Chapter 74, Environmental Improvement, Article 4 Hazardous Waste, sections 74-4-3(J), (R), and (S).

(b) The regulatory provisions include: New Mexico Administrative Code (NMAC), as amended effective July 24, 2018: Title 20 Environmental Protection, Chapter 5 Petroleum Storage Tanks:

Part 101: General Provisions – Sections 20.5.101.2 “Scope”; 20.5.101.7 “Definitions” (except “above ground storage tank” and “AST system”);

Part 102: Registration of Tanks – Sections 20.5.102.200 “Existing Tanks”, 20.5.102.201 “Transfer of Ownership”, and , 20.5.102.203 “Substantially Modified Storage Tank Systems” through 20.5.102.207 “Registration Certificate”;

Part 104: Operator Training – Sections 20.5.104.400 “Classes of Operators” through 20.5.104.412 “Documentation and Recordkeeping”;

Part 105: Certification of Tank Installers and Junior Installers; Requirements for Testers – Sections 20.5.105.500 “General Requirements for Installer of UST Systems” through 20.5.105.508 “Individual Certification for Junior Installer of UST Systems”, and 205.105.510 “On-Site Examination for Installer” through 20.5.105.520 “Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks and Hybrid Storage Tank Systems”;

Part 106: New and Upgraded Underground Storage Tank Systems: Design, Construction, and Installation – Sections 20.5.106.600 “General Performance Standards for UST Systems”

through 20.5.106.613 “Spill and Overfill Protection”, and 20.5.106.615 “Required Notification Prior to Installation” through 20.5.106.617 “Alternate Methods”;

Part 107: General Operating Requirements for Underground Storage Tank Systems - Sections 20.5.107.700 “Operation and Maintenance of Underground Storage Tank Systems” through 20.5.107.711 “Required Notification Prior to Replacement, Repair and Modification”; 20.5.107.713 “Alternate Methods” through 20.5.107.715 “Reporting”;

Part 108: Release Detection For Underground Storage Tank Systems – Sections 20.5.108.800 “General Release Detection Requirements for UST Systems” through 20.5.105.816 “Reporting”;

Part 113 Underground Storage Tank Emergency Generator Systems – Sections 20.5.113.1300 “General Requirements” through 20.5.113.1308 “Reporting”;

Part 114: Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks, and Hybrid Storage Tank Systems – Sections 20.5.114.1400 “General Requirements for Airport Hydrant Fuel Distribution Systems, UST Systems with Field-Constructed Tanks, and Hybrid Storage Tank Systems” through 20.5.114.1414 “Reporting”;

Part 115: Out-of-Service Storage Tank Systems and Closure – Sections 20.5.115.1500 “Required Notification Prior to Temporary or Permanent Closure, Return to Service, Removal, or Change in Service”; 20.5.115.1501 “Out-of-Service Storage Tank Systems and Closure” (except 20.5.115.1501.C(3), 1501.E, 1501.F(3), and 1501.G [for field-erected AST systems only]); and 20.5.115.1502 “Permanent Closure” through 20.5.115.1506 “Closure Records”;

Part 117: Financial Responsibility – Sections 20.5.117.1700 “Applicability”; 20.5.117.1703 “Amount and Scope of Required Financial Responsibility” through 20.5.117.1772 “Form Document for Drawing on Financial Assurance Mechanisms”;

Part 118: Reporting and Investigation of Suspected and Confirmed Releases – Sections 20.5.118.1800 “Reporting of Spill or Release” through 20.5.118.1803 “Spills and Overfills”;

Part 119: Corrective Action for Storage Tank Systems Containing Petroleum Products – Sections 20.5.119.1900 “General” (except 20.5.119.1900.G and 20.5.119.1900.H) through 20.5.119.1933 “Reporting”;

Part 120: Corrective Action for UST Systems Containing Other Regulated Substances – Sections 20.5.120.2000 “General” (except 20.5.120.2000.G and 20.5.120.2000.H) through 20.5.120.2030 “Reporting”;

Part 121: Corrective Action Fund Use and Expenditures – Sections 20.5.121.2100 “Permissible Fund Expenditures” through 20.5.121.2106 “Reserved Money”; and

Part 124: Lender Liability – Sections 20.5.124.7 “Definitions” through 20.5.124.2405 “Operating a Storage Tank or Storage Tank System After Foreclosure”.

(c) Copies of the New Mexico regulations that are incorporated by reference are available from the New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number: (505)-476-7941; Website <http://164.64.110.134/nmac/>.

* * * * *

[FR Doc. 2020-16273 Filed: 8/27/2020 8:45 am; Publication Date: 8/28/2020]