



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R06-UST-2018-0701; FRL-10014-65-Region 6]

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

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If EPA receives adverse comment, it will publish a timely withdrawal in the *Federal Register* informing the

public that the rule will not take effect. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Instructions: Direct your comments to Docket ID No. EPA-R06-UST-2018-0701. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal <https://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

The index to the docket for this action is available electronically at <https://www.regulations.gov>. You can view and copy the documents that form the basis for this codification and associated publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 6, 1201 Elm Street, Suite #500, Dallas, Texas 75270. This facility is open from 8:30 a.m. to 4:00 p.m. Monday through Friday excluding Federal holidays and facility closures. We recommend that you telephone Audray Lincoln, Environmental Protection Specialist at (214) 665-2239 before visiting the Region 6 Office. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Audray Lincoln, (214) 665-2239, lincoln.audray@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

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

A. Why are revisions to State programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b), 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to,

consistent with, and no less stringent than the Federal underground storage tank program. When EPA makes revisions to the regulations that govern the UST program, States must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Changes to State UST programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program and these changes must then be approved by EPA.

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

On October 17, 2018, in accordance with 40 CFR 281.51(a), Arkansas submitted a complete program revision application seeking approval for its UST program revisions corresponding to the EPA final rule published on July 15, 2015 (80 FR 41566), which finalized revisions to the 1988 UST regulations and to the 1988 State program approval (SPA) regulations. As required by 40 CFR 281.20, the State submitted the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations.

We have reviewed the application and the revisions to Arkansas's UST program and determined they are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and the Arkansas program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Arkansas 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 Arkansas Department of Environmental Quality (ADEQ) is the lead implementing agency for the UST program in Arkansas, 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 Arkansas, 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. Arkansas received comments during its comment period when the rules and regulations in this document were being considered and were proposed at the State level. All comments were addressed at public hearing and/or reflected in the adopted regulations.

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

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

comment on this approval, you must do so at this time.

F. For what has Arkansas previously been approved?

On February 24, 1995, EPA finalized a rule approving the UST program submitted by Arkansas in lieu of the Federal program. On January 18, 1996, EPA codified the approved Arkansas program that is subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

In order to be approved, the program must provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The ADEQ has broad statutory authority to regulate the installation, operation, maintenance, closure of USTs, and UST releases under the following: Arkansas Code Annotated (ACA), Title 8, Environmental Law; Chapter 1, General Provisions; Subchapter 1 General Provisions section 8-1-107; Subchapter 2 Powers of the Department and the Commission section 8-1-202; Chapter 4 Waste and Air Pollution Control Act; Subchapter 1 sections 8-4-103(d)(1)(A) and (d)(3)(A) – (d)(4)(A); Subchapter 2 Water Pollution section 8-4-224; Chapter 7 Hazardous Substances; Subchapter 8 Regulated Substance Storage Tanks; and Subchapter 9 Petroleum Storage Tank Trust Fund Act.

Specific authorities to regulate the installation, operation, maintenance, closure of USTs, and UST releases are found under Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation Number 12 Storage Tanks, sections Reg. 12.101 through 12.1002 as amended effective August 24, 2018. The aforementioned regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

The Arkansas DEQ's Office of Land Resources (OLR) provides notice and opportunity

for public comment on all proposed rules. The OLR investigates and requires petroleum storage tank owners and operators to provide notice about contaminants and submissions of final remediation plans. Requirements for public participation and notification can be found in the ACA at sections 8-4-224 and 8-7-803, as well as in Regulation No. 12 at section 12.104 which incorporates the Federal 40 CFR 280.67 by reference and Regulation No. 8 at section 8.604. Arkansas has met the public participation requirements found in 40 CFR 281.42.

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

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

Title 40 CFR 281.30 lists the Federal requirements for new UST system design, construction, installation, and notification with which a State must comply in order to be found to be no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 incorporates the necessary elements of 40 CFR 280 by reference. Additionally, the State includes requirements for notification and notification reporting at APC&EC Regulation No. 12 Storage Tanks, section 12.201(A), requiring UST system owners and operators to notify the implementing agency of any new UST systems, including instances where one assumes ownership of an existing UST.

Title 40 CFR 281.31 requires that most existing UST systems meet the requirements of 281.30, are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills, or are permanently closed. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as sections 12.109, 12.502, and 12.503 contain the necessary requirements that UST systems be upgraded to prevent releases during their operating life due to corrosion, spills, or overfills.

