



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA-R