



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 281 and 282**

**[EPA-R04-UST-2023-0410; FRL-11400-02-R4]**

**Mississippi: 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 Mississippi (Mississippi 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 Mississippi'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 Mississippi'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: [giri.upendra@epa.gov](mailto:giri.upendra@epa.gov)*. Include the Docket ID No. EPA-R04-UST-2023-0410 in the subject line of the message.

*Instructions:* Submit your comments, identified by Docket ID No. EPA-R04-UST-2023-0410, 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>.

The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Upendra Giri, 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 action and associated publicly available docket materials are available electronically in <https://www.regulations.gov>. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Upendra Giri for alternative access to docket materials.

Please also contact Upendra Giri 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 please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Upendra Giri, 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) 562-8185; e-mail address: [giri.upendra@epa.gov](mailto:giri.upendra@epa.gov). Please contact Upendra Giri by phone or email for further information.

**SUPPLEMENTARY INFORMATION:**

**I. Approval of Revisions to Mississippi’s 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?*

In accordance with 40 CFR 281.51(a), Mississippi submitted a complete program revision application (State Application) seeking approval of changes to its UST Program. The State Application was submitted on July 31, 2023 and amended on August 17, 2023. The program revisions described 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 UST 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 Mississippi's UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Mississippi UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants Mississippi final approval to operate its UST Program with the revisions described in the State Application, and as outlined below. The Mississippi Department of Environmental Quality (MDEQ) is the lead implementing agency for the UST Program in Mississippi, except in Indian country as noted below in Section I.I.

*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. Mississippi 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 Mississippi, and are not changed by this action. This action merely approves the existing State regulations as being no less stringent than 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.

Mississippi 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 Mississippi previously been approved?*

On October 2, 1989, Mississippi submitted a complete State program approval application seeking approval of its UST Program under subtitle I of RCRA. Effective July 11, 1990, the EPA granted final approval for Mississippi to administer its UST Program in lieu of the Federal UST program (55 FR 23549, June 11, 1990). Effective July 22, 1997, the EPA incorporated by reference and codified the federally approved Mississippi UST Program (62 FR 28364, May 23, 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 Mississippi's UST Rules at 11 Miss. Admin. Code Pt. 5, Ch. 2, effective October 5, 2018. The EPA is approving the State's changes because they are no less stringent than the Federal UST program, and because the revised Mississippi 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.

MDEQ continues to be the lead implementing agency for the UST Program in Mississippi. MDEQ has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the Mississippi Underground Storage Tank Act (the UST Act) of 1988, Miss. Code Ann. sections 49-17-401 to 49-17-435 (2022), and the Mississippi UST Rules at 11 Miss. Admin. Code Pt. 5, Ch. 2 (2018).

The following State authorities provide authority for compliance monitoring as required pursuant to 40 CFR 281.40: Miss. Code Ann. sections 49-17-31, 49-17-35, 49-17-39, 49-17-409, 49-17-413(1), 49-17-415, and 49-17-427; and 11 Miss. Admin. Code Pt. 5, Ch 2, Rule 2.3, section 280.35.

The following State authorities provide authority for enforcement response as required pursuant to 40 CFR 281.41: Miss. Code Ann. sections 49-17-27, 49-17-31, 49-

17-33, 49-17-35, 49-17-37, 49-17-41, 49-17-419, 49-17-427; and 11 Miss. Admin. Code Pt. 5, Ch 2, Rule 2.3, section 280.36.

The following State authorities provide authority for enabling public participation in the State enforcement process, including citizen intervention and filing of complaints, required pursuant to 40 CFR 281.42: Rule 24(a)(2) of the Mississippi Rules of Civil Procedure; Miss. Code Ann. sections 49-17-35, 49-17-41, and 49-17-431; and 11 Miss. Admin. Code Pt. 5, Ch 2, Rule 2.6, section 280.67. Further, through a Memorandum of Agreement between MDEQ 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 MDEQ will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation. 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 UST Program with the EPA as required by 40 CFR 281.43: Miss. Code Ann. sections 49-17-39 and 49-17-425. Further, through a Memorandum of Agreement between MDEQ 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 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. Mississippi adopted all of the required 2015 Federal Revisions at 11 Miss. Admin. Code Pt. 5, Ch. 2 (2018).