Title 40 CFR 281.32 contains the general operating requirements that must be met in order for the State's submission to be considered no less stringent than the Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as section 12.105 contain the necessary general operating requirements required by 40 CFR 281.32.

Title 40 CFR 281.33 contains the requirements for release detection that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as section 12.109 contain the necessary

requirements for release detection as required by 40 CFR 281.33.

Title 40 CFR 281.34 contains the requirements for release reporting, investigation, and confirmation that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as sections 12.108 and 12.305 contain the necessary requirements as required by 40 CFR 281.34 for release reporting, investigation, and confirmation.

Title 40 CFR 281.35 contains the requirements for release response and corrective action that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference contains the required provisions as listed in 40 CFR 281.35 for release response and corrective action.

Title 40 CFR 281.36 contains the requirements for out of service UST systems and closures that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference contains the necessary requirements as listed in 40 CFR 281.36 for out of service UST systems and closures.

Title 40 CFR 281.37 contains the requirements for financial responsibility for UST systems containing petroleum that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as sections 12.302(A)(1) and 12.314 contain the necessary requirements as listed in 40 CFR 281.37 for financial responsibility for UST systems.

Title 40 CFR 281.38 contains the requirements for lender liability that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as section 12.321 contain the requirements for lender liability as listed in 40 CFR 281.38.

Title 40 CFR 281.39 contains the requirements for operator training that must be met in order for the State's submission to be considered no less stringent than Federal requirements. APC&EC Regulation No. 12 Storage Tanks, section 12.104 which incorporates the necessary Federal 40 CFR 280 requirements by reference, as well as sections 12.105, and 12.701 through 12.710 contain the requirements for operator training as required by 40 CFR 281.39.

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

Broader in Scope Provisions

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

At ACA 8-7-801(1) introductory paragraph through (1)(B), Arkansas defines "aboveground storage tank".

ACA 8-7-802(a)(2), grants the Arkansas Pollution Control and Ecology Commission the power to set reasonable fees for licensure and registration. All such State fees are broader in scope.

At ACA 8-7-808, Arkansas details the requirements of the Regulated Substance Storage Tank Program Fund; all funds of this type are broader in scope because they have no Federal counterparts.

At ACA 8-7-813, references to aboveground storage tanks with respect to the State registration requirement are broader in scope.

ACA Chapter 7, Subchapter 9, sections 8-7-901 through 8-7-908 regarding the detailed requirements of the State Petroleum Storage Tank Trust Fund Act are broader in scope.

At APC&EC Regulation No. 12, section 12.103(20), the reference to aboveground storage tanks are broader in scope.

At APC&EC Regulation No. 12, section 12.107, Arkansas regulates aboveground storage tanks in a manner that is broader in scope than the Federal program.

At APC&EC Regulation No. 12, section 12.201(C) through (F), Arkansas regulates aboveground storage tanks in a manner that is broader in scope than the Federal program.

At APC&EC Regulation No. 12, sections 12.202(B)(2) and 12.203, Arkansas assesses a storage tank registration fee to be paid by tank owners and operators. All such State fees are broader in scope.

APC&EC Regulation No. 12, Chapter 3 Petroleum Storage Tank Trust Fund Corrective Action Reimbursement Procedures and Chapter 4 Petroleum Storage Tank Trust Fund Third-Party Payment Procedures; State trust funds of this type are state-specific and are broader in scope than the Federal program.

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program. *See* 40 CFR 281.12(a)(3)(ii).

More Stringent Provisions

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

At APC&EC Regulation No. 12 Storage Tanks, section 12.105, Arkansas has additional, state-only records requirements, including access by the Department, and additional records for state-specific programs such as the broader in scope Trust Fund Act.

At APC&EC Regulation No. 12 Storage Tanks, section 12.109(A), the State began requiring secondary containment for new tanks installed after July 1, 2007.

At APC&EC Regulation No. 12 Storage Tanks, section 12.109(C), the State began requiring under dispenser containment for specific tank systems installed after July 1, 2007.

At APC&EC Regulation No. 12 Storage Tanks, section 12.109(B), the State began requiring secondary containment for existing tanks replaced after July 1, 2007.

At APC&EC Regulation No. 12 Storage Tanks, Chapter 6 Licensing of Underground Storage Tank Testers, section 12.602 through 12.613, Arkansas requires UST testers to be licensed in a manner that is not required by the Federal program; however, this is consistent with the licensing of other tank professionals.

