



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 282**

**[EPA-R06-UST-2018-0704; FRL-10009-03-Region 6]**

### **Texas: 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 Texas'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 Texas's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

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

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

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

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

2. *E-mail:* [lincoln.audray@epa.gov](mailto:lincoln.audray@epa.gov).

*Instructions:* Direct your comments to Docket ID No. EPA-R06-UST-2018-0704. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal <https://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov).

You can view and copy the documents that form the basis for this codification and associated publicly available docket materials are available either through [www.regulations.gov](http://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 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Audray Lincoln, Environmental Protection Specialist, at (214) 665-2239, before visiting the Region 6 office. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Audray Lincoln, (214) 665-2239, [lincoln.audray@epa.gov](mailto: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 Texas’s Underground Storage Tank Program**

*A. Why are revisions to state programs necessary?*

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank

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

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

On October 15, 2018, in accordance with 40 CFR 281.51(a), Texas submitted a complete program revision application seeking approval for its UST program revisions corresponding to the EPA final rule published on July 15, 2015 (80 FR 41566) which finalized revisions to the 1988 UST regulation and to the 1988 State program approval (SPA) regulation. As required by 40 CFR 281.20, the State submitted the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations.

We have reviewed the application and have determined that the revisions to Texas's UST program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281 and the Texas program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Texas 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 Texas Commission on Environmental Quality (TCEQ) is the lead

implementing agency for the UST program in Texas, 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 Texas, 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. Texas did not receive any comments during its comment period when the rules and regulations being considered today were proposed at the State level.

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

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

*F. For what has Texas previously been approved?*

On April 17, 1995, EPA finalized a rule approving the UST program submitted by Texas

to be implemented by TCEQ in lieu of the Federal program<sup>1</sup>. On March 18, 1996, EPA codified the approved Texas 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<sup>2</sup>.

*G. What changes are we approving with this action?*

In order to be approved, the program must provide for adequate enforcement of compliance as described in 40 CFR 40 CFR 281.11 and part 281, Subpart D. The TCEQ has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under Texas Water Code (TWC), as amended, effective October 2018, Title 2, Water Administration: Subtitle A, Executive Agencies, Chapter 5, Texas Commission on Environmental Quality and Chapter 7, Enforcement; Subtitle D, Water Quality Control, Chapter 26, Water Quality Control.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Texas Administrative Code (TAC), Title 30 Environmental Quality, Part I Texas Commission on Environmental Quality, Chapter 334 Underground and Aboveground Storage Tanks, as amended effective through May 31, 2018. The aforementioned regulations satisfy the requirements of 40 CFR 281.40 and 281.41<sup>3</sup>.

The TCEQ Office of Compliance and Enforcement requires that respondents provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions, except where immediate emergency action is necessary to adequately protect human

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<sup>1</sup> 60 FR 14372 (March 17, 1995).

<sup>2</sup> 61 FR 1223 (January 18, 1996).

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

health, safety, and the environment. The TCEQ investigates and provides responses to citizen complaints about violations. Requirements for public participation can be found in the Texas Government Code Chapter 552, the Texas Water Code at Chapters 5 and 7, and TAC Title 30 Part I, Texas Commission on Environmental Quality, Chapter 334 at section 334.82. Texas 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)<sup>4</sup>. EPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulation. The changes also added secondary containment requirements for new and replaced tank and piping, operator training requirements, periodic operation and maintenance requirements for UST systems, requirement to ensure UST system compatibility before storing certain biofuel blends. It removed past deferrals for emergency generator tanks, field constructed tanks and airport hydrant systems.

The TCEQ made updates to their regulations to ensure that they were no less stringent than the Federal regulations which were revised on July 15, 2015 (80 FR 41566). 40 CFR 281.30 through 281.39 contain the "no less stringent than" criteria that a State must meet in order to have its UST program approved. In the State's application for approval of its UST program, the Texas 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

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<sup>4</sup> See 40 CFR 281.11(b).

rulemaking. The corresponding State regulations are as follows:

40 CFR 281.30 lists the Federal requirements for new UST system design, construction, installation, and notification with which a State must comply in order to be found to be no less stringent than Federal requirements. 30 TAC 334.1 Applicability, 334.2 Definitions, 334.5 General Prohibitions for Underground Storage Tanks (USTs) and UST Systems, 334.7 Registration for Underground Storage Tanks (USTs) and UST Systems, 334.8 Certification for Underground Storage Tanks (USTs) and UST Systems, 334.10 Reporting and Recordkeeping, 334.44 Implementation Schedules, 334.45 Technical Standards for New Underground Storage Tank Systems, 334.46 Installation Standards for New Underground Storage Tank Systems, 334.49 Corrosion Protection, 334.50 Release Detection, 334.51 Spill and Overfill Prevention and Control, and 334.71 Applicability and Deadlines 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 sections also require UST system owners and operators to notify the implementing agency of any new UST systems, including instances where one assumes ownership of an existing UST.

40 CFR 281.31 requires that most existing UST systems meet the requirements of 281.30, are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills, or are permanently closed. 30 TAC 334.1(b) and 334.71(a) Applicability, 334.44. Implementation Schedules, 334.47 Technical Standards for Existing Underground Storage Tank Systems, 334.49 Corrosion Protection, 334.50 Release Detection, and 334.52 Underground Storage Tank System Repairs and Relining contain the appropriate requirements that UST systems be upgraded to

prevent releases during their operating life due to corrosion, spills, or overfills.

40 CFR 281.32 contains the general operating requirements that must be met in order for the State's submission to be considered no less stringent than the Federal requirements. 30 TAC 334.7 Registration for Underground Storage Tanks (USTs) and UST Systems, 334.10 Reporting and Recordkeeping, 334.42 General Standards, 334.45 Technical Standards for New Underground Storage Tank Systems, 334.48 General Operating and Management Requirements, 334.49 Corrosion Protection, 334.50 Release Detection, 334.51 Spill and Overfill Prevention and Control, and TAC 334.52 Underground Storage Tank System Repairs and Relining contain the necessary general operating requirements required by 40 CFR 281.32.

40 CFR 281.33 contains the requirements for release detection that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 334.1 Purpose and Availability, 334.48 General Operating and Management Requirements, 334.50 Release Detection, and 334.71 Applicability and Deadlines contain the necessary requirements for release detection as required by 40 CFR 281.33.

40 CFR 281.34 contains the requirements for release reporting, investigation, and confirmation that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 334.72 Reporting of Suspected Releases, 334.73 Investigation Due to Off-Site Impacts, 334.74 Release Investigation and Confirmation Steps, and 334.75 Reporting and Cleanup of Surface Spills and Overfills contain the necessary requirements as required by 40 CFR 281.34 for release reporting, investigation, and confirmation.

40 CFR 281.35 contains the requirements for release response and corrective action that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 334.76 Initial Response to Releases, 334.77 Initial Abatement Measures

and Site Check, 334.78 Site Assessment, 334.79 Removal of Non-Aqueous Phase Liquids, 334.80 Investigation for Soil and Groundwater Cleanup, 334.81 Corrective Action Plan, and 334.82 Public Participation contain the required provisions as listed in 40 CFR 281.35 for release response and corrective action.

40 CFR 281.36 contains the requirements for out of service UST systems and closures that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 334.1 Purpose and Applicability, 334.50 Release Detection, 334.54 Temporary Removal from Service, 334.55 Permanent Removal from Service, 334.56 Change to Exempt or Excluded Status, and 334.71 Applicability and Deadlines contain the necessary requirements as listed in 40 CFR 281.36 for out of service UST systems and closures.

40 CFR 281.37 contains the requirements for financial responsibility for UST systems containing petroleum that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 37.371 Local Government Financial Test, 37.381 Local Government Guarantee, and Chapter 37, Subchapter I, Financial Assurance for Petroleum Underground Storage Tanks (37.801 through 37.895) contain the necessary requirements as listed in 40 CFR 281.37 for financial responsibility for UST systems.

40 CFR 281.38 contains the requirements for lender liability that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC 334.15 Limits on Liability of Lender contains the requirements for lender liability as listed in 40 CFR 281.38.

40 CFR 281.39 contains the requirements for operator training that must be met in order for the State's submission to be considered no less stringent than Federal requirements. 30 TAC Chapter 334 Subchapter N (334.601 through 334.606) Operator Training contains the

requirements for operator training as required by 40 CFR 281.39.

