



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 281 and 282

[EPA-R04-UST-2020-0614; FRL-8817-01-R4]

### Tennessee: Final Approval of State Petroleum Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The State of Tennessee (Tennessee or State) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Petroleum Underground Storage Tank Program (Petroleum UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to approve revisions to the Petroleum UST Program. The EPA has reviewed Tennessee's revisions and has determined that these revisions satisfy all requirements needed for approval. In addition, this action also codifies the EPA's approval of Tennessee's revised Petroleum UST Program and incorporates by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval.

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

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

- *Federal eRulemaking Portal: <https://www.regulations.gov>* (our preferred method).  
Follow the online instructions for submitting comments.
- *Email: [smith.wg@epa.gov](mailto:smith.wg@epa.gov)*. Include the Docket ID No. EPA-R04-UST-2020-0614 in the subject line of the message.

*Instructions:* Submit your comments, identified by Docket ID No. EPA-R04-UST-2020-0614, via the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit:

<https://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov> or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Winston Smith, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action and all documents that form the basis of this codification and associated publicly available docket materials are available for review on the <https://www.regulations.gov> website. The EPA encourages electronic reviewing of these documents, but if you are unable to review

these documents electronically, please contact Winston Smith to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. EPA Region 4 requires all visitors to adhere to the COVID-19 protocol. Please contact Winston Smith for the COVID-19 protocol requirements for your appointment.

Please also contact Winston Smith if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Winston Smith, RCRA Programs and Cleanup Branch, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960; Phone number: (404) 562-9467; email address: [smith.wg@epa.gov](mailto:smith.wg@epa.gov). Please contact Winston Smith by phone or email for further information.

**SUPPLEMENTARY INFORMATION:**

**I. Approval of Revisions to Tennessee's Petroleum Underground Storage Tank Program**

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

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain a UST program that is no less stringent than the Federal program. When the EPA revises 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. Most commonly, states must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR) part 280. States can also initiate

changes on their own to their UST programs and these changes must then be approved by the EPA.

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

On October 15, 2018, in accordance with 40 CFR 281.51(a), Tennessee submitted a complete program revision application (State Application) seeking approval of changes to its Petroleum UST Program. The program revisions addressed in the State Application 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 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; an Attorney General's Statement; and copies of all relevant State statutes and regulations. The EPA has reviewed the State Application and has determined that the revisions to Tennessee's Petroleum UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Tennessee Petroleum UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants Tennessee final approval to operate its Petroleum UST Program with the revisions described in the State Application, and as outlined below. As the Tennessee UST program is a partially approved program, this approval covers petroleum underground storage tanks only and does not include hazardous substance underground storage tanks under subtitle I of RCRA. The Tennessee Department of Environment and Conservation (TDEC) is the lead implementing agency for the Petroleum UST Program in Tennessee.

*C. What is the effect of this approval on the regulated community?*

Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), as amended, allows the EPA to approve state UST programs to operate in lieu of the Federal program. With this approval, the changes

described in the State Application will become part of the approved State Petroleum UST Program, and therefore will be federally enforceable. Tennessee will continue to have primary enforcement authority and responsibility for its Petroleum UST Program. This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Tennessee and are not changed by this action. This action merely approves the existing State regulations as meeting the 2015 Federal Revisions and rendering them federally enforceable.

*D. Why is the 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 we anticipate no adverse comment. Tennessee addressed all comments it received during its comment period when the rules and regulations being considered in this document were proposed at the State level.

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

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the “Proposed Rules” section of this *Federal Register* that serves as the proposal to approve the State’s Petroleum UST Program revisions and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before it becomes effective. The EPA will make any further decision on approval of the State Application after considering all comments received during the comment period. The 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 Tennessee previously been approved?*

On September 1, 1996, Tennessee submitted a complete State program approval application seeking approval of its Petroleum UST Program under subtitle I of RCRA. Tennessee did not request approval of the underground storage tank program for hazardous substances.

Effective January 19, 1999, the EPA granted final approval for Tennessee to administer its Petroleum UST Program in lieu of the Federal UST program (63 FR 63793, Nov. 17, 1998).