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

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

II. Codification

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies

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

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

The EPA incorporated by reference Arkansas's then-approved UST program effective March 18, 1996 (61 FR 1213; January 18, 1996). In this document, the EPA is revising 40 CFR 282.53 to include the approved revisions.

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

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

The purpose of this *Federal Register* document is to codify Arkansas'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 Arkansas UST program addressed in this direct final rule become final. The document incorporates by reference Arkansas's UST regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Arkansas 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 Arkansas program.

The EPA is incorporating by reference the Arkansas approved UST program in 40 CFR 282.53. Section 282.53(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.53 also references the Attorney General's Statement, the Demonstration of Procedures for Adequate Enforcement, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under subtitle I of RCRA.

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

The EPA retains the authority under Subtitle I of RCRA sections 9003(h), 9005 and 9006, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Arkansas procedural and enforcement authorities. Section 282.53(d)(1)(ii) of 40 CFR lists those approved Arkansas authorities that would fall into this category.

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

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally-approved

program. As a result, State provisions which are “broader in coverage” than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.53(d)(1)(iii) of the codification simply lists for reference and clarity the Arkansas 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 Arkansas’s 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 a regulatory action under Executive Order 13771 (82 FR 9339, February 3, 2017) because actions such as this final approval of Arkansas’s revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I

certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

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

D. Executive Order 13132: Federalism

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

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

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

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that

Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

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

H. Executive Order 12988: Civil Justice Reform

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

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

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

J. Paperwork Reduction Act

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

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

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

L. Congressional Review Act

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

List of Subjects in 40 CFR Part 282

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

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

Dated: October 27, 2020.

Kenley McQueen,
Regional Administrator, Region 6.

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

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

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

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

2. Revise § 282.53 to read as follows:

§ 282.53 Arkansas State-Administered Program.

(a) *History of the approval of Arkansas's program.* The State of Arkansas 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 Arkansas 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 Arkansas underground storage tank base program effective on November 16, 1990. A subsequent program revision

application was approved effective on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

(c) *Retaining program approval.* To retain program approval, Arkansas must revise its approved program to adopt new changes to the Federal subtitle I program which make it more stringent, in accordance with RCRA section 9004, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Arkansas obtains approval for the revised requirements pursuant to RCRA section 9004, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

(d) *Final program approval.* Arkansas has final approval for the following elements of its program application originally submitted to EPA and approved effective November 16, 1990, and the program revision application approved by EPA effective on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]:

(1) *State statutes and regulations—(i) Incorporation by reference.* The Arkansas provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Arkansas regulations that are incorporated by reference from the Arkansas Department of Environmental Quality (ADEQ) web site at

<http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317; Phone number: (501) 682–0923. You may inspect all approved material at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270 (Phone number (214) 665-2239) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email fedreg.legal@nara.gov or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “EPA-Approved Arkansas Regulatory Requirements Applicable to the Underground Storage Tank Program,” August 2020. Only those provisions that have been approved by EPA are incorporated by reference. Those provisions are listed in Appendix A to part 282.

(B) [Reserved]

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

(A) The statutory provisions include: Arkansas Code Annotated (ACA), 2017 Title 8, Environmental Law:

(1) *Chapter 1 General Provisions:*

(i) *Subchapter 1 General Provisions*, section 8-1-107; and

(ii) *Subchapter 2 Powers of the Department and Commission*, section 8-1-202;

(2) *Chapter 4 Arkansas Water and Air Pollution Control Act:*

(i) *Subchapter 1 General Provisions*, sections 8-4-103(d)(1)(A) and 8-4-103(d)(3)(A) through (d)(4)(A); and

(ii) *Subchapter 2 Water Pollution*, section 8-4-224;

(3) *Chapter 7 Hazardous Substances:*

(i) *Subchapter 8 Regulated Substance Storage Tanks*, sections 8-7-801(2) through (14)(J); 8-7-802(a)(1); 8-7-802(b); 8-7-803 through 8-7-807; 8-7-809 through 8-7-812, 8-7-813 (except references to aboveground storage tanks [ASTs]); 8-7-814; 8-7-816; 8-7-817; and

(ii) *Subchapter 9 Petroleum Storage Tank Trust Fund Act*, section 8-7-909.