As part of the State Application, the Mississippi 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 Mississippi'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 Mississippi 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*

(i) Miss. Code. Ann. section 49-17-403(b), as to the definition of "Bonded distributor," insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(ii) Miss. Code. Ann. section 49-17-403(o), as to the definition of “Response action contractor,” insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(iii) Miss. Code. Ann. section 49-17-403(p), as to the definition of “Retailer,” insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(iv) Miss. Code. Ann. section 49-17-403(q), as to the definition of “Substantial compliance,” insofar as it relates to a state fund.

(v) Miss. Code. Ann. section 49-17-405, insofar as it provides for the creation of the Mississippi Groundwater Protection Trust Fund (State Fund), promulgation of regulations regarding the State Fund, criteria for qualified expenditure of funds, and liability of owners for fund expenditures.

(vi) Miss. Code. Ann. section 49-17-407, insofar as it creates an environmental protection fee, provides limits on use of the State Fund, and addresses third party claims.

(vii) Miss. Code. Ann. section 49-17-409, all except for the first sentence, insofar as these provisions provide for the eligibility requirements of the State Fund and reimbursement of costs from owners.

(xiii) Miss. Code. Ann. section 49-17-421, insofar as it establishes an annual tank regulatory fee.

(ix) Miss. Code. Ann. section 49-17-422, insofar as it creates an Underground Storage Tank Advisory Council.

(x) Miss. Code. Ann. section 49-17-423, insofar as it pertains to the commission's administration of funds from the Leaking Underground Storage Tank Trust Fund.

(xi) Miss. Code. Ann. section 49-17-429, insofar as it requires the certification of individuals to install, alter, or remove underground storage tanks and provides for the promulgation of regulations setting forth certification requirements.

*Regulatory Broader in Scope Provisions*

(i) 11 Miss. Admin. Code Pt. 5, Ch. 1 (2009), insofar as these provisions regulate Immediate Response Action Contractors, Environmental Response Action Contractors, and the State Fund.

(ii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “Ancillary equipment,” insofar as it pertains to dispensers.

(iii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “Certificate of Operation,” insofar as it requires UST systems to be permitted by MDEQ and the payment of tank regulatory fees.

(iv) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “Motor fuel,” insofar as it includes 100% biodiesel or ethanol.

(v) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “New tank system,” insofar as it includes dispensers as part of the new tank system.

(vi) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “Register,” insofar as it requires notification for installation, replacement, or change in the operational status of a dispenser.

(vii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.1, section 280.12, as to the definition of “Replace,” insofar as it considers replacement of a dispenser to constitute a new UST system.

(viii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.2, section 280.20(j), insofar as it regulates shear valves.

(ix) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.2, sections 280.22(a) and (b), insofar as these provisions regulate dispensers.

(x) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.3, sections 280.34(g) through (i), insofar as these provisions regulate dispensers.

(xi) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.3, section 280.35(a)(4), insofar as it regulates dispensers.

(xii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.3, section 280.35(b)(1), insofar as it regulates shear valves.

(xiii) 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.3, section 280.38(b)(1)(iii), insofar as it regulates shear valves.

(xiv) 11 Miss. Admin. Code Pt. 5, Ch. 3, insofar as these provisions provide for the certification and regulation of persons who install, alter, test, and permanently close underground storage tanks.

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

The EPA's approval of Mississippi's UST Program does not extend to Indian country as defined in 18 U.S.C. 1151. The EPA will retain responsibility 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 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 Mississippi's UST Program?*

In 1997, the EPA incorporated by reference and codified Mississippi's approved UST Program at 40 CFR 282.74 (62 FR 28364, May 23, 1997). Through this action, the EPA is amending 40 CFR 282.74 to incorporate by reference and codify Mississippi'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 Mississippi 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 Mississippi'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 Mississippi 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 Mississippi 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 Mississippi UST Program.

Specifically, in 40 CFR 282.74(d)(1)(i), the EPA is incorporating by reference the EPA-approved Mississippi UST Program. Section 282.74(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 282.74(d)(1)(iii) identifies the State's statutory and

regulatory provisions that are broader in scope, external, or excluded for other reasons from the State's approved UST Program and therefore not incorporated by reference. Sections 282.74(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 State UST Program under subtitle I of RCRA.