Effective July 27, 1999, the EPA incorporated by reference and codified the federally approved Tennessee Petroleum UST Program (64 FR 28927, May 28, 1999). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

*G. What changes is the EPA approving with this action and what standards do we use for review?*

In order to be approved, each state program revision application must meet the general requirements in 40 CFR 281.11 (General Requirements), and the specific requirements in 40 CFR part 281, subpart B (Components of a Program Application), subpart C (Criteria for No Less Stringent), and subpart D (Adequate Enforcement of Compliance).

As more fully described below, the State has made changes to its Petroleum UST Program to reflect the 2015 Federal Revisions. These changes are included in Tennessee's UST Rules at Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17, effective October 13, 2018. The EPA is approving the State's changes because they are no less stringent than the Federal UST program, and because the revised Tennessee Petroleum UST Program will continue to provide for adequate enforcement of compliance as required by 40 CFR 281.11(b) and part 281, subparts C and D, after this approval.

TDEC continues to be the lead implementing agency for the Petroleum UST Program in Tennessee. TDEC has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68-215-101 to 68-215-204 (2018), and the Tennessee UST Rules at Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17 (2018).

The following State authorities provide authority for compliance monitoring as required by 40 CFR 281.40: Tenn. Code Ann. sections 68-215-107(e)(1) through (4) and 68-215-123; and Tenn. Comp. R. & Regs. 0400-18-01-.03(2).

The following State authorities provide authority for enforcement response as required by 40 CFR 281.41: Tenn. Code Ann. sections 68-215-106(c), (e), and (f), 68-215-107(b), (c), (d), (e)(5), and (e)(6), 68-215-114, 68-215-116, 68-215-118, 68-215-119, 68-215-121, 68-215-122, and 4-5-313; and Tenn. Comp. R. & Regs. 0400-18-01-.09(17) and 0400-18-01-.15.

The following State authorities provide authority for enabling public participation in the State enforcement process, including citizen intervention and the submission of complaints, as required by 40 CFR 281.42: Tenn. Code Ann. sections 68-215-121(e), 68-215-123, 4-5-308(a) through (c), and 4-5-310; and Tenn. Comp. R. & Regs. 0400-18-01-.06(11). Further, through a Memorandum of Agreement between TDEC and the EPA, effective October 12, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and TDEC will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Pursuant to 40 CFR 281.43, the State is required to provide authority for enabling the sharing of information in the State files obtained or used in the administration of the State Petroleum UST Program with the EPA. Through a Memorandum of Agreement between TDEC and the EPA, effective October 12, 2018, the State agrees to furnish the EPA, upon request, any information in State files obtained or used in the administration of the State Petroleum UST Program. Further, the following State authorities provide authority for enabling the sharing of information in the State files obtained or used in the administration of the State Petroleum UST Program with the EPA as required by 40 CFR 281.43: Tenn. Code Ann. section 68-215-108 and Tenn. Comp. R. & Regs. 0400-18-01-.01(5)(e).

To qualify for final approval, revisions to a state's UST program must be no less stringent than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems

deferred in the 1988 UST regulations, and added, among other things: new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. Tennessee adopted all of the required 2015 Federal Revisions at Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17 (2018).

As part of the State Application, the Tennessee Attorney General has certified that the State regulations provide for adequate enforcement of compliance and meet the no less stringent criteria in 40 CFR part 281, subparts C and D. The EPA is relying on this certification, in addition to the analysis submitted by the State, in approving the State's changes.

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

States may enact laws that are more stringent than their Federal counterparts. *See* RCRA section 9008, 42 U.S.C. 6991g. When an approved state program includes requirements that are considered more stringent than those required by Federal law, the more stringent requirements become part of the federally approved program in accordance with 40 CFR 281.12(a)(3)(i). The EPA has determined that some of Tennessee's regulations are considered more stringent than the Federal program, and upon approval, they will become part of the federally approved State Petroleum UST Program and therefore federally enforceable.

