



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA-R04-UST-2020-0611; FRL-8784-01-R4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Alabama (Alabama or State) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Underground Storage Tank Program (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 UST Program. The EPA has reviewed Alabama'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 Alabama's revised 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: self.terry@epa.gov. Include the Docket ID No. EPA-R04-UST-2020-0611 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA-R04-UST-2020-0611, 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 Terry Self, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action is available electronically at <https://www.regulations.gov>. The 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 Terry Self 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 Terry Self for the COVID-19 protocol requirements for your appointment.

Please also contact Terry Self 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: Terry Self, 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) 562-9396; email address: self.terry@epa.gov. Please contact Terry Self by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Alabama's Underground Storage Tank (UST) 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 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. 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 10, 2018, in accordance with 40 CFR 281.51(a), Alabama submitted a complete program revision application (State Application) seeking approval of changes to its UST Program. The program revisions requested 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 Alabama's UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Alabama UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants Alabama final approval to operate its UST Program with the revisions described in the State Application, and as outlined below. The Alabama Department of Environmental Management (ADEM) is the lead implementing agency for the UST program in Alabama, except in Indian country as noted below.

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 UST Program, and therefore will be federally enforceable. Alabama will continue to have primary enforcement authority and responsibility for its State 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 Alabama, 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. Alabama 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 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 Alabama previously been approved?

Effective March 25, 1997, the EPA granted final approval for Alabama to administer the State UST Program in lieu of the Federal UST program, and incorporated by reference and codified the federally approved State UST Program (62 FR 3613, January 24, 1997). 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 UST Program to reflect the 2015 Federal Revisions. These changes are included in the Alabama Administrative Code, Chapter 335-6-15 (Ala. Admin. Code chapter 335-6-15), as amended, effective December 8, 2017. The EPA is approving the State's changes because they are no less stringent than the Federal UST program, and because the revised Alabama 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.

ADEM continues to be the lead implementing agency for the UST Program in Alabama, except in Indian country. ADEM has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the Alabama Underground Storage Tank and Wellhead Protection Act of 1988, Code of Alabama, 1975, Title 22, Chapter 36 (Ala. Code 22-36), and Ala. Admin. Code chapter 335-6-15 (2017).

The following State authorities provide authority for compliance monitoring as required by 40 CFR 281.40: Ala. Code sections 22-36-3, 22-36-4, and 22-36-6(b) and (c) and Ala. Admin. Code r. 335-6-15-.13, 335-6-15-.40, and 335-6-15-.41.

The following State authorities provide authority for enforcement response as required by 40 CFR 281.41: Ala. Code sections 22-36-3, 22-36-9, and 22-22A-5(19), and Ala. Admin. Code r. 335-6-15-.45.

The following State authorities provide authority for enabling public participation in the State enforcement process, including citizen intervention, as required by 40 CFR 281.42: Ala.

Code sections 22-36-8 and 22-22A-5(19), Ala Admin. Code r. 335-6-15-.31, and Alabama Rules of Civil Procedure Rule 24(a). Further, through a Memorandum of Agreement between ADEM 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 ADEM will not oppose citizen intervention when permissive intervention is allowed by statute, rule or regulation.

The following State authorities provide authority for the sharing of information as required pursuant to 40 CFR 281.43: Ala. Code section 22-36-8 and Ala. Admin. Code r. 335-6-15-.39. Further, through the October 12, 2018 Memorandum of Agreement between ADEM and the EPA, ADEM agrees to furnish to the EPA, upon request, any information in State files obtained or used in the administration of the State UST Program.

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. Alabama adopted all of the required 2015 Federal Revisions at Ala. Admin. Code chapter 335-6-15 (2017).

As part of the State Application, the Alabama 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 Alabama's regulations are considered more stringent than the Federal program, and upon approval, they will become part of the federally approved State 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 Alabama 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 UST Program:

Statutory Broader in Scope Provisions

- Ala. Code section 22-36-5, insofar as it requires the collection of underground storage tank fees.
- Ala. Code sections 22-35-1 to 22-35-13, insofar as it establishes procedures for administration of the Alabama Underground and Aboveground Storage Tank Trust Fund.

