



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R01-UST-2020-0207; FRL-10015-22-Region 1]

Rhode Island: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Rhode Island's Underground Storage Tank (UST) program submitted by the Rhode Island Department of Environmental Management (RI DEM). This action also codifies EPA's approval of Rhode Island'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 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives adverse comments, it will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

instructions for submitting comments.

2. *E-mail: beland.andrea@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA-R01-UST-2020-0207.

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> website 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, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance.

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

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials either through www.regulations.gov or at the EPA Region 1 Office, 5 Post Office Square, 1st floor, Boston, MA 02109-3912. The facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Andrea Beland, RCRA Waste Management, UST, and Pesticides Section, at (617) 918-1313, before visiting the Region 1 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: Andrea Beland, (617) 918-1313, beland.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

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

A. Why are revisions to state programs necessary?

States that have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

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

On February 4, 2020, in accordance with 40 CFR 281.51(a), Rhode Island submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Rhode Island's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program

approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter 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 State Application and determined that the revisions to Rhode Island's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Rhode Island program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Rhode Island 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.

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 Rhode Island, 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?

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

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

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" Section of this issue of the *Federal Register* that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA

receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Rhode Island previously been approved?

On February 3, 1993, the EPA finalized a rule approving the UST program, effective March 5, 1993, to operate in lieu of the Federal program. On February 20, 1996, effective April 22, 1996, the EPA codified the approved Rhode Island program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA’s inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

On February 4, 2020, in accordance with 40 CFR 281.51(a), Rhode Island submitted a complete application for final approval of its UST program revisions adopted on November 20, 2018. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Rhode Island’s UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Rhode Island final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	250-RICR-140-25 Part(s): 1.4; 1.7; 1.8; 1.11; 1.11(C); 1.11(L); and 1.12
40 CFR 281.31, Upgrading Existing UST Systems	250-RICR-140-25 Part(s): 1.10(E); and 1.15

40 CFR 281.32, General Operating Requirements	250-RICR-140-25 Part(s): 1.4(I) 1.5(A)(8) and (27); 1.7P(2)(b); 1.10(B)(4) and (5); 1.10(E); 1.10(F)(1)(f); 1.10(G)(2)(d); 1.10(N); 1.10(N)(3); 1.10(U)(9); 1.11(C)(6); 1.11(D); 1.12(C) and (D); 1.12(D)(1)(g); and 1.13
40 CFR 281.33, Release Detection	250-RICR-140-25-1 Part(s): 1.10(A), (F), (G) and (M); 1.11(A), (N), (O) and (P)
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	250-RICR-140-25-1 Part(s): 1.14
40 CFR 281.35, Release Response and Corrective Action	250-RICR-140-25-1 Part(s): 1.14
40 CFR 281.36, Out-of-service Systems and Closure	250-RICR-140-25-1 Part(s): 1.15(C); 1.15(D); and 1.15(D)(12)
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	250-RICR-140-25-1 Part(s): 1.8; and 1.9
40 CFR 281.39, Operator Training	250-RICR-140-25-1 Part(s): 1.10(U)
40 CFR 281.40, Legal Authorities for Compliance Monitoring	250-RICR-140-25-1 Part(s): 1.4; 1.10; 1.13; 1.14(I); 1.16
40 CFR 281.41, Legal Authorities for Enforcement Response	250-RICR-140-25-1 Part(s): 1.10(T)

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The RI DEM has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Rhode Island General Laws, Title 38: Public Records, Chapters 38-1, 2, and 3; Rhode Island General Laws, Title 42: State Affairs and Government, Chapter 42-17.1-2(20), Department of Environmental Management; and Rhode Island General Laws, Title 46: Waters and Navigation, Chapter 46-12: Water Pollution, Section 12-3, Sections 12-9 and 10, 12-13 through 15, and Section 46-12-22.

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

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law:

The State of Rhode Island regulates heating oil of all grades at non-residential locations and partially regulates residential tanks storing heating oil at one, two, or three-unit dwellings; farm tanks storing heating oil for non-commercial purposes, and holding tanks.

All owners and operators of USTs must comply with registration requirements, with the exception of those exempted under 250-RICR-140-25 section 1.4(D). Registration applies to all farm and residential tanks containing heating or fuel oils consumed on-site and containing motor fuels for on-site use.