In addition, states may enact laws which are broader in scope than their Federal counterparts in accordance with 40 CFR 281.12(a)(3)(ii). State requirements that go beyond the scope of the Federal program are not part of the federally approved program and the EPA cannot enforce them. Although these requirements are enforceable by the State in accordance with Tennessee law, they are not Federal RCRA requirements. The EPA considers the following State requirements to be broader in scope than the Federal program and therefore not part of the federally approved State Petroleum UST Program:

Statutory Broader in Scope Provisions



- i. Tenn. Code Ann. section 68-215-103(17)(A)(iii) and (iv), as to the definition of “Responsible party,” insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.
- ii. Tenn. Code Ann. section 68-215-104(3), insofar as it refers to the payment of fees associated with the Petroleum UST Program.
- iii. Tenn. Code Ann. section 68-215-104(4), insofar as it refers to reimbursement from Tennessee’s Petroleum Underground Storage Tank Fund (State Fund).
- iv. Tenn. Code Ann. section 68-215-106(a)(6), insofar as it places notification requirements on persons other than owners and operators, as these terms are defined in 40 CFR 280.12.
- v. Tenn. Code Ann. section 68-215-109, insofar as it establishes annual tank fees and provides for promulgation of regulations regarding these fees.
- vi. Tenn. Code Ann. section 68-215-110(b) through (h), insofar as these provisions provide for the creation of the State Fund and environmental assurance fee.
- vii. Tenn. Code Ann. section 68-215-111, insofar as it provides criteria for the qualified expenditure of funds, requirements for fund eligibility, and promulgation of regulations regarding the State Fund.
- viii. Tenn. Code Ann. section 68-215-115, insofar as it provides the procedures for the State to recover its costs for investigation, identification, containment, or clean up of a particular site.
- ix. Tenn. Code Ann. section 68-215-125, insofar as it prohibits the State Fund from being considered an insurance company or a member of the Tennessee Insurance Guaranty Association.
- x. Tenn. Code Ann. section 68-215-129, insofar as it provides criteria for cleanup contracts and reimbursement from the State Fund.

Regulatory Broader in Scope Provisions

- i. Tenn. Comp. R. & Regs. 0400-18-01-.01(4)1.(iii) and (iv), as to the definition for “Responsible party,” insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.
- ii. Tenn. Comp. R. & Regs. 0400-18-01-.02(1)(a)2., insofar as it requires owners to submit annual tank fees as part of the notification requirement.
- iii. Tenn. Comp. R. & Regs. 0400-18-01-.02(4)(c)6.(ii)(II)IV., insofar as it refers to tank fees and late penalties.
- iv. Tenn. Comp. R. & Regs. 0400-18-01-.04(1)(e), insofar as it requires inspection of dispensers.
- v. Tenn. Comp. R. & Regs. 0400-18-01-.05(1)(b) and (c), insofar as these provisions contain requirements for coverage and reimbursement from the State Fund.
- vi. Tenn. Comp. R. & Regs. 0400-18-01-.06(2)(b)1., as to the text “The fund shall not reimburse the owner, operator, and/or other responsible party of [the] petroleum UST system for the cost of generating duplicate data,” insofar as this text pertains to the State Fund.
- vii. Tenn. Comp. R. & Regs. 0400-18-01-.06(3)(f), insofar as it provides eligibility requirements for the State Fund.
- viii. Tenn. Comp. R. & Regs. 0400-18-01-.06(7)(c), insofar as it provides for reimbursement from the State Fund.
- ix. Tenn. Comp. R. & Regs. Appendix 0400-18-01-.07-A, as to the text “transport and” in (4)(a) and (4)(e), insofar as these provisions pertain to the transportation of a tank.
- x. Tenn. Comp. R. & Regs. 0400-18-01-.08(5)(a) and (b), insofar as these provisions establish eligibility requirements for the State Fund.
- xi. Tenn. Comp. R. & Regs. 0400-18-01-.09(1) through (16), insofar as these provisions regulate disbursements, coverage, and fund eligibility regarding the

State Fund and provide for approval of corrective action contractors and recovery of State costs.

xii. Tenn. Comp. R. & Regs. 0400-18-01-.10, insofar as it establishes a system and schedule for the collection of fees under the UST Act.

xiii. Tenn. Comp. R. & Regs. 0400-18-01-.12(3), insofar as it establishes eligibility requirements for the State Fund.

xiv. Tenn. Comp. R. & Regs. 0400-18-01-.12(4), insofar as it pertains to the payment of annual tank fees.