(B) The regulatory provisions include: Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 12 Storage Tanks, as amended effective August 24, 2018: Chapter 1 General Provisions, Reg. 12.110 Delivery Prohibition; Chapter 2 Registration of Storage Tanks, Reg. 12.201 Registration Requirement; Chapter 5 Licensing of Underground Storage Tank Installers and Service Personnel, Reg. 12.515; Chapter 6 Licensing of Underground Storage Tank Testers, Reg. 12.613 Violations; Chapter 7 Operator Training, Reg. 12.709 Violations and Reg. 12.710 Disclosure Exemption; and Chapter 8 Confidentiality Reg. 12.801 through Reg. 12.805.

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

(A) Arkansas Code Annotated (ACA), 2017, Title 8 Environmental Law: Chapter 7 Hazardous Substances, Subchapter 8 Regulated Substance Storage Tanks, sections 8-7-801(1) introductory paragraph through (1)(B), 8-7-802(a)(2), 8-7-808, 8-7-813 (as it applies to aboveground storage tanks [ASTs] only); and Subchapter 9 Petroleum Storage Tank Trust Fund Act, sections 8-7-901 through 8-7-908.

(B) Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 12 Storage Tanks, as amended effective August 24, 2018: Chapter 1 General Provisions, Reg. 12.107 Entry and Inspection of Aboveground Storage Tank Facilities; Chapter 2 Registration of Storage Tanks, Reg. 12.201(C) through (F) Registration Requirement, 12.202(B)(2) Certification of Registration (as it applies to fees only), 12.203 Storage Tank Registration Fees; Chapter 3 Petroleum Storage Tank Trust Fund Corrective Action Reimbursement Procedures; and Chapter 4 Petroleum Storage Tank Trust Fund Third-Party Payment Procedures.

(2) *Statement of legal authority.* The Attorney General's Statement, signed by the Assistant Attorney General of Arkansas September 21, 1994, and revisions to that Statement dated October 2, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Adequate Enforcement of Compliance" submitted as part of the original application on September 26, 1994 and as part of the program revision application for approval on October 17, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application September 26, 1994, and as part of the program revision application October 17, 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 Arkansas Department of Environmental Quality, signed by the EPA Regional

Administrator on May 8, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

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

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

* * * * *

Arkansas

(a) The regulatory provisions include: Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 12 Storage Tanks, as amended effective August 24, 2018:

Chapter 1 General Provisions, Reg. 12.103 Definitions, except (B)(1), Reg. 12.104 Incorporation of Federal Regulations, Reg. 12.105 Records, Reg. 12.106 Entry and Inspection of Underground Storage Tank Facilities, Reg. 12.108 Notice Requirements, Reg. 12.109 Secondary Containment;

Chapter 2 Registration of Storage Tanks, Reg. 12.201(A);

Chapter 5: Licensing of Underground Storage Tank Installers and Service Personnel, Reg. 12.502 Definitions, Reg. 12.503 Applicability, Reg. 12.504 General Requirements, Reg. 12.505 Surety Requirement, Reg. 12.506 Notification Requirement, Reg. 12.507 Contractor Licensing, Reg. 12.508 Individual Licensing, Reg. 12.509 Contractor/Individual Licensing, Reg. 12.510 Experience Requirements, Reg. 12.511 Licensing Examination, Reg. 12.512 Renewal of

Licenses, Reg. 12.513 Denial of Licenses, Reg. 12.514 Department Approval of Training and Continuing Education;

Chapter 6: Licensing of Underground Storage Tank Testers, Reg. 12.602 Definitions, Reg. 12.603 Applicability, Reg. 12.604 General Requirements, Reg. 12.605 Surety Requirement, Reg. 12.606 Company Licensing, Reg. 12.607 Individual Licensing, Reg. 12.608 Company/Individual Licensing, Reg. 12.609 Experience Requirements, Reg. 12.610 Renewal of Licenses, Reg. 12.611 Denial of Licenses, Reg. 12.612 Department Approval of Training and Continuing Education; and

Chapter 7: Operator Training, Reg. 12.702 Definitions, Reg. 12.703 Applicability, Reg. 12.704 General Requirements, Reg. 12.705 Class A Operator Certification, Reg. 12.706 Class B Operator Certification, Reg. 12.707 Class C Operator Training, Reg. 12.708 Operator Examination.

(b) Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality (ADEQ) Web site at <http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317; Phone number: (501) 682-0923.

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[FR Doc. 2020-24240 Filed: 1/6/2021 8:45 am; Publication Date: 1/7/2021]