The Rhode Island Underground Storage Tank Financial Responsibility Fund (RI UST FR Fund) was established to provide a mechanism to comply with financial responsibility requirements and to ensure that the environmental and public health impacts of leaks from USTs are addressed in an effective and timely manner.

Owners/operators must ensure that their facilities comply with Rhode Island's UST regulations by conducting their own inspections and certifying their compliance by completing and submitting the Environmental Results Program Certification (ERP) Booklet. At least every three years the RI DEM will issue an ERP Certification Booklet to all operating UST facilities.

With the exception of UST systems that store fuel oil of any grade consumed on-site for heating, all single-walled tanks and/or piping installed before May 8, 1985 were required to be permanently closed by December 22, 2017. All single-walled tanks and/or piping installed between May 8, 1985 and July 20, 1992, shall be permanently closed within thirty-two (32) years of the date of installation. If the installation date is not known, then any single-walled tank and/or piping shall be permanently closed immediately.

All USTs containing heating oil of any grade at commercial or industrial facilities are required to be tested for tightness beginning in 2021.

Remote pumping systems, including dispensers, shall be equipped with an emergency shut-off valve designed to close automatically in the event that a dispensing unit is significantly impacted or exposed to fire.

New USTs are prohibited from being installed in wellhead protection areas for community water systems. However, USTs registered before November 20, 2018 that were not abandoned or removed for more than 180 days are permitted to be replaced with tanks of equivalent size, or less, and substance stored.

The installation of an UST within 200 feet of a public drilled (rock), driven, or dug well or within 400 feet of a gravel-packed or gravel-developed well is prohibited.

USTs are to be installed as far away as possible from private wells.

Construction of a new tank system or replacement tank system, and modification (including product piping replacement) to any UST facility for which an application for a certificate of registration is required, is prohibited without prior written notification to, and approval by, the Director.

Before installing or replacing any USTs or product piping, the owner is required to submit a completed UST Registration Form; a completed Equipment List Addendum; a completed UST Installation/Modification/Upgrade Supplemental Information form; a site plan, including all of the information listed in 250-RICR-140-25 section 1.7(D)(1)(a)(3) which must be reviewed and stamped by a registered Professional Engineer; specifications or a diagram indicating depth of excavation, bedding, and backfill, supports and anchorage used, distance between tanks, and dimensions (including thickness) of traffic pad; and the appropriate registration fees.

All new and replacement tanks and piping (primary and secondary) shall be tightness tested after all paving over the tanks and piping has been completed and before commencing regular UST operation.

USTs storing heating oil used onsite for heating purposes only with aboveground fill pipes do not require spill containment as long as the ground around the fill pipe is covered with a positive-limiting barrier constructed of material impervious to the substance stored and can contain spills less than three gallons; the fill pipe extends a minimum of six inches above the

finished grade; and aboveground fill pipes in high traffic areas are protected by concrete-filled bollards.

When permanently closing any UST system and/or product pipeline, a \$75.00 per UST fee must be submitted at least 10 days prior to the removal date.

No person can conduct tightness or interstitial testing on USTs or tank components in Rhode Island unless they are in compliance with the licensing and other provisions of these regulations. Any individual wishing to be licensed must submit a completed application with the required documentation and application fee. Any business who employs or subcontracts licensed testers to conduct tank and/or piping tests are required to submit a completed application for a tank testing business license to the RI DEM.

Any owner/operator of a facility, or person subject to these regulations may submit a written request to the Director for a variance from some or all provisions of these regulations.

More Stringent Provisions

Facilities subject to leak detection requirements must post or provide, in a location readily accessible to the facility staff, emergency response procedures, including instructions on responding to alarms, releases, spills, and other abnormal events, and include current contact information for the Class A and B operator or a 24-hour call center or spill response hotline.

All USTs and product piping installed after 1992 are required to have liquid-tight secondary containment and be equipped with continuous monitoring of the interstitial space.

Double-walled USTs with a dry interstice (except those for heating fuels for on-site use, emergency generators, and waste or motor oil) must have a tightness test of the interstitial space completed every two years once the tanks have been installed for 20 years. If the test fails, the primary wall must be tested within 48 hours. Any product remaining in the tank can be consumed for up to 30 days if the primary tank tests tight. If the primary wall is unable to be tested or fails, the tank must be taken out of service, the contents removed within 24 hours, and the tank tester must notify DEM immediately. Within 30 days and before adding product to the

repaired tank, an additional interstitial tightness test must be done to confirm the repair. All failed USTs must be repaired or replaced within 60 days or be temporarily closed. Test results are to be maintained on-site at all times as permanent records.