## **II. Codification**

### *A. What is codification?*

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the CFR. The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of the EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST programs 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 Tennessee's Petroleum UST Program?*

In 1999, the EPA incorporated by reference and codified Tennessee's approved Petroleum UST Program at 40 CFR 282.92 (64 FR 28927, May 28, 1999). Through this action, the EPA is amending 40 CFR 282.92 to incorporate by reference and codify Tennessee's revised Petroleum UST Program.

### *C. What codification decisions is the EPA making in this rule?*

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Tennessee Petroleum UST Program, including the revisions made to the Petroleum UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Tennessee's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through <https://www.regulations.gov>. This codification reflects the State Petroleum UST Program that will be in effect at the time the EPA's approval of the revisions to the Tennessee Petroleum UST Program addressed in this direct final rule becomes final. If, however, the EPA receives substantive comment on the proposed rule, the EPA will withdraw this direct final rule and this codification will not take effect. The EPA will consider all comments and will make a decision on program approval and codification in a future final rule. By codifying the approved Tennessee Petroleum UST Program and by amending the CFR, the public will more easily be able to discern the status of the federally approved requirements of the Tennessee Petroleum UST Program.

Specifically, in 40 CFR 282.92(d)(1)(i), the EPA is incorporating by reference the EPA-approved Tennessee Petroleum UST Program. Section 282.92(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State Petroleum UST Program, although not incorporated by reference for enforcement purposes, unless they impose obligations on the regulated entity. Section 282.92(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope or external to the State's approved Petroleum UST Program and therefore not incorporated by reference. Section 282.92(d)(2) through (5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, Program Description, and Memorandum of Agreement, which are part of the State Application and part of the Petroleum UST Program under subtitle I of RCRA.

*D. What is the effect of the EPA's codification of the federally approved Tennessee Petroleum UST Program on enforcement?*

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Tennessee, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference Tennessee's procedural and enforcement authorities, although they are listed in 40 CFR 282.92(d)(1)(ii).

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

As discussed in section I.H. above, some provisions of the State's Petroleum UST Program are not part of the federally approved State Petroleum UST Program because they are broader in scope than the Federal UST program. 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. *See* 40 CFR 281.12(a)(3)(ii). In addition, provisions that are external to the state UST program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.92(d)(1)(iii) lists the Tennessee statutory and regulatory provisions which are broader in scope than the Federal program or external to State UST program approval requirements. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

### **III. Statutory and Executive Order (EO) Reviews**

The EPA's actions merely approve and codify Tennessee's revised Petroleum UST Program requirements pursuant to RCRA section 9004, and do not impose additional requirements other than those imposed by State law. For that reason, these actions:

- Are not significant regulatory actions and have been exempted from review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not “significant regulatory actions” under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Are not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA;
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994); and
- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. The 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). This final action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### **List of Subjects in 40 CFR Parts 281 and 282**

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

**Authority:** This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005, and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Dated: August 30, 2021.

John Blevins,  
*Acting Regional Administrator,*  
*Region 4.*

For the reasons set forth in the preamble, the 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 § 282.92 to read as follows:

### **§282.92 Tennessee State-Administered Program.**

(a) *History of the approval of Tennessee's program.* The State of Tennessee (Tennessee or State) is approved to administer and enforce a petroleum underground storage tank (UST) 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 Petroleum Underground Storage Tank Program (Petroleum UST Program), as administered by the Tennessee Department of Environment and Conservation (TDEC), was approved by the EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA approved the Tennessee Petroleum UST Program on November 17, 1998, and it was effective on January 15, 1999. A subsequent program revision was approved by the EPA and became effective **[INSERT DATE 60 DATES AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

(c) *Retention of program approval.* To retain program approval, Tennessee must revise its approved Petroleum UST Program to adopt new changes to the Federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Tennessee obtains approval for revised requirements pursuant to



section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval*. Tennessee has final approval for the following elements of its Petroleum UST Program submitted to the EPA and approved effective January 15, 1999, and the program revisions approved by the 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 Tennessee materials cited in this paragraph (d)(1)(i) and listed in appendix A to this part, are incorporated by reference as part of the Petroleum UST 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 access copies of the Tennessee statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 12<sup>th</sup> Floor, 312 Rosa L. Parks Ave., Nashville, TN 37243; Phone number: (615) 532-0730; website: <https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/ust/act-rules-and-policies.html>. You may inspect all approved material at the EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562-9900; or the National Archives and Records Administration (NARA), email: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov); website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “Tennessee Statutory Requirements Applicable to the Petroleum Underground Storage Tank Program,” dated May 11, 2021.