Regulatory Broader in Scope Provisions

- Ala. Admin. Code r. 335-6-15-.32, insofar as it specifies analytical methods for soil and groundwater sampling.
- Ala. Admin. Code r. 335-6-15-.42, insofar as it requires owners of underground storage tanks to pay an annual fee.
- Ala. Admin. Code r. 335-6-15-.47, insofar as it specifies certification requirements for individuals who supervise installation, closure, and repair of UST systems.

- Ala. Admin. Code chapter 335-6-16, insofar as it establishes procedures for implementation of the Alabama Underground and Aboveground Storage Tank Trust Fund.

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

The EPA's approval of Alabama's UST Program does not extend to Indian country as defined in 18 U.S.C. 1151, which includes the Poarch Band of Creek Indians. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. See 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the Code of Federal Regulations (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 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 Alabama's UST Program?

In 1997, the EPA incorporated by reference and codified Alabama's approved UST Program at 40 CFR 282.50 (62 FR 3613, January 24, 1997). Through this action, the EPA is amending 40 CFR 282.50 to incorporate by reference and codify Alabama's revised 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 Alabama UST Program, including the revisions made to the UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Alabama'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 UST Program that will be in effect at the time the EPA's approval of the revisions to the Alabama UST Program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule, this codification will not take effect and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Alabama 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 Alabama UST Program.

Specifically, in 40 CFR 282.50(d)(1)(i), the EPA is incorporating by reference the EPA-approved Alabama UST Program. Section 282.50(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State UST Program, although not incorporated by reference for enforcement purposes, unless they impose obligations on the regulated entity. Section 282.50(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope or external to the State's approved UST Program and therefore not incorporated by reference. Section 282.50(d)(2) through (d)(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 UST Program under subtitle I of RCRA.

D. What is the effect of the EPA's codification of the federally approved Alabama 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 Alabama, 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 Alabama's procedural and enforcement authorities, although they are listed in 40 CFR 282.50(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 UST Program are not part of the federally approved State 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. See 40 CFR 281.12(a)(3)(ii). 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. 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 282.50(d)(1)(iii) lists the Alabama 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 Alabama's revised 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 subject to 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 significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- 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

Administrative practice and procedure, Environmental protection, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, and 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: September 8, 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 § 282.50 to read as follows:

§282.50 Alabama State-Administered Program.

(a) *History of the approval of Alabama's Program.* The State of Alabama (Alabama or State) is approved to administer and enforce an 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 Underground Storage Tank Program (UST Program), as administered by the Alabama Department of Environmental Management (ADEM), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA approved the Alabama UST Program on January 24, 1997 and it was effective on March 25, 1997. A subsequent program revision was approved by EPA and became effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

(c) *Retention of program approval.* To retain program approval, Alabama must revise its approved 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 Alabama 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.* Alabama has final approval for the following elements of its UST Program submitted to EPA and approved effective March 25, 1997, and the program revisions 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 Alabama materials cited in this paragraph (d)(1)(i) and listed in appendix A to this part, are incorporated by reference as part of the 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 Alabama statutes that are incorporated by reference in this paragraph (d)(1)(i) from the Alabama Legislative Services Agency, Alabama State House, Suite 613, 11 South Union Street, Montgomery, Alabama 36110 - 2400; Phone number: (334) 271-7700; website: <http://lsa.state.al.us>. You may access copies of the regulations that are incorporated by reference at the following website <http://www.alabamaadministrativecode.state.al.us>. You may inspect all approved material at 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, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “Alabama Statutory Requirements Applicable to the Underground Storage Tank Program,” dated March 21, 2021.

(B) “Alabama Regulatory Requirements Applicable to the Underground Storage Tank Program,” dated March 21, 2021.

(ii) *Legal basis.* EPA considered the following statutes and regulations which provide the legal basis for the State’s implementation of the UST Program, but they are not being incorporated by reference and do not replace Federal authorities, unless the provisions place requirements on regulated entities:

(A) Alabama Underground Storage Tank and Wellhead Protection Act of 1988, Ala. Code sections 22-36-1 to 22-36-10 (1988):

(1) Section 22-36-3 – Rules and regulations governing underground storage tanks. Insofar as it provides specific authorities enabling compliance monitoring and enforcement response.

(2) Section 22-36-4 – Information to be furnished by owner upon request of department; owner to permit access to records and entry and inspection of facilities. Insofar as it provides specific authorities enabling compliance monitoring.