*D. What is the effect of the EPA's codification of the federally approved Mississippi 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 Mississippi, 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 Mississippi's procedural and enforcement authorities, although they are listed in 40 CFR 282.74(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. 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 40 CFR part 282. In addition, some

provisions are being excluded from incorporation by reference in 40 CFR part 282 for other reasons. For reference and clarity, 40 CFR 282.74(d)(1)(iii) lists the Mississippi statutory and regulatory provisions which are broader in scope than the Federal program, external to State UST program approval requirements, or being excluded for other reasons. 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 Mississippi'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 14094 (88 FR 21879, April 11, 2023);
- 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.

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: December 21, 2023.

*Jeaneanne M Gettle,  
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. Amend § 282.2 by revising paragraph (b)(4) as follows:

**§ 282.2 Incorporation by reference.**

\* \* \* \* \*

(b)(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; Phone Number: (404) 562-9900.

\* \* \* \* \*

3. Revise § 282.74 to read as follows:

**§ 282.74 Mississippi State-Administered Program.**

(a) *History of the approval of Mississippi's program.* The State of Mississippi (Mississippi 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 Mississippi Department of Environmental Quality (MDEQ), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Mississippi UST Program on June 11, 1990, and it was effective on July 11, 1990. A subsequent program revision was approved by EPA and became effective **[INSERT DATE 60 DATES AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* Mississippi 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, Mississippi 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 Mississippi 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.* Mississippi has final approval for the following elements of its UST Program submitted to EPA and approved effective June 11, 1990, 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 Mississippi 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.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Mississippi statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the Mississippi Department of Environmental Quality, P.O. Box 2261, Jackson, MS 29335; Phone number: (601) 961-5171; website: <https://www.mdeq.ms.gov/water/groundwater-assessment-and-remediation/underground-storage-tanks/>.

(A) “Mississippi Statutory Requirements Applicable to the Underground Storage Tank Program,” dated September 5, 2023.

(B) “Mississippi Regulatory Requirements Applicable to the Underground Storage Tank Program,” dated September 5, 2023.

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

(A) *Mississippi Underground Storage Tank Act (the UST Act) of 1988, Miss. Code Ann. sections 49-17-401 to 49-17-435 (2022).*

(1) Section 49-17-409, as to the first sentence, insofar as it provides for compliance monitoring and the promulgation of regulations for the reporting of releases.

(2) Section 49-17-413(1), insofar as it provides for compliance monitoring, and the promulgation of regulations for the implementation of the State UST Program.

(3) Section 49-17-415, insofar as it provides for compliance monitoring and establishes authority to conduct inspections, tests, and obtain information from owners.

(4) Section 49-17-419, insofar as it establishes authority over corrective action.

(5) Section 49-17-425, insofar as it provides for the sharing of information with EPA.

(6) Section 49-17-427, insofar as it provides for enforcement response, enforcement of orders, assessment of penalties under the UST Act, proceedings before the commission, and limitations on liability.

(7) Section 49-17-431, insofar as it provides for appeal of any decision by the commission or the director.

(B) *Mississippi Air and Water Pollution Control Law, Miss. Code Ann. sections 49-17-27 and 49-17-31 to 49-17-41 (2020).*

(1) Section 49-17-27, insofar as it provides for enforcement response and injunctive relief.

(2) Section 49-17-31, insofar as it provides for enforcement response, notice of violations, enforcement of regulations and orders, procedures for contested cases, and assessment of penalties.

(3) Section 49-17-33, insofar as it provides for hearing procedures, issuance of orders, and penalties.

(4) Section 49-17-35, insofar as it provides for enforcement response, public participation, and citizen intervention.

(5) Section 49-17-37, insofar as it provides for hearing procedures and transcripts.

(6) Section 49-17-39, insofar as it provides for the sharing of information with EPA.

(7) Section 49-17-41, insofar as it provides for appeal rights for aggrieved parties.

(C) *Mississippi's Underground Storage Tank Regulations, 11 Miss. Admin. Code Pt. 5, Ch. 2 (2018).*

(1) R. 2.3, 280.36, insofar as it provides for delivery prohibition and enforcement of the State UST Program.

(2) R. 2.6, 280.67, insofar as it provides for public participation in the corrective action process.