(B) “Tennessee Regulatory Requirements Applicable to the Petroleum Underground Storage Tank Program,” dated May 11, 2021.

(ii) *Legal basis*. The EPA considered the following statutes and regulations which provide the legal basis for the State’s implementation of the Petroleum UST Program, but these

provisions do not replace Federal authorities. Further, these provisions are not being incorporated by reference, unless the provisions place requirements on regulated entities.

(A) *Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68-215-101 to 68-215-204 (2018)*. (1) Section 68-215-106(c), (e), and (f), insofar as these provisions provide for delivery prohibition and enforcement of the Petroleum UST Program.

(2) Section 68-215-106(d), insofar as it provides for criminal prosecution under the UST Act.

(3) Section 68-215-107(a), insofar as it establishes authority over the placement and storage of petroleum substances in underground storage tanks, release prevention, release detection, release correction, closure, and post-closure care of petroleum underground storage tanks in Tennessee.

(4) Section 68-215-107(b), insofar as it provides for the issuance of orders to enforce the Petroleum UST Program.

(5) Section 68-215-107(c) and (d), insofar as these provisions identify specific authorities for release response and corrective actions, including in response to an imminent and substantial danger.

(6) Section 68-215-107(e), insofar as it identifies specific authorities for compliance monitoring and enforcement.

(7) Section 68-215-107(f), insofar as it provides for the promulgation of regulations for the implementation of the Petroleum UST Program.

(8) Section 68-215-107(g)(1), insofar as it provides evaluation considerations for the State's approval of a cleanup plan.

(9) Section 68-215-108, insofar as it provides for the protection of "proprietary" information and sharing of information in the files obtained or used in the administration of the Petroleum UST Program with the EPA.

- (10) Section 68-215-114, insofar as it provides for the issuance and enforcement of correction orders; and establishes liability costs for responsible parties.
- (11) Section 68-215-116, insofar as it provides for an assessment of penalties under the UST Act.
- (12) Section 68-215-117, insofar as it provides for immunity from liability under the UST Act in certain circumstances.
- (13) Section 68-215-118, insofar as it identifies authorities for enforcement response, specifically authority over governmental entities, under the UST Act.
- (14) Section 68-215-119, insofar as it identifies authorities for enforcement response and provides for review of orders and appeal of any determination by the Tennessee Department of Environment and Conservation (TDEC) under the UST Act.
- (15) Section 68-215-120, insofar as it provides for criminal prosecution under the UST Act.
- (16) Section 68-215-121, insofar as it identifies authorities for enforcement response and public participation, provides for assessment of civil penalties and damages, and establishes third-party intervention under the UST Act.
- (17) Section 68-215-122, insofar as it identifies authorities for enforcement response and provides for injunctions as a legal remedy under the UST Act.
- (18) Section 68-215-123, insofar as it identifies specific authorities for compliance monitoring and public participation and provides for any person to submit a complaint against any person for violating the UST Act.
- (19) Section 68-215-126, insofar as it establishes authority in relation to local laws or regulations.

(20) Section 68-215-127, insofar as it establishes authority over releases of petroleum from underground storage tanks and creates the soil and groundwater classification and cleanup criteria.

(B) *Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17 (2018)*. (1) 0400-18-01-.01(5)(e), insofar as it provides for the State's sharing of information with the EPA.

(2) 0400-18-01-.03(2), insofar as it identifies specific authorities for compliance monitoring and provides for reporting and maintenance of records.

(3) 0400-18-01-.06(11), insofar as it provides for public participation in the corrective action process.

(4) 0400-18-01-.08(20) and (21), insofar as these provisions provide procedures governing the forfeiture of financial assurance and release of financial assurance mechanism documents.