(3) Section 22-36-6(b) and (c) – Expenditure of funds from Leaking Underground Storage Tank Trust Fund; investigative and corrective powers in regard to administration of funds; liability of owner or operator for costs. Insofar as it provides specific authorities enabling compliance monitoring.

(4) Section 22-36-8 – Availability to public of records, reports, or information obtained under chapter. Insofar as it provides specific authorities enabling public participation and the sharing of information.

(5) Section 22-36-9 – Penalties. Insofar as it provides specific authorities enabling enforcement response.

(B) Alabama Underground Storage Tank Control Regulations, Ala. Admin. Code r. 335-6-15-.01 to 335-6-15-.49 (2017):

(1) Rule 335-6-15-.13 – Reporting and Recordkeeping. Insofar as it provides specific authorities enabling compliance monitoring.

(2) Rule 335-6-15-.19 – Release Reporting and Recordkeeping. Insofar as it provides specific authorities enabling compliance monitoring.

(3) Rule 335-6-15-.31 – Public Participation. Insofar as it identifies specific authorities enabling public participation.

(4) Rule 335-6-15-.39 – Availability To Public of Records, Reports or Information. Insofar as it provides specific authorities enabling the sharing of information.

(5) Rule 335-6-15-.40 – Access To Records. Insofar as it provides specific authorities enabling compliance monitoring.

(6) Rule 335-6-15-.41 – Entry and Inspection Of Facilities. Insofar as it provides specific authorities enabling compliance monitoring.

(7) Rule 335-6-15-.45 – Delivery Prohibition. Insofar as it identifies specific authorities enabling enforcement response.

(C) Ala. Code section 22-22A-5(19) – Powers and functions of Department; representation of Department by Attorney General in legal actions. Insofar as it provides specific authorities enabling enforcement and public participation.

(D) Alabama Rules of Civil Procedure, Rule 24(a) - Intervention. Insofar as it provides for public participation in the State enforcement process.

(iii) Other provisions not incorporated by reference. The following statutory and regulatory provisions applicable to the Alabama 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 UST Program and are not incorporated by reference herein:

(A) Alabama Underground Storage Tank and Wellhead Protection Act of 1988, Ala. Code sections 22-36-1 to 22-36-10 (1988):

(1) Section 22-36-5, insofar as it requires the collection of an underground storage tank fee.

(2) Section 22-36-6(a) is external insofar as it pertains to ADEM's implementation of the Leaking Underground Storage Tank Trust Fund.

(3) Section 22-36-7 is external insofar as it provides authority for the promulgation of regulations to establish and protect wellhead areas.

(4) Section 22-36-10 is external insofar as it places requirements on the promulgation of rules and regulations to be adopted by ADEM.

(B) Alabama Underground Storage Tank Control Regulations, Ala. Admin. Code r. 335-6-15-.01 to 335-6-15-.49 (2017):

(1) Rule 335-6-15-.01 is external insofar as it contains the State's public policy for regulating underground storage tanks.

(2) Rule 335-6-15-.32, insofar as it specifies analytical methods for soil and groundwater sampling.

(3) Rule 335-6-15-.38 is external insofar as it provides specific authority for ADEM to require an owner or operator to provide an alternate or temporary drinking water source.

(4) Rule 335-6-15-.42, insofar as it requires owners of underground storage tanks to pay an annual fee.

(5) Rule 335-6-15-.44 is external insofar as it is a reserved provision.

(6) Rule 335-6-15-.47, insofar as it imposes certification requirements on individuals who supervise installation, closure, and repair of underground storage tanks.

(7) Rule 335-6-15-.49 is external insofar as it relates to the severability of the underground storage tank requirements.

(C) Alabama Underground and Aboveground Storage Tank Trust Fund Act, Code of Alabama, Ala. Code sections 22-35-1 to 22-35-13 (1988). Insofar as it establishes procedures for administration of the Alabama Underground and Aboveground Storage Tank Trust Fund for purposes of paying response actions and third-party claims.

(D) Alabama Underground and Aboveground Storage Tank Trust Fund Regulations, Ala. Admin. Code r. 335-6-16-.01 to 335-6-16-.20 (2015). Insofar it establishes procedures for determining eligibility for disbursements from the Alabama Underground and Aboveground Storage Tank Trust Fund for paying response actions and third-party claims.

(2) *Statement of legal authority.* The Attorney General's Statement, signed by the Alabama Attorney General on April 16, 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 as part of the application on October 10, 2018,

though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 et seq.