(D) *Rule 24(a)(2) of the Mississippi Rules of Civil Procedure (1982)*, insofar as it provides for citizen intervention and public participation in the State enforcement process.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the Mississippi UST Program are broader in scope than the Federal program, external to the State UST program approval requirements, or are being excluded for other reasons as noted below. Therefore, these provisions are not part of the approved UST Program and are not incorporated by reference in this section:

(A) *Mississippi Underground Storage Tank Act (the UST Act) of 1988, Miss. Code Ann. sections 49-17-401 to 49-17-435 (2022).*

(1) 49-17-403(b) is broader in scope as to the definition of “Bonded distributor,” insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(2) Section 49-17-403(o) is broader in scope as to the definition of “Response action contractor,” insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(3) Section 49-17-403(p) is broader in scope as to the definition of “Retailer,” insofar as it is associated with the regulation of entities other than owners and operators as these terms are defined in 40 CFR 280.12.

(4) Section 49-17-403(q) is broader in scope as to the definition of “Substantial compliance,” insofar as it relates to a State fund.

(5) Section 49-17-405 is broader in scope insofar as it provides for the creation of the Mississippi Groundwater Protection Trust Fund (State Fund), promulgation of regulations regarding the State Fund, criteria for qualified expenditure of funds, and liability of owners for fund expenditures.

(6) Section 49-17-407 is broader in scope insofar as it creates an environmental protection fee, provides limits on use of the State Fund, and addresses third party claims.

(7) Section 49-17-409 is broader in scope, all except for the first sentence, insofar as it provides for the eligibility requirements of the State Fund and reimbursement of costs from owners.

(8) Section 49-17-421 is broader in scope insofar as it establishes an annual tank regulatory fee.

(9) Section 49-17-422 is broader in scope insofar as it creates an Underground Storage Tank Advisory Council.

(10) Section 49-17-423 is broader in scope insofar as it pertains to the commission's administration of funds from the Leaking Underground Storage Tank Trust Fund.

(11) Section 49-17-429 is broader in scope insofar as it requires the certification of individuals to install, alter, or remove underground storage tanks and provides for the promulgation of regulations setting forth certification requirements.

(12) Section 49-17-433 is external insofar as it pertains to the severability of the State UST Act.

(13) Section 49-17-435 is external insofar as it contains reporting obligations on the State agency, not a regulated entity.

(B) *Mississippi Air and Water Pollution Control Law, Miss. Code Ann. sections 49-17-27 and 49-17-31 to 49-17-41 (2020).*

(1) Section 49-17-32 is external insofar as it does not pertain to the State UST Program.

(2) Section 49-17-34 is external insofar as it does not pertain to the State UST Program.

(3) Section 49-17-36 is external insofar as it does not pertain to the State UST Program.

(C) *Mississippi's Groundwater Protection Trust Fund Regulations, 11 Miss. Admin. Code Pt. 5, Ch. 1 (2009)* is broader in scope insofar as these provisions regulate Immediate Response Action Contractors, Environmental Response Action Contractors, and the State Fund.

(D) *Mississippi's Underground Storage Tank Regulations, 11 Miss. Admin. Code Pt. 5, Ch. 2 (2018).*

(1) R. 2.1, 280.12 is broader in scope as to the definition of "Ancillary equipment," insofar as it pertains to dispensers.

(2) R. 2.1, 280.12 is broader in scope as to the definition of "Certificate of Operation," insofar as it requires UST systems to be permitted by MDEQ and the payment of tank regulatory fees.

(3) R. 2.1, 280.12 is broader in scope as to the definition of "Motor fuel," insofar as it includes 100% biodiesel or ethanol.

(4) R. 2.1, 280.12 is broader in scope as to the definition of "New tank system," insofar as it includes dispensers as part of the new tank system.

(5) R. 2.1, 280.12 is broader in scope as to the definition of "Register," insofar as it requires notification for installation, replacement, and change in operational status of a dispenser.

(6) R. 2.1, 280.12 is broader in scope as to the definition of “Replace,” insofar as it considers replacement of a dispenser to constitute a new UST system.

(7) R. 2.2, 280.20(j) is broader in scope insofar as it regulates shear valves.

(8) R. 2.2, 280.22(a) and (b) are broader in scope insofar as these provisions regulate dispensers.

(9) R. 2.3, 280.34(g) through (i) are broader in scope insofar as these provisions regulate dispensers.

(10) R. 2.3, 280.35(a)(4) is broader in scope insofar as it regulates dispensers.

(11) R. 2.3, 280.35(b)(1) is broader in scope insofar as it regulates shear valves.