(5) 0400-18-01-.09(17), insofar as it provides for assessment of civil penalties for failure to comply with orders issued under the UST Act.

(6) 0400-18-01-.11, insofar as it provides for appeal of any determination by TDEC under the provisions of Tennessee's Underground Storage Tank Regulations, procedures for contested cases, and the State Administrative Procedures Act.

(7) 0400-18-01-.15, insofar as it identifies specific authorities for enforcement response and delivery prohibition requirements.

(C) *Tennessee's Uniform Administrative Procedures Act, Part 3 – Contested Cases, Tenn. Code Ann. sections 4-5-301 to 4-5-325 (2018)*. (1) Section 4-5-308(a) through (c), insofar as these provisions identify authorities for public participation and provide for the filing of pleadings, briefs, motions, and other documents.

(2) Section 4-5-310, insofar as it identifies authorities for public participation and provides for intervention in contested case proceedings.

(3) Section 4-5-313, insofar as it identifies authorities for enforcement response and provides procedures for contested cases.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the Tennessee Petroleum UST Program are broader in scope than the Federal program or external to the State UST program approval requirements. Therefore, these provisions are not part of the approved Petroleum UST Program and are not incorporated by reference in this section:

(A) *Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68-215-101 to 68-215-204 (2018).* (1) Section 68-215-102 is external insofar as it contains the State's public policy for regulating underground storage tanks.

(2) Section 68-215-103(17)(A)(iii) and (iv), as to the definition of "Responsible party," insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

(3) Section 68-215-104(3), insofar as it refers to the payment of fees associated with the Petroleum UST Program.

(4) Section 68-215-104(4), insofar as it refers to reimbursement from Tennessee's Petroleum Underground Storage Tank Fund (State Fund).

(5) Section 68-215-106(a)(6), insofar as it places notification requirements on persons other than owners and operators, as these terms are defined in 40 CFR 280.12.

(6) Section 68-215-106(b)(1) and (2) are external insofar as these provisions contain obligations on the State agency, not a regulated entity.

(7) Section 68-215-109, insofar as it establishes annual tank fees and provides for promulgation of regulations regarding these fees.

(8) Section 68-215-110(b) through (h), insofar as these provisions provide for the creation of the State Fund and environmental assurance fee.

(9) Section 68-215-111, insofar as it provides criteria for the qualified expenditure of funds, requirements for fund eligibility, and promulgation of regulations regarding the State Fund.

(10) Section 68-215-115, insofar as it provides the procedures for the State to recover its costs for investigation, identification, containment, or cleanup of a particular site.

(11) Section 68-215-125, insofar as it prohibits the State Fund from being considered an insurance company or a member of the Tennessee Insurance Guaranty Association.

(12) Section 68-215-129, insofar as it provides criteria for cleanup contracts and reimbursement from the State Fund.

(B) *Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17 (2018)*. (1) 0400-18-01-.01(4)1.(iii) and (iv), as to the definition for "Responsible party," insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

(2) 0400-18-01-.01(5)(a) through (d) are external insofar as these provisions contain obligations on the State agency with respect to proprietary information, not a regulated entity.

(3) 0400-18-01-.02(1)(a)2., insofar as it requires owners to submit annual tank fees as part of the notification requirement.

(4) 0400-18-01-.02(4)(c)6.(ii)(II)IV., insofar as it refers to tank fees and late penalties.

(5) 0400-18-01-.04(1)(e), insofar as it requires inspection of dispensers.

(6) 0400-18-01-.05(1)(b) and (c), insofar as these provisions contain requirements for coverage and reimbursement from the State Fund.

(7) 0400-18-01-.06(2)(b)1., as to the text “The fund shall not reimburse the owner, operator, and/or other responsible party of [the] petroleum UST system for the cost of generating duplicate data,” insofar as this text pertains to the State Fund.

(8) 0400-18-01-.06(3)(f), insofar as it provides eligibility requirements for the State Fund.

(9) 0400-18-01-.06(7)(c), insofar as it provides for reimbursement from the State Fund.