If a piping interstitial space tightness test fails, and there is no evidence of a release, the primary product pipeline wall must be tested for tightness within 48 hours. If it is tight, any product remaining in the failed product pipeline and all USTs directly connected to that pipeline may be consumed for no longer than 30 days. No additional product may be added to any UST connected to the failed product pipeline until it has been repaired or replaced and passes a final tightness test. The repaired pipeline must be re-tested within 30 days and before placing it back into regular service. Test results are to be maintained on-site at all times as permanent records.

If the primary wall of the piping is unable to be tested or fails, the failed line must be taken out of service immediately, the contents removed, and the tank tester must notify the RIDEM immediately. No product may be added to an UST that services the failed pipeline until it has been repaired or replaced and passed a final tightness test to confirm the repair. All failed USTs must be repaired or replaced within 60 days or be temporarily closed. Test results are to be maintained on-site at all times as permanent records.

All single-walled USTs and all single-walled product pipelines, including pressurized, U.S. suction, and European suction, must be tested for tightness by a third-party licensed tester on an annual basis, regardless of age or installation date.

Statistical inventory reconciliation, groundwater, and vapor monitoring are not accepted as leak detection methods.

Owners/Operators of single-walled USTs are required to operate an approved automatic tank gauging system that tests for loss or gain of the contents stored, perform a leak test capable of detecting a leak rate of 0.2 gal/hour or less at least once per month, perform daily and monthly inventory recordkeeping, and perform a tank tightness test annually.

Interior lining is no longer accepted as a method of corrosion protection. USTs lined prior to November 20, 2018, must be inspected within 10 years after lining, and every five years thereafter. Any pitting, tearing, discoloration, failure to adhere to the tank structure, or other damage will be considered a lining failure. The USTs must be removed from service and permanently closed within 90 days. Failed lining inspections must be reported to the RI DEM by the inspector within 24 hours and the final report/results are to be submitted within 30 calendar days. Records of all tank lining inspections are required to be permanently kept.

Impressed current cathodic protection systems are required to be tested every 2 years.

All facilities are required to have a trained and certified Class A and Class B operator registered with RI DEM who are required to perform monthly walk-through inspections and complete the Department's monthly inspection checklist. Class A and B operator certification is valid for five years from the date of passing provided the facility remains in compliance with these regulations. Class C operators must be trained every two years, by a Class A or B operator.

Written approval is needed to operate as an unmanned facility before operating without a Class C operator being present during all operating hours. Certified Class A and Class B operators must be designated to the facility and registered with the RI DEM. A sign must be posted with the names and telephone numbers of the Class A and B operators, facility owner/operator, 911, local emergency responders, and must include a statement advising persons to call these numbers to report a spill or other emergency. This sign must be visible for the person fueling the vehicle or the USTs to read. A designated person(s) must be available to respond to emergencies immediately when the owner or operator is contacted.

Airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall meet release detection requirements for tanks and piping systems. Piping associated with airport hydrant distribution systems and field constructed UST systems shall have secondary containment.

All new and replacement spill containment basins must be capable of holding a minimum of three gallons, be double-walled and capable of periodic interstitial monitoring. Single-walled spill containment basins are prohibited from being installed as of November 20, 2018.

USTs and/or their associated piping can be modified or repaired only once.

Owners and operators of all UST facilities must maintain the following records for three years beyond the facility's operational life: data used in the certificate of registration application; modifications or repairs to pipes, fittings, or other UST system components; storage of regulated substances greater than 10% ethanol and 20% biodiesel, and the UST system compatibility of those substances; annual test results of leak detection equipment and systems; records of closure activities; tank and line tightness test results; corrosion protection methods documentation; records of leaks, spills, releases, overfill, site investigations, and remedial response activities; equipment warranties and manufacturers' checklists; monitoring, testing, and/or inspections for single-walled and double-walled spill prevention equipment, containment sumps, and overfill prevention equipment.

All confirmed and suspected leaks or releases from USTs must be immediately reported.

A temporary closure application must be submitted to the RI DEM for approval at least 15 days prior to the requested closure date. Class A, Class B, or Class A/B operator must be registered with RI DEM for the entire duration of the temporary closure, must visit the site biannually to ensure the facility and the UST components are in good condition, there are no missing components, and no unsafe situations exist on the property. The operator must complete the monthly inspection checklist and at least once per year measure the product and water level in the tanks. The RI DEM must be notified within 24 hours if there is any change in the product or water level, and corrective action may be required. The facility owner/operator must notify RI DEM 30 days before re-opening the UST system and must receive written approval before adding or dispensing any regulated substances or hazardous materials.