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

*Broader in Scope Provisions*

The following statutory and regulatory provisions are considered broader than the Federal program:

Texas includes in their statutes references to the broader in scope aboveground storage tank program. The following provisions are broader in scope because they contain references to Aboveground Storage Tanks (ASTs) or apply only to ASTs: Texas Water Code, Title 2, Subtitle D, Chapter 26: Water Quality Control, Sections 26.341(b)(1), 26.342(9), (12)(A), (14), (15), 26.344, 26.3441, 26.345, 26.346, 26.349, 26.351, 26.3511, 26.3514 through 26.3516, 26.354 through 26.356, and 26.358.

The following provisions from Texas Water Code, Title 2, Subtitle D, Chapter 26: Water Quality Control are broader in scope than the Federal program for the reasons stated:

These items are associated with the State-only clean up and remediation funds – Sections 26.342(2), (4), (16), and (18), 26.3512, 26.3571, 26.3573, 26.35731, and 26.361;

The provision at 26.342(16-a) is associated with the State-only broader in scope contaminated soil program;

The provisions at 26.3574 and 26.35745 are associated with fees and reporting for State-only fees;

The provisions at 26.364 through 26.367 are associated with the State-only registration of contractors who perform or supervise corrective action; and

The provisions at 26.451, 26.452 and 26.456 describe State-only occupational licensing and registration for occupations not covered under the Federal program.

The Texas regulatory provisions definition section at 30 TAC 334.2 contains a definition (at 334.2(4)) and references to Aboveground Storage Tanks (ASTs) that are broader in scope than the Federal program.

At Section 334.9 Texas requires a tank seller to disclose to a purchaser certain obligations with respect to State notification and other regulatory information.

At Sections 334.15 and 334.18 there are references to ASTs that are broader in scope than the Federal program.

State fees are generally broader in scope. Texas includes state-specific fee requirements at 30 TAC 334.19 Fee on Delivery of Petroleum Product, Subchapter B. Underground Storage Tank Fees (TAC 334.21 through 334.23).

Texas includes a State-only Reimbursement Program at 30 TAC Chapter 334, Subchapter H. Reimbursement Program (TAC 334.301 through 334.322) and Subchapter M. Reimbursable Cost Specifications for the Petroleum Storage Tank Reimbursement Program. These are State-only programs with no Federal counterparts and are broader in coverage.

Texas includes State-only licensing and registration of occupations that are not included in the Federal program at 30 TAC Chapter 334 Subchapter I. Underground Storage Tank On-site Supervisor Licensing and Contract Registration (TAC 334.401, 334.407, and 334.424).

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 than the Federal rules and are included in the state's federally approved program:

Texas requires that professional engineers and geoscientists be licensed by the State (30 TAC 334.10(a)(10)).

Texas requires owners and operators to maintain records for five years (30 TAC 334.51(c)(2) and 334.48(g)(3)(A)&(B)). This is longer than the three years required by the federal rules at 40 CFR 280.35(c), therefore the Texas requirement is more stringent.

Texas requires that all corrective action services be performed by or be coordinated by a person or entity registered as a corrective action specialist (30 TAC 334.451(b)).

Texas does not allow exceptions to the secondary containment requirements for piping that are allowed by the Federal program (at 40 CFR 280.252(a)); therefore, the State is more stringent with respect to this requirement (30 TAC 334.45(d)(1)(E)).

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

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

**II. Codification**

*A. What is codification?*

Codification is the process of placing a State's statutes and regulations that comprise the State's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the

EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of State programs in 40 CFR part 282 and incorporates by reference State regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

*B. What is the history of codification of Texas' UST program?*

The EPA incorporated by reference Texas' then approved UST program effective March 18, 1996 (61 FR 1223; January 18, 1996). In this document, the EPA is revising 40 CFR 282.93 to include the approval revision actions.

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

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Texas rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://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 Texas'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 Texas UST program addressed in this direct final rule become

final. The document incorporates by reference Texas's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Texas 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 Texas program.

The EPA is incorporating by reference the Texas approved UST program in 40 CFR 282.93. Section 282.93(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.93 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA.

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

The EPA retains the authority under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogs to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Texas procedural and enforcement authorities. Section 282.93(d)(1)(ii) of 40 CFR lists those approved Texas authorities that would fall into this category.