(12) R. 2.3, 280.38(b)(1)(iii) is broader in scope insofar as it regulates shear valves.

(13) R. 2.8, 280.91(e) and (f), are excluded for other reasons. Paragraph (e) is excluded only insofar as it includes Indian tribes as a “local government entity,” and paragraph (f) is excluded insofar as EPA retains responsibility for implementing the Federal UST program in Indian country.

**Note 1 to paragraph (d)(1)(iii)(D)(13).** MDEQ does not regulate any USTs on Indian lands and EPA retains responsibility for implementing the Federal UST program in Indian country. In a subsequent rulemaking, MDEQ will revise these provisions to remove references to the State’s regulation of USTs in Indian country.

(14) R. 2.8, 280.92, is excluded for other reasons only insofar as the definition of “Local government” includes Indian tribes.

**Note 2 to paragraph (d)(1)(iii)(D)(14).** MDEQ does not regulate any USTs on Indian lands and the EPA retains responsibility for implementing the Federal UST program in Indian country. In a subsequent rulemaking, MDEQ will revise the definition of “Local government” to exclude Indian tribes.

(15) R. 2.8, 280.100 is external insofar as it is not applicable in a State with an approved UST program.

(E) *Mississippi's Underground Storage Tank Regulations for the Certification of Persons Who Install, Alter, and Remove Underground Storage Tanks, 11 Miss. Admin. Code Pt. 5, Ch. 3 (2018)* is broader in scope insofar as these provisions provide for the certification and regulation of persons who install, alter, test, and permanently close underground storage tanks.

(2) *Statement of legal authority.* The Attorney General's Statement, signed by the Mississippi Attorney General on July 27, 2023, 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 in the application dated July 31, 2023, as amended on August 17, 2023, 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 submitted in the application dated July 31, 2023, as amended on August 17, 2023, 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.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the MDEQ, 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.*

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

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

\* \* \* \* \*

*Mississippi*

(a) The statutory provisions include:

*Mississippi Underground Storage Tank Act (the UST Act) of 1988, Miss. Code Ann. sections 49-17-401 to 49-17-435 (2022):*

- 49-17-401 Short Title.
- 49-17-403 Definitions, except (b), (o), (p), and (q).
- 49-17-411 Compliance with regulations.
- 49-17-413 Rules and regulations, except for (1).
- 49-17-417 Repealed.

**Note to paragraph (a) of Appendix A to Part 282.** Miss. Code Ann. section 49-17-413(2) is approved as part of the State UST Program to the extent that Mississippi will not grant a variance that makes its UST Program less stringent than the Federal regulations. In practice, Mississippi does not grant variances for the UST Program. Mississippi has agreed to execute a revised Memorandum of Agreement with EPA stating that Mississippi will limit the scope of its variance authority to only those situations where the Federal regulations allow the implementing agency to approve flexibilities.

(b) The regulatory provisions include:

*Mississippi's Underground Storage Tank Regulations, 11 Miss. Admin. Code Pt. 5, Ch. 2 (2018):*

Rule 2.1 Program Scope and Interim Prohibition

- 280.10 Applicability.
- 280.11 Installation requirements for partially excluded UST systems.
- 280.12 Definitions, except for “dispensers” in the definition of “Ancillary equipment;” the definition of “Certificate of Operation;” “including 100% biodiesel or ethanol” from the definition of “Motor fuel;” “dispensers” and (c) from the definition of “New tank system;” “dispensers” from the definition of “Register;” “dispensers” and (c) from the definition of “Replace.”
- 280.13 Industry codes and recommended practices.

## Rule 2.2 UST Systems: Design, Construction, Installation and Notification

- 280.20 Performance Standards for new UST systems, except for (j).
- 280.21 Upgrading of existing UST systems.
- 280.22 Notification requirements, except as applied to “dispensers” in (a) and (b).

## Rule 2.3 General Operating Requirements

- 280.30 Operation and maintenance of spill and overfill prevention.
- 280.31 Operation and maintenance of secondary containment.
- 280.32 Operation and maintenance of corrosion protection.
- 280.33 Compatibility.
- 280.34 Repairs and replacements, except as applied to “dispenser(s)” in (g), (h), and (i).
- 280.35 Reporting recordkeeping, except as applied to “dispensers” in (a)(4); and except as applied to “shear valves” in (b)(1).
- 280.37 Operator training.
- 280.38 Operation and maintenance walkthrough inspections, except for (b)(1)(iii).