(4) *Program description.* The program description and any other material submitted as part of the application on October 10, 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 ADEM, 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 Alabama to read as follows:

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

* * * * *

Alabama

(a) The statutory provisions include:

Alabama Underground Storage Tank and Wellhead Protection Act of 1988, Ala. Code sections 22-36-1 to 22-36-10 (1988):

Section 22-36-1	Short title.
Section 22-36-2	Definitions.
Section 22-36-4	Information to be furnished by owner upon request of department; owner to permit access of records and entry and inspection of facilities, insofar as it imposes requirements on owners and operators of underground storage tank systems.

(b) The regulatory provisions include:

Alabama Underground Storage Tank Control Regulations, Ala. Admin. Code r. 335-6-15-.01 to 335-6-15-.49 (2017):

- Rule 335-6-15-.02 Definitions.
- Rule 335-6-15-.03 Applicability.
- Rule 335-6-15-.04 Installation Requirements For Partially Excluded UST Systems.
- Rule 335-6-15-.05 Notification Requirements.
- Rule 335-6-15-.06 Performance Standards For New UST Systems, And Dispensers.
- Rule 335-6-15-.07 Upgrading Of Existing UST Systems.
- Rule 335-6-15-.08 Plans and Specifications.
- Rule 335-6-15-.09 Operation, Maintenance, and Testing or Inspection of Spill and Overfill Prevention Equipment And Containment Systems; And Walkthrough Inspections.
- Rule 335-6-15-.10 Operation and Maintenance of Corrosion Protection.
- Rule 335-6-15-.11 Compatibility.
- Rule 335-6-15-.12 Repairs Allowed.
- Rule 335-6-15-.13 Reporting And Recordkeeping, insofar as it imposes requirements on owners and operators.
- Rule 335-6-15-.14 General Release Detection Requirements For All UST Systems.
- Rule 335-6-15-.15 Release Detection Requirements For Petroleum UST Systems.

- Rule 335-6-15-.16 Release Detection Requirements For Hazardous Substance UST Systems.
- Rule 335-6-15-.17 Methods Of Release Detection For Underground Storage Tanks.
- Rule 335-6-15-.18 Methods Of Release Detection For Underground Piping.
- Rule 335-6-15-.19 Release Detection Recordkeeping, insofar as it imposes requirements on owners and operators.
- Rule 335-6-15-.20 Reporting Of Suspected Releases.
- Rule 335-6-15-.21 Investigation Due To Environmental Impacts.
- Rule 335-6-15-.22 Release Investigation And Confirmation Steps.
- Rule 335-6-15-.23 Reporting And Cleanup Of Spills And Overfills.
- Rule 335-6-15-.24 Initial Release Response.
- Rule 335-6-15-.25 Initial Abatement Measures And Preliminary Investigation.
- Rule 335-6-15-.26 Preliminary Investigation Requirements.
- Rule 335-6-15-.27 Free Product Removal.
- Rule 335-6-15-.28 Secondary Investigation Requirements.
- Rule 335-6-15-.29 Corrective Action Plan.
- Rule 335-6-15-.30 Corrective Action Requirements.

- Rule 335-6-15-.33 Temporary Closure.
- Rule 335-6-15-.34 Permanent Closure And Changes-In-Service.
- Rule 335-6-15-.35 Site Closure Or Change-In-Service Assessment.
- Rule 335-6-15-.36 Applicability to Previously Closed UST Systems.
- Rule 335-6-15-.37 Closure Records.
- Rule 335-6-15-.43 Financial Responsibility for Petroleum UST Owners And Operators.
- Rule 335-6-15-.46 Operator Training.
- Rule 335-6-15-.48 UST Systems With Field-Constructed Tanks And UST Systems With Airport Hydrant Fuel Distribution Systems.

(c) Copies of Alabama statutes that are incorporated by reference are available from the Legislative Services Agency, Alabama State House, Suite 613, 11 South Union Street, Montgomery, Alabama 36110 - 2400; Phone number: (334) 271-7700; website: <http://lsa.state.al.us>. Copies of Alabama regulations that are incorporated by reference are available at the following website: <http://www.alabamaadministrativecode.state.al.us>.

[FR Doc. 2021-19724 Filed: 9/13/2021 8:45 am; Publication Date: 9/14/2021]