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

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.93(d)(1)(iii) of the codification simply lists for reference and clarity the Texas statutory and regulatory provisions which are "broader in coverage" than the Federal program and which are not, therefore, part of the approved program being codified today. Provisions that are "broader in coverage" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

### **III. Statutory and Executive Order Reviews**

This action only applies to Texas'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 Texas's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

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

*D. Executive Order 13132: Federalism*

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

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

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997),

because it is not economically significant and it does not make decisions based on environmental health or safety risks.

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

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

*G. National Technology Transfer and Advancement Act*

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

*H. Executive Order 12988: Civil Justice Reform*

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

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

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

### *J. Paperwork Reduction Act*

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

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

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

### *L. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days

after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective [*insert date 60 days after the date of publication in the Federal Register*] because it is a direct final rule.

**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, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: May 5, 2020.

**Kenley McQueen,**

*Regional Administrator, EPA Region 6.*

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

## **PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS**

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

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

2. Revise § 282.93 to read as follows:

### **§ 282.93 Texas State-Administered Program.**

(a) *History of the approval of Texas's program.* The State of Texas 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 Texas Department of Environmental Quality, was approved by EPA pursuant to 42 U.S.C. 6991c and Part 281 of this Chapter. EPA published the notice of final determination approving the Texas underground storage tank base program effective on April 17, 1995. 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.* Texas has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retaining program approval.* To retain program approval, Texas must revise its approved program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281,

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

(d) *Final program approval.* Texas 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 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 Texas UST regulations that are incorporated by reference in this paragraph from Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123; Phone: 1-888-728-7677; Web site: <http://legalsolutions.thomsonreuters.com> or the Texas Secretary of State office website at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=30&pt=1&ch=334\\_](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=334_). 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 this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “EPA-Approved Texas Regulatory Requirements Applicable to the Underground Storage Tank Program, October 2019”. Those provisions are listed in Appendix A to Part 282.

(B) [Reserved]

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

(A) The statutory provisions include:

(1) Texas Water Code, as amended, effective October 2018. Title 2, Water Administration, Subtitle A, Executive Agencies:

(i) Chapter 5. Texas Commission on Environmental Quality, Subchapter B. Organization of the Texas Natural Resource Conservation Commission, Section 5.012, Subchapter D. General Powers and Duties of the Commission, Sections 5.103, and 5.105; Subchapter E. Administrative Provision for Commission, Sections 5.173, 5.176, 5.1765, and 5.177; Subchapter L. Emergency and Temporary Orders, Sections 5.510, 5.511, 5.515, and 5.516;

(ii) Chapter 7. Enforcement, Subchapter A, General Provisions, Sections 7.002 and 7.006; Subchapter B. Corrective Action and Injunctive Relief, Section 7.032; Subchapter C. Administrative Penalties, Sections 7.053 and 7.075; Subchapter D. Civil Penalties, Sections 7.101, 7.102, 7.103, 7.105, 7.106, 7.107, 7.108, and 7.110; Subchapter E. Criminal Offenses and Penalties, Sections 7.149 and 7.156.

(2) Texas Water Code, as amended, effective October 2018. Title 2, Water Administration, Subtitle D, Water Quality Control: Chapter 26. Water Quality Control, Subchapter B, General Powers and Duties, Sections 26.011, 26.013, 26.014, 26.015, 26.0151, 26.017, 26.019, 26.020, 26.021, 26.022, 26.039, and 26.042; Subchapter D. Prohibition Against Pollution; Enforcement, Sections 26.341 (except 26.341(b)(1), 26.342 (except 26.342(2), (4), (5), (16), (16-a), (18), and references to aboveground storage tanks at (9), (12), (14), (15), 26.343 (except 26.343(a)(1)), 26.344 (except reference to aboveground storage tanks), 26.3441, 26.345

(except reference to aboveground storage tanks), 26.346 (except reference to aboveground storage tanks), 26.3465, 26.3467, 26.347, 26.348, 26.349 (except reference to aboveground storage tanks), 26.350, 26.351 and 26.3511 (except references to aboveground storage tanks), 26.3512 (except reference to petroleum storage tank remediation account), 26.3513, 26.3514 through 26.3516 (except references to aboveground storage tanks), 26.352, 26.354 through 26.356 (except references to aboveground storage tanks), 26.357, 26.3572, 26.35735, 26.359, 26.362 and 26.363.