Prior approval and oversight from the RI DEM is required for the permanent closure of any UST, UST system, or an UST and product pipeline.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

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

EPA incorporated by reference the Rhode Island DEM approved UST program effective April 22, 1996 (61 FR 6320; February 20, 1996). In this document, EPA is revising 40 CFR 282.89 to include the approved revisions.

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

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the federally approved Rhode Island UST program described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, this document generally available through *www.regulations.gov* and at the EPA Region 1 office (see the **ADDRESSES** Section of this preamble for more information).

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

EPA is incorporating by reference the Rhode Island approved UST program in 40 CFR 282.89. Section 282.89(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.89 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

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

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Rhode Island procedural and enforcement authorities. Section 282.89(d)(1)(ii) of 40 CFR lists those approved Rhode Island authorities that would fall into this category.

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

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. Section 281.12(a)(3)(ii) of 40 CFR states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.89(d)(1)(iii) lists for reference and clarity the Rhode Island 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 in this document. 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 Rhode Island'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 Orders 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 subject to Executive Order 13771 (82 FR 9339, February 3, 2017) because actions such as this final approval of Rhode Island'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). As discussed above, EPA is not acting on approval to operate the State's UST program as it applies to Tribal lands in the State. Therefore, 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: Services of Children From Environmental Health and Safety Risks

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

environmental health or safety risks.

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

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

G. National Technology Transfer and Advancement Act

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

H. Executive Order 12988: Civil Justice Reform

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

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

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

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

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

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

L. Congressional Review Act

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

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

List of Subjects in 40 CFR Part 282

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

Dated: November 10, 2020.

Dennis Deziel,
Regional Administrator,
EPA Region 1.

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

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

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

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

2. Revise § 282.89 to read as follows:

§ 282.89 Rhode Island State-Administered Program.

(a) The State of Rhode Island 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 Rhode Island Department of Environmental Management (RI DEM), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part

281. EPA approved the Rhode Island program on February 3, 1993, which was effective on March 5, 1993.

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

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

(d) Rhode Island has final approval for the following elements of its program application originally submitted to EPA and approved effective March 5, 1993, and the program revision application approved by EPA, effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(1) *State statutes and regulations--(i) Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Rhode Island regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from Kevin Gillen, Rhode Island DEM, 235 Promenade Street, Providence, RI 02908-5767; Phone number: 401-222-2797; kevin.gillen@dem.ri.gov, Hours: Monday-Friday, 7:00 a.m. to 3:30 p.m.; link to statutes and regulations: State of Rhode Island General Laws: <https://webserver.rilin.state.ri.us/Statutes/>;

<http://www.dem.ri.gov/programs/wastemanagement/ust/>. You may inspect all approved material at the EPA Region 1 Office, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; Phone Number: (617) 918-1313; or the National Archives and Records Administration (NARA), Email: fedreg.legal@nara.gov, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “EPA-Approved Rhode Island Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, May 2020.”

(B) [Reserved]

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

(A) The statutory provisions include:

(1) *Rhode Island General Laws, Title 38: Public Records*; Chapter 38-1, Custody and Protection of Public Records; Chapter 38-2, Access to Public Records; and 38-3, Administration of Public Records.

(2) *Rhode Island General Laws, Title 42 - Affairs and Government*; Chapter 42-17.1-2(20), Department of Environmental Management, Powers and Duties to Enter, Examine or Survey for Criminal Investigations; Chapter 42-17.6, Administrative Penalties for Environmental Violations.

(3) *Rhode Island General Laws, Title 46 - Waters and Navigation*; Chapter 46-12 - Water Pollution, Section 12-3, Powers and Duties of the Director, except (21); Section 12-9, Notices of Violation and Compliance Orders; 12-10, Emergency Powers; 12-13, Civil Penalties; 12-14, Criminal Penalties; 12-15, Inspection Powers - Rules and Regulations; and Section 12-22. Access of Enforcement Officers to Premises.