## Rule 2.4 Leak Detection

- 280.40 General requirements for all UST systems.
- 280.41 Requirements for petroleum UST systems.
- 280.42 Requirements for hazardous substance UST systems.
- 280.43 Methods of leak detection for tanks.
- 280.44 Methods of leak detection for piping.
- 280.45 Leak detection recordkeeping.

## Rule 2.5 Leak Reporting, Release Reporting, Investigation, and Confirmation

- 280.50 Reporting of leaks and suspected releases.
- 280.51 Investigation due to off-site impacts.
- 280.52 Release investigation and confirmation steps.
- 280.53 Reporting and cleanup of spills and overfills.

## Rule 2.6 Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

- 280.60 General.
- 280.61 Initial response.
- 280.62 Initial abatement measures and site check.
- 280.63 Initial site characterization.
- 280.64 Free product removal.
- 280.65 Investigations for soil and ground-water cleanup.
- 280.66 Corrective action plan.

#### Rule 2.7 Out-of-Service UST Systems and Closure

- 280.70 Temporary closure.
- 280.71 Permanent closure and changes-in-service.
- 280.72 Assessing the site at closure or change-in-service.
- 280.73 Applicability to previously closed UST systems.
- 280.74 Closure records.

#### Rule 2.8 Financial Responsibility

- 280.90 Applicability.
- 280.91 Compliance dates, except for “including Indian tribes” in (e), and (f).
- 280.92 Definition of terms, except for “and includes Indian tribes” from the definition of “Local government.”
- 280.93 Amount and scope of required financial responsibility.
- 280.94 Allowable mechanisms and combinations of mechanisms.
- 280.95 Financial test of self-insurance.
- 280.96 Guarantee.
- 280.97 Insurance and risk retention group coverage.
- 280.98 Surety bond.
- 280.99 Letter of credit.
- 280.101 State fund or other State assurance.
- 280.102 Trust fund.
- 280.103 Standby trust fund.
- 280.104 Local government bond rating test.
- 280.105 Local government financial test.
- 280.106 Local government guarantee.
- 280.107 Local government fund.

- 280.108 Substitution of financial assurance mechanisms by owner or operator.
- 280.109 Cancellation or nonrenewal by a provider of financial assurance.
- 280.110 Reporting by owner or operator.
- 280.111 Recordkeeping.
- 280.112 Drawing on financial assurance mechanisms.
- 280.113 Release from the requirements.
- 280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
- 280.115 Replenishment of guarantees, letters of credit, or surety bonds.
- 280.116 Suspension of enforcement. [Reserved]

#### Rule 2.9 Lender Liability

- 280.120 Definitions.
- 280.121 Participation in management.
- 280.122 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.
- 280.123 Operating an underground storage tank or underground storage tank system.

#### Rule 2.10 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems.

- 280.130 Definitions.
- 280.131 General requirements.
- 280.132 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

**Note to paragraph (b) of Appendix A to Part 282.** 11 Miss. Admin. Code Pt. 5, Ch. 2, 280.42(b)(5) is approved as part of the UST Program only to the extent that Mississippi will not allow alternate release detection methods for hazardous substance UST systems installed on or after October 13, 2015. Sections 40 CFR 281.33(e) and 280.42(e) of the Federal regulations only allow alternate release detection methods for hazardous substance UST systems installed prior to October 13, 2015. Mississippi's section 280.42(b)(5) does not contain an analogous limitation on the use of alternative release detection methods. In practice, MDEQ does not allow alternative release detection methods for hazardous substance tanks installed after October 1, 2008. In a subsequent rulemaking, MDEQ will revise 11 Miss. Admin. Code Pt. 5, Ch. 2, R. 2.4, section 280.42(b)(5) to clarify this point.

(C) Copies of the Mississippi statutes and regulations that are incorporated by reference are available from the Mississippi Department of Environmental Quality, P.O. Box 2261, Jackson,

MS 29335; Phone number: (601) 961-5171; *website: <https://www.mdeq.ms.gov/water/groundwater-assessment-and-remediation/underground-storage-tanks/>*.

[FR Doc. 2024-00171 Filed: 1/17/2024 8:45 am; Publication Date: 1/18/2024]