(B) The regulatory provisions include:

(1) Texas Administrative Code, Title 30, Part I. Texas Commission on Environmental Quality, Chapter 334 Underground and Aboveground Storage Tanks, effective May 31, 2018, Section 334.14 Memorandum of Understanding between the Attorney General of Texas and the Texas Natural Resource Conservation Commission, 334.82 Public Participation, and 334.83 Enforcement.

(2) [Reserved]

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

(A) Texas Water Code, as amended, effective October 2018, Title 2, Water Administration, Subtitle D, Water Quality Control: Chapter 26 Water Quality Control, Sections 26.341(b)(1), 26.342(2), 26.342(4), 26.342(9) as it applies to aboveground storage tanks, 26.342(12) as it applies to aboveground storage tanks, 26.342(14) and 26.342(15) as they apply to aboveground storage tanks, 26.342(16), 26.342(16-a), 26.342(18), 26.343(a)(1), 26.344 as it

applies to aboveground storage tanks, 26.3441, 26.345 and 26.346 as they apply to aboveground storage tanks, 26.349 as it applies to aboveground storage tanks, 26.351 and 26.3511 as they apply to aboveground storage tanks, 26.3512 as it applies to petroleum storage tank remediation account, 26.3514 through 26.3516 as they apply to aboveground storage tanks, 26.354 through 26.356 as they apply to aboveground storage tanks, 26.3571, 26.3573, 26.35731, 26.3574, 26.35745, 26.358, 26.361, 26.364 through 26.367; Subchapter K. Occupational Licensing and Registration, Sections 26.451, 26.452 and 26.456.

(B) Texas Administrative Code, Title 30, Part I. Texas Commission on Environmental Quality, Chapter 334 Underground and Aboveground Storage Tanks, effective May 31, 2018: Sections 334.2 “Definitions” as applied to aboveground storage tanks (ASTs), 334.9 “Seller’s Disclosure”, 334.19 “Fee on Delivery of Petroleum Product, 334.21 “Fee Assessment” through 334.23 “Disposition of Fees, Interest, and Penalties”, 334.121 “Purpose and Applicability for Aboveground Storage Tanks (ASTs)” through 334.132 “Other General Provisions for Aboveground Storage Tanks (ASTs)”, 334.201 “Purpose, Applicability, and Deadlines” through 334.208 “Model Institutional Controls”, 334.301 “Applicability of this Subchapter” through 334.322 “Subchapter H Definitions”, 334.401 “License and Registration Required”, 334.407 “Other Requirements for an Underground Storage Tank Contractor”, 334.424 “Other Requirements for an On-site Supervisor” and 334.560 “Reimbursable Cost Specifications”.

(2) *Statement of legal authority.* The Attorney General’s Statements, signed by the Attorney General of Texas on January 11, 1994 and October 22, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on April 28, 1994 and as part of the program revision application for approval on October 15, 2018 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on April 28, 1994 and as part of the program revision application on October 15, 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 Texas Department of Environmental Quality, 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 Texas to read as follows:

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

\* \* \* \* \*

*Texas*

(a) The regulatory provisions include:

*1. Texas Administrative Code, Title 30, Part I. Texas Commission on Environmental Quality, Chapter 37 Financial Assurance, as amended effective through May 31, 2018:*

Subchapter I. Financial Assurance for Petroleum Underground Storage Tank Systems

Section 37.801 Applicability

Section 37.802 Definitions

Section 37.815 Amount and Scope of Required Financial Assurance

Section 37.820 Allowable Mechanisms and Combinations of Mechanisms

Section 37.825 Financial Test of Self-Insurance

Section 37.830 Guarantee

Section 37.835 Insurance and Risk Retention Group Coverage

Section 37.840 Surety Bond

Section 37.845 Letter of Credit

Section 37.850 Trust Fund

Section 37.855 Standby Trust Fund

Section 37.860 Substitution of Financial assurance Mechanisms by Owner or Operator

Section 37.865 Cancellation or Non-renewal by a Provider of Financial Assurance

Section 37.867 Duty to Empty Tanks After Termination of Financial Assurance

Section 37.870 Reporting, Registration, and Certification

Section 37.875 Financial Assurance Recordkeeping

Section 37.880 Drawing on Financial Assurance Mechanisms

Section 37.885 Release from the Requirements

Section 37.890 Bankruptcy or Other Incapacity of Owner or Operator or Provider of  
Financial Assurance

Section 37.895 Replenishment of Guarantees, Letters of Credit or Surety Bonds.