(10) Appendix 0400-18-01-.07-A, as to the text “transport and” in (4)(a) and (4)(e), insofar as these provisions pertain to the transportation of a tank.

(11) 0400-18-01-.08(5)(a) and (b), insofar as these provisions establish eligibility requirements for the State Fund.

(12) 0400-18-01-.09(1) through (16), insofar as these provisions regulate disbursements, coverage, and fund eligibility regarding the State Fund and provide for approval of corrective action contractors and recovery of State costs.

(13) 0400-18-01-.09(18) is external insofar as it pertains to the severability of the rule.

(14) 0400-18-01-.10, insofar as it establishes a system and schedule for the collection of fees under the UST Act.

(15) 0400-18-01-.12(3), insofar as it establishes eligibility requirements for the State Fund.

(16) 0400-18-01-.12(4), insofar as it pertains to the payment of annual tank fees.

(17) 0400-18-01-.14 is external insofar as it contains record retention obligations on the State agency, not a regulated entity.

(2) *Statement of legal authority.* The Attorney General’s Statement, signed on October 3, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

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

(4) *Program description.* The program description and any other material submitted on October 15, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and TDEC, signed by the EPA Regional Administrator on October 12, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Amend appendix A to part 282 by revising the entry for Tennessee to read as follows:

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

\* \* \* \* \*

*Tennessee*

(A) The statutory provisions include:

*Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68-215-101 to 68-215-204 (2018):*

- 68-215-101 Short Title.
- 68-215-103 Definitions, except (17)(A)(iii) and (iv).
- 68-215-104 Prohibitions, except (3) and (4).
- 68-215-105 Minimum standards.
- 68-215-106 Notice; certificates and certification; except (a)(6), (b)(1), (b)(2), and (c) through (f).
- 68-215-107 Supervision; orders; enforcement; rules and regulations; except (a) through (g)(1).
- 68-215-110 Fund; environmental assurance fee; except (b) through (h).
- 68-215-112 Repealed.



- 68-215-113 Repealed.
- 68-215-124 Exemptions.
- 68-215-128 Obsolete.
- 68-215-130 Repealed.
- 68-215-201 Definitions.
- 68-215-202 Ownership of petroleum site or petroleum underground storage tank or property on which a petroleum site or petroleum underground tank is located.
- 68-215-203 Operation prior to and after foreclosure.
- 68-215-204 Participation in the management.

(B) The regulatory provisions include:

*Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400-18-01-.01 to .17 (2018):*

- 0400-18-01-.01 Program Scope, Definitions, and Proprietary Information Applicability; except (4)1.(iii) and (iv) of the definition for “Responsible party” and (5).
- 0400-18-01-.02 UST Systems: Installation and Operation; except (1)(a)2. and (4)(c)6.(ii)(II)IV.
- 0400-18-01-.03 Notifications, Reporting, and Record Keeping.
- 0400-18-01-.04 Release Detection; except (1)(e).
- 0400-18-01-.05 Release Reporting, Investigation, and Confirmation; except (1)(b) and (c).
- 0400-18-01-.06 Petroleum Release Response, Remediation, and Risk Management; except for the text “The fund shall not reimburse the owner, operator, and/or other responsible party of petroleum UST system for the cost of generating duplicate data” in (2)(b)1. Also, except (3)(f), (7)(c), and (11)(b) and (c).
- 0400-18-01-.07 Out-of-Service UST Systems and Closure; as to Appendix 0400-18-01-.07-A, except for the text “transport and” in (4)(a). Also, except (4)(e).
- 0400-18-01-.08 Financial Responsibility; except (5)(a), (5)(b), (20), and (21).
- 0400-18-01-.12 Indicia of Ownership; except (3) and (4).

0400-18-01-.13	Reserved.
0400-18-01-.16	Certified Operator Program.
0400-18-01-.17	UST Systems with Field-Constructed Tanks and Airport Hydrant Systems.

(C) Copies of the Tennessee statutes and regulations that are incorporated by reference are available from the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 12<sup>th</sup> Floor, 312 Rosa L. Parks Ave., Nashville, TN 37243; Phone number: (615) 532-0730; website:

*<https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/ust/act-rules-and-policies.html>*.

\* \* \* \* \*

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