(B) The regulatory provisions include:

(1) *Title 250 - Department of Environmental Management, Chapter 140 - Waste and Materials Management, Subchapter 25 - Oil and Underground Tanks, Part 1 - Rhode*

Island Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials, adopted as 250-RICR-140-25-1, Section: 1.10(T) Delivery Prohibition; 1.16 (F) Suspension or Revocation of License; 1.16(G) Procedure for Suspension and Revocation; 1.16(H) Requests for Hearings; 1.21 Appeals; 1.22 Penalties.

(2) *Title 250 - Department of Environmental Management, Chapter 20 - Legal Services, Subchapter 00 - N/A, Part 1 - Administrative Rules of Practice and Procedure for the Department of Environmental Management 20-00-1, adopted as 250-RICR-20-00-1.*

(3) *Title 250 – Department of Environmental Management, Chapter 130 – Compliance and Inspection, Subchapter 00 – N/A, Part 1 - Rules and Regulations for Assessment of Penalties, adopted as 250-RICR-130-00-1*

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the Rhode Island’s UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference in this section for enforcement purposes:

(A) *Rhode Island Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials, 250-RICR-140-25-1, Section: 1.4(E) Partial regulation of residential tanks storing heating oil at one, two, or three-unit dwellings and farm tanks storing heating oil for non-commercial purposes; 1.4(G) Partial regulation of holding tanks; 1.7(A) Registration applies to all farm and residential tanks containing heating or fuel oils consumed on-site and containing motor fuels for on-site use; 1.9 The Rhode Island UST Financial Responsibility Fund; 1.10 Minimum UST Operation and Maintenance Requirements, (C), (D), (F)(4) and (J); 1.11 New and Replacement UST System Requirements, (B)(1-3) and (5), (C)(1), (J)(1), and (L)(2); 1.12 Facility Modifications or Repairs, (A); 1.15 Closure, (D)(5); 1.16 Approval of Tank and/or Line Tightness Tests, Leak Detection Methods and Licensing Requirements, (B), (D), and (E); 1.19 Holding Tanks; 1.20 Variances.*

(B) [Reserved]

(2) *Statement of legal authority.* The Attorney General’s Statements, signed by the Attorney General of Rhode Island on July 1, 1992, and January 23, 2020, 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 July 2, 1992, and as part of the program revision application for approval on February 4, 2020, 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 July 2, 1992, and as part of the program revision application on February 4, 2020, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the Rhode Island Department of Environmental Services, signed by the EPA Regional Administrator on February 12, 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 Rhode Island to read as follows:

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

* * * * *

Rhode Island

(a) The statutory provisions include:

1. *Rhode Island General Laws, Title 42: State Affairs and Government; Chapter 42-17.1, Department of Environmental Management; Section 42-17.1-2, Powers and Duties.*

(31) standards for the quality of air, and water, and the location, design, construction, and operation of all underground storage facilities used for storing petroleum products or hazardous materials.

2. *Rhode Island General Laws, Title 46: Waters and Navigation; Chapter 46-12. Water Pollution; Section 46-12-3, Powers and Duties of the Director.*

(4) accepting and administering loans and grants.

(21) standards for location, design, construction, maintenance, and operation of underground storage facilities used for storing petroleum products or hazardous materials to prevent, abate, and remedy the discharge of petroleum products and hazardous materials into the waters of the state.

(22) promulgate regulations for monitoring wells.

(b) The regulatory provisions include:

1. *Rhode Island Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials, 250-RICR-140-25-1, (effective November 20, 2018)*

Section 1.1 Purpose.

Section 1.2. Authority.

Section 1.3 Incorporated Materials.

Section 1.4 Applicability, except (E) and (G).

Section 1.5 Definitions.

Section 1.6 Administrative Findings.

Section 1.7 Facility Registration.

Section 1.8 Financial Responsibility, except (D).

Section 1.10 Minimum UST Operation and Maintenance Requirements, except (C), (D), and (F)(4) and (T).

Section 1.11 New and Replacement UST System Requirements, except (B)(1-3) and (5), (C)(1), (J)(1), and (L)(2).

Section 1.12 Facility Modifications or Repairs, except (A).

Section 1.13 Maintaining Records.

Section 1.14 Leak and Spill Response.

Section 1.15 Closure, except (D)(5).

Section 1.16 Approval of Tank and/or Line Tightness Tests, Leak Detection Methods and Licensing Requirements, except (B), (D), (E) (F), (G) and (H).

Section 1.17 Signatories to Registration and Closure Applications.

Section 1.18 Transfer of Certificates of Registration and Closure.

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