*2. Texas Administrative Code, Title 30, Part I. Texas Commission on Environmental Quality, Chapter 334 Underground and Aboveground Storage Tanks; effective May 31, 2018:*

Subchapter A. General Provisions:

Section 334.1 “Purpose and Applicability”

Section 334.2 “Definitions” (except as they apply to aboveground storage tanks (ASTs))

Section 334.3 “Exemptions for Underground Storage Tanks (USTs) and UST Systems

Section 334.4 “Exclusions for Underground Storage Tanks (USTs) and UST Systems

Section 334.5 “General Prohibitions for Underground Storage Tanks (USTs) and UST Systems

Section 334.6 “Construction Notification for Underground Storage Tanks (USTs) and UST Systems”

Section 334.7 “Registration for Underground Storage Tanks (USTs) and UST Systems

Section 334.8 “Certification for Underground Storage Tanks (USTs) and UST Systems

Section 334.10 “Reporting and Recordkeeping”

Section 334.12 “Other General Provisions”

Section 334.15 “Limits on Liability of Lender” (except as it applies to aboveground storage tanks (ASTs))

Section 334.16 “Limits on Liability of Corporate Fiduciary”

Section 334.18 “Limits on Liability of Taxing Unit” (except as it applies to aboveground storage tanks (ASTs)).

Subchapter C. Technical Standards:

Section 334.41 “Applicability”

Section 334.42 “General Standards”

Section 334.43 “Variances and Alternative Procedures”

Section 334.44 “Implementation Schedules”

Section 334.45 “Technical Standards for New Underground Storage Tank Systems”

Section 334.46 “Installation Standards for New Underground Storage Tank Systems”

Section 334.47 “Technical Standards for Existing Underground Storage Tank Systems”

Section 334.48 “General Operating and Management Requirements”

Section 334.49 “Corrosion Protection”

Section 334.50 “Release Detection”

Section 334.51 “Spill and Overfill Prevention and Control”

Section 334.52 “Underground Storage Tank System Repairs and Relining

Section 334.53 “Reuse of Used Tanks”

Section 334.54 “Temporary Removal from Service”

Section 334. 55 “Permanent Removal from Service”

334.56 “Change to Exempt or Excluded Status”.

Subchapter D. Release Reporting and Corrective Action:

Section 334.71 “Applicability and Deadlines”

Section 334.72 “Reporting of Suspected Releases”

Section 334.73 “Investigation Due to Off-Site Impacts”

Section 334.74 “Release Investigation and Confirmation Steps”

Section 334.75 “Reporting and Cleanup of Surface Spills and Overfills”

Section 334.76 “Initial Response to Releases”

Section 334.77 “Initial Abatement Measures and Site Check”

Section 334.78 “Site Assessment”

Section 334.79 “Removal of Non-Aqueous Phase Liquids (NAPLs)”

Section 334.80 “Investigation of Soil and Groundwater Cleanup”

Section 334.81 “Corrective Action Plan”

Section 334.84 “Corrective Action by the Agency”

Section 334.85 “Management of Wastes”.

Subchapter J. Leaking Petroleum Storage Tank Corrective Action Specialist Registration  
and Project Manager Licensing:

Section 334.451 “Applicability of Subchapter J”

Section 334.454 “Exception for Emergency Abatement Actions”

Section 334.455 “Notice to Owner or Operator”.

Subchapter N. Operator Training:

Section 334.601 “Purpose and Applicability”

Section 334.602 “Designation and Training of Classes of Operators”

Section 334.603 “Acceptable Operator Training and Certification Processes”

Section 334.604 “Operator Training Deadlines”

Section 334.605 “Operator Training Frequency”

Section 334.606 “Documentation of Operator Training”.

(b) Copies of the Texas UST regulations that are incorporated by reference are available from Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123; Phone: 1-888-728-7677; Web site: <http://legalsolutions.thomsonreuters.com>; or the Texas Secretary of State office website at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=30&pt=1&ch=334](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=334).

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