



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R01-UST-2018-0085; FRL-9996-56-Region 1]

Massachusetts: Final Approval of State Underground Storage Tank Program Revisions, Codification, 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 Massachusetts' Underground Storage Tank (UST) program submitted by the Massachusetts Department of Environmental Protection (MassDEP). This action also codifies EPA's approval of Massachusetts' 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 comments, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of **[INSERT**

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

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

1. Federal *eRulemaking Portal*: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail*: coyle.joan@epa.gov.
3. *Mail*: Joan Coyle, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912.
4. *Hand Delivery or Courier*: Deliver your comments to Joan Coyle, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 007-1), Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA-R01-UST-2018-0085. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal Web site, <http://www.regulations.gov>, is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will

be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, 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.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, might be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy.

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; by appointment only; tel: (617) 918-1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Joan Coyle, (617) 918-1303,
coyle.joan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Massachusetts' Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States that 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 UST program. Either EPA or the approved state may initiate program revision. 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. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

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

The responsibility for administering the underground storage tank program was transferred from the Massachusetts Department of Fire Services (DFS) to the Massachusetts Department of Environmental Protection (MassDEP), effective July 1, 2009. The transfer was authorized by the Massachusetts Legislature in Chapter 4 of the Acts of 2009, which also established M.G.L c 210, *Operation and Removal of Underground Storage Tanks*. On January 2, 2015, MassDEP adopted UST regulations (310 CMR 80.00) that maintained the basic requirements established by DFS (Board of Fire Prevention Regulations 527 CMR 9.00) and authorized by EPA in 1995.

On March 17, 1995, effective April 17, 1995 (60 FR 14371), EPA approved the State's UST program administered by the DFS. Effective December 30, 1996 (61 FR 56135), EPA codified the Massachusetts' statutes and regulations comprising the state's approved UST program, incorporating by reference those approved provisions that EPA could enforce. When the new state UST regulations, 310 CMR 80.00, became effective on January 2, 2015, the existing DFS regulations that were enforceable by EPA were withdrawn. At that time, EPA

determined that until the State updates, revises, adopts, and receives approval for their DEP UST regulations to meet the EPA final rule published on July 15, 2015 (80 FR 41566), EPA does not have the authority to enforce the State's current regulations. For that reason, the EPA seeks to approve the revised Massachusetts program at this time and to incorporate by reference those provisions that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. On June 21, 2017, in accordance with 40 CFR 281.51(a), Massachusetts submitted a complete application for final approval of its UST program revisions corresponding to the statutory and regulatory requirements established by Subtitle I of RCRA in effect in 1988, not including those outlined in the EPA final rule that was published on July 15, 2015. EPA concludes that the application and revisions to Massachusetts' UST program are no less stringent than the corresponding federal requirements in subpart C of 40 CFR part 281 promulgated in 1988 and that the Massachusetts program provides for adequate enforcement of compliance with these requirements (40 CFR 281.11(b)). Therefore, the EPA grants Massachusetts approval to operate its UST program with the revisions described in the program approval application.

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 today's rule are already effective in Massachusetts, and they are not changed by today's 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?

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an

opportunity for public comment now.

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

Along with this direct final, the EPA is publishing a separate document in the “Proposed Rules” section of this Federal Register that serves as the proposal to approve the State’s UST program revision, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes 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 Massachusetts previously been approved?

On March 17, 1995, the EPA finalized a rule approving the UST program, effective April 17, 1995, to operate in lieu of the Federal program. On October 31, 1996, effective December 30, 1996, the EPA codified the approved Massachusetts program, incorporating by reference the state statutes and regulatory provisions that are 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 today’s action?

On June 21, 2017, in accordance with 40 CFR 281.51(a), Massachusetts submitted a complete application for final approval of its UST program revisions adopted on January 2, 2015. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Massachusetts’ UST program revision satisfies all of the

requirements necessary to qualify for final approval. Therefore, EPA grants Massachusetts final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR §281.30, New UST Systems and Notification	310 CMR 80.04; 80.14; 80.16 – 80.23
40 CFR §281.31, Upgrading Existing UST Systems	310 CMR 80.19; 80.21; 80.22
40 CFR §281.32, General Operating Requirements	310 CMR 80.03; 80.04; 80.18; 80.22; 80.27; 80.28; 80.29; 80.30; 80.33; 80.36
40 CFR §281.33, Release Detection	310 CMR 80.03; 80.04; 80.19; 80.26; 80.31
40 CFR §281.34, Release Reporting, Investigation, and Confirmation	310 CMR 80.26; 80.31 – 80.33; 80.38; 80.39
40 CFR §281.35, Release Response and Corrective Action	310 CMR 80.33; 310 CMR 80.38 – 80.40
40 CFR §281.36, Out-of-service Systems and Closure	310 CMR 80.42; 80.43; 310 CMR 80.46; 80.47
40 CFR §281.37, Financial Responsibility for USTs Containing Petroleum	310 CMR 80.04; 80.36; 80.53 – 80.57; 80.59; 80.60
40 CFR §281.40, Legal Authorities for Compliance Monitoring	310 CMR 80.10; 80.13
40 CFR §281.41, Legal Authorities for Enforcement Response	310 CMR 80.50

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR §281.11(b) and part 281, Subpart D. The MassDEP has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Massachusetts General Laws, Chapter 21O, Operation and Removal of Underground Storage Tanks; Massachusetts General Laws, Chapter 21E, Massachusetts Oil and Hazardous Material Release Prevention and Response Act; and Massachusetts General Laws, Chapter 21J, Underground Storage Tank Petroleum Product Cleanup Fund.

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, and are therefore not enforceable as a matter of federal law:

No underground tank which has been used for the keeping or storage of flammable or combustible fluids shall be removed or relocated unless a permit has first been obtained from the state fire marshal or the official designated by it to grant permits in the city, town or district where such tank is located.

Owners and operators of UST systems containing low level radioactive waste or its mixture with hazardous waste regulated by the Nuclear Regulatory Commission and the Department of Public Health must ensure that the UST systems will prevent releases due to corrosion or structural failure, be cathodically protected against corrosion, be constructed of non-corrodible material, and be constructed or lined with material that is compatible with the stored regulated substance.

Massachusetts requires that consumptive use (CU) tanks of 1,100 gallons or less must comply with release response requirements and, if installed on and after March 21, 2008, be double walled and equipped with continuous interstitial monitoring. Consumptive use tanks greater than 1,100 gallons must comply with most of the regulatory requirements, except financial responsibility and registration. If CU tanks greater than 1,100 gallons were installed before January 1, 1989, they must meet most requirements except the leak detection and the corrosion protection requirements.

Farm and residential tanks having a capacity of 1,100 gallons or less used exclusively for the storage of motor fuel must be double walled and must comply with release response

requirements.

Emergency spill or overflow UST systems must be double walled and comply with registration and release response requirements. They must also be emptied within 72 hours of the introduction of regulated substances.

Owners or operators must maintain, until the UST system is removed or permanently closed, a scaled drawing or set of as-built plans prepared by the installer or a registered professional engineer, of all UST systems installed on and after January 2, 2015, with specific information.

Owners and operators of most UST systems are required to hire Third-Party Inspectors (TPIs) to conduct compliance inspections of those systems every three years. MassDEP's TPI Certification Program requires that qualified individuals must pass a written exam and meet certain minimum eligibility requirements, are certified for five years, and need to apply for renewal at least 90 days before their current certifications expire

Owners or operators of all UST systems must submit a performance-based compliance certification to the Department in accordance with the *Environmental Results Program Certification* requirements.

Owners and operators must ensure that at least one certified Class A, B, and C operator is designated to each UST system.

Massachusetts requires that an owner or operator hire a Licensed Site Professional (LSP) to work on their behalf to oversee the assessment and cleanup of contaminated properties.

Massachusetts provisions that are broader in scope than the federal program are not incorporated by reference and are not part of the federally-approved program.

More Stringent Provisions

The following statutory and regulatory provisions are considered more stringent than the federal program and are therefore enforceable as a matter of federal law:

All single-walled steel tanks in-service and temporarily out-of-service must be permanently closed and removed from the ground, or be permanently closed in-place, by August 7, 2017, except for consumptive use tanks, and tanks that were relined prior to August 8, 2007.

New tanks installed after January 1, 1989, are required to be double walled with interstitial monitoring.

Regulated substance piping installed in UST systems after January 1, 1989, except European suction systems and siphon lines between tanks, are required to be installed with secondary containment.

Groundwater monitoring is not permitted as a form of release detection.

After January 2, 2017, owners and operators may no longer use soil vapor monitoring as a primary form of release detection.

Emergency generator tanks are required to have release detection.

Regulated substance dispensers installed, repaired, or replaced on or after March 21, 2008 must be equipped with a dispenser sump that is continuously monitored with a dispenser sump sensor.

Tanks installed after March 21, 2008, that have a submersible pump must be equipped with a turbine sump that is continuously monitored with a sump sensor.

Turbine, intermediate, and dispenser sumps must pass a tightness test at installation to ensure the sump is liquid tight.

Spill buckets must be at least five gallons in capacity, if installed after January 2, 2015.

Spill buckets must pass a tightness test at installation.

On or after January 2, 2015, new or replacement ball float valves are prohibited from being used as the primary overfill prevention device.

All high-level alarms installed on and after January 2, 2015 must be visible and audible, and be clearly labeled as a tank overfill alarm.

Massachusetts requires all UST systems, regardless of the amount of regulated product received at one time, to have a spill bucket and an overfill prevention device.

All submersible pumps that do not have a turbine containment sump shall be visually inspected every 30 days.

Single-walled and double-walled sumps without continuous monitoring sensors in the sump, and single-walled and double-walled sumps with continuous monitoring that do not meet criteria in 80.27(5)(b)1- (b) 3 must be inspected every 90 days.

All turbine, intermediate and dispenser sumps shall be tested on or before January 2, 2017 to ensure the sump is liquid tight by using vacuum or hydrostatic testing.

Spill buckets must be tested to ensure the spill bucket is liquid tight by using vacuum or hydrostatic testing on or before January 2, 2017 and once every five years thereafter.

Overfill prevention equipment must be inspected and tested as required by the manufacturer's specifications to verify that the overfill protection is operational, or if no manufacturer's specifications exist, annually.

If sacrificial or galvanic anode cathodic protection systems test results indicate a negative voltage of between -0.85 and -0.90, the system shall be tested annually.

Impressed current cathodic protection systems must be tested every 12 months.

All cathodic protection systems must be tested within 60 days of a repair.

Owners or operators of regulated tanks that are not double-walled and do not have continuous monitoring must conduct daily and monthly inventory monitoring, with the exception of emergency generator tanks installed before January 2, 2015.

On and after January 1, 2018, tank and piping/line tightness testing shall be capable of detecting a release or leakage of 0.05 gallon per hour.

Financial responsibility must be maintained and demonstrated for UST systems containing hazardous substances.

When an UST system is taken temporarily out of service, all regulated substances must be removed from the tank and the UST rendered inert. Vent lines must be kept open and functioning and all other lines capped, locked, and secured.

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 statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state 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 Massachusetts' UST program?

EPA incorporated by reference the Massachusetts DFS approved UST program effective December 30, 1996 (61 FR 56135; October 31, 1996). In this document, EPA is revising 40 CFR 282.71 to include the approval revision actions.

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

Incorporation by reference: 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 Massachusetts statutes and regulations 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 at the EPA Region 1 office (see the **ADDRESSES** section of this preamble for more information).

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

EPA is incorporating by reference the Massachusetts approved UST program in 40 CFR 282.71. Section 282.71(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.71 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. These documents are not incorporated by reference.

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

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake 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 Massachusetts procedural and enforcement authorities. Section 282.71(d)(1)(ii) of 40 CFR lists those approved Massachusetts 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 scope" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in 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 scope than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.71(d)(1)(iii) of the codification simply lists for reference and clarity the Massachusetts 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 Massachusetts' UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (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 today's final approval of Massachusetts' revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

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

D. Executive Order 13132: Federalism

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

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

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

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

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

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as

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

H. Executive Order 12988: Civil Justice Reform

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

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

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

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

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

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

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective *[insert date 60 days after the date of publication in the Federal Register]* because it is a direct final rule.

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

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: June 20, 2019.

Deborah A. Szaro,
Acting Regional Administrator,
EPA Region 1.

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 § 282.71 to read as follows:

§ 282.71 Massachusetts State-Administered Program.

(a) The State of Massachusetts 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 Massachusetts Department Environmental Protection (MassDEP), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR Part 281 of this

Chapter. EPA approved the Massachusetts program on March 3, 1995, which was effective on April 17, 1995.

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

(c) To retain program approval, Massachusetts must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Massachusetts 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 notification of any change will be published in the Federal Register.

(d) Massachusetts has final approval for the following elements of its program application originally submitted to EPA and approved effective April 17, 1995, 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 material cited in this paragraph, and listed in appendix A to part 282, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Massachusetts statutes and regulations that are incorporated by reference in this paragraph from the

State Bookstore, State House, Room 116, Boston, MA 02133; Phone number: 617-727-2834;

Hours: Monday-Friday, 8:45am to 5:00pm; website:

<http://www.sec.state.ma.us/spr/sprcat/catidx.htm>

(A) “Massachusetts Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, March 2019.”

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) Massachusetts General Laws, Chapter 21A, *Executive Office of Energy and Environmental Affairs*, Section 16, Civil Administrative Penalties.

(2) Massachusetts General Laws, Chapter 21E, *Massachusetts Oil and Hazardous Material Release Prevention and Response Act (2014)*, Sections 4 through 6, 8 through 12 and 15 through 18.

(3) Massachusetts General Laws, Chapter 21J, *Underground Petroleum Product Cleanup Fund*, Chapters 11 through 14.

(4) Massachusetts General Laws, Chapter 21O, *Operation and Removal of Underground Storage Tanks*, Section 4, Sections 6 through 9.

(B) The regulatory provisions include:

(1) Code of Massachusetts Regulations, 310 CMR 80, *Underground Storage Tank (UST) Systems*: 80.10 Duty to Provide Information; 80.12 Presumption of Irreparable Harm; 80.13,

Department Access to UST Facilities and Records; 80.48, Delivery Prohibition; 80.50, Enforcement and Appeals.

(2) Code of Massachusetts Regulations, 310 CMR 40, *Massachusetts Contingency Plan*: 40.0010, Effect of Orders and Appeals; 40.0011, Confidentiality of Information; 40.0013, Presumption of Irreparable Harm; 40.0019, Violations of Environmental Restrictions; 40.0020, Violations of a Permanent Solution or Temporary Solution; 40.0021, Unlawful Interference with Response Actions; 40.0050, Appeals of Orders and Permits; 40.0051, Appeals Relative to Administrative Penalties; 40.0160, Departmental Notice to Responsible Parties and Potentially Responsible Parties; 40.0165, Department Request for Information (RFI); 40.0166, Department Right of Entry; 40.0171, Failure to Perform a Response Action.

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the Massachusetts' UST program 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) *Massachusetts General Laws, Chapter 210: Operation and Removal of Underground Storage Tanks*, Section 1, Removal or relocation of underground flammable or combustible fluid tanks; permits; abandoned underground residential tanks; *Massachusetts General Laws, Chapter 21E: Massachusetts Oil and Hazardous Material Release Prevention and Response Act*, Sections 3A, 3B, Sections 13, 14, and 19 through 22;

(B) *Code of Massachusetts Regulations, Title 310 CMR Chapter 80, Underground Storage Tank Systems*: General Provisions Section, Applicability, 80.04(6)(c), (8) through (12); Design, Construction and Installation Requirements Section, 80.16(7); Requirements for Compliance Certification Section, 80.34; Class A, B, and C Operator Requirements and

Certifications, 80.37; Third Party Inspections Section, 80.49; *310 CMR Chapter 40, Massachusetts Contingency Plan: Subpart B: Organization and Responsibilities, The Role of Licensed Site Professionals* Section, 40.0169; and other provisions of Chapter 40.0000 Subparts A–P insofar as they do not relate to underground storage tanks and with respect to underground storage tanks insofar as they are broader in scope than the federal requirements.

(2) *Statement of Legal Authority.* The Attorney General’s Statements, signed by the Attorney General of Massachusetts on August 18, 1993, and March 2, 2017, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on October 5, 1992, and as part of the program revision application for approval on June 21, 2017 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on October 5, 1992, and as part of the program revision application on June 21, 2017, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the Massachusetts Department of Environmental Protection, signed by the EPA Regional Administrator on November 21, 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.*

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

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

* * * * *

Massachusetts

(a) The statutory provisions include:

Massachusetts General Laws, Part I, Title II

1. Chapter 21E, *Massachusetts Oil and Hazardous Material Release Prevention and Response Act*

Section 1: Short title; Section 2: Definitions; Section 3: Implementation; regulations; response actions; Section 7: Notice of release or threat of release.

2. Chapter 21O, *Operation and Removal of Underground Storage Tanks*

Section 2: Notification of operation of underground storage tanks; definitions; Section 3: Notification of operation of underground storage tanks; requirements; exceptions; Section 5: Notification of operation of underground storage tanks; regulations for requirements and standards of tanks;

(b) The regulatory provisions include:

1. *Code of Massachusetts Regulations, Title 310 CMR Chapter 80, Underground Storage Tank Systems*: (effective January 2, 2015)

General Provisions Section, 80.01: Authority; 80.02: Purpose; 80.03: Definitions; 80.04: Applicability, (1) through (13), except (6)(c), and (8) through (12); 80.05: Rules of Construction; 80.06: Computation of Time; 80.07: Accurate and Timely Submittals to the Department and

Record Keeping; 80.08: Accurate and Complete Record Keeping; 80.09: Accurate Monitoring; 80.11: Submittals to the Department.

Design, Construction and Installation Requirements Section, 80.14: General Requirements; 80.15: General Prohibitions; 80.16: Installation Requirements, except (7); 80.17: Specifications for Tanks; 80.18: Specifications for Regulated Substance Piping; 80.19: Leak Detection; 80.20: Requirements for Turbine, Intermediate and Dispenser Sumps; 80.21: Requirements for Spill Buckets and Overfill Prevention Equipment; 80.22: Requirements for Corrosion Protection.

General Operating Requirements Section, 80.23: Requirements for Registration and Reporting; 80.24: General Requirements; 80.25: Requirements for a UST system or UST Component Emergency Response; 80.26: Requirements for Leak Detection Systems; 80.27: Requirements for Turbine, Intermediate and Dispenser Sumps; 80.28: Requirements for Spill Buckets and Overfill Prevention Equipment; 80.29: Requirements for Corrosion Protection; 80.30: Requirements for Compatibility; 80.31: Requirements for Inventory Monitoring; 80.32: Requirements for Tank and Pipe/Line Tightness Testing; 80.33: Requirements for Repairs and Replacements; 80.35: Requirements for Monthly Inspections; 80.36: Requirements for Recordkeeping.

Leakage and Release: Response, Reporting and Remediation Section, 80.38: Response to a Release; 80.39: Response to Leakage; 80.40: Reportable Releases.

Change-In-Product, Out of Service Systems and Closure Section, 80.41: Requirements for Change-in-product; 80.42: Requirements for Taking a UST System Temporarily Out-of-service; 80.43: Requirements for Removal and Permanent Closure In-place; 80.44: Requirements for Out-of-use UST Systems; 80.45: Requirements for Bringing Out-of-use UST Systems Back

into Service; 80.46: Requirements for Previously Closed-in-place UST Systems; 80.47: Standards for Cleaning and Closure.

Financial Responsibility Section, 80.51: Definitions; 80.52: Requirements for Amount and Scope of Financial Responsibility; 80.53: Allowable Mechanisms and Combinations of Mechanisms; 80.54: Requirements for Financial Responsibility Mechanisms; 80.55: Requirements for a Standby Trust; 80.56: Substitution of Financial Assurance Mechanisms by Owner or Operator; 80.57: Cancellation or Nonrenewal by a Provider of Financial Assurance; 80.58: Requirements for Reporting by Owner or Operator; 80.59: Requirements for Recordkeeping; 80.60: Requirements for Drawing on Financial Assurance Mechanisms; 80.61: Release from Financial Responsibility Requirements; 80.62: Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance; 80.63: Requirements for Replenishment of Local Government Guarantees, Letters of Credit, or Surety Bonds.

2. *Code of Massachusetts Regulations, Title 310 CMR Chapter 40: Massachusetts Contingency Plan* (effective April 24, 2014) only insofar as they pertain to the regulation of underground storage tanks in Massachusetts and only insofar as they are incorporated by reference and are not broader in scope than the federal requirements. Note that reserved sections of 310 CMR 40.0000 *et seq.* are not incorporated by reference:

Subpart A: General Provisions, except 40.0010 through 40.0013, 40.0016, 40.0019 through 40.0021, 40.0050, 40.0051; Subpart B: Organization and Responsibilities, except 40.0160, 40.0165, 40.0166, 40.0169, 40.0171); Subpart C: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Material; Subpart D: Preliminary Response Actions and Risk Reduction Measures; Subpart E: Tier Classification and Response Action Deadlines; Subpart H: Comprehensive Response

Actions; Subpart I: Risk Characterization; Subpart J: Permanent and Temporary Solutions; Subpart K: Audits; Subpart L: Cost Recovery, Lien Hearings and Petitions for Reimbursement of Incurred Costs; Subpart M: Administrative Record; Subpart N: Public Involvement and Technical Assistance Grants.

(c) Official copies of the Massachusetts statutes and regulations that are incorporated by reference, are available at: State Bookstore, State House, Room 116, Boston, MA 02133; Phone number: 617-727-2834; Hours: Monday-Friday, 8:45am to 5:00pm; website: <http://www.sec.state.ma.us/spr/sprcat/catidx.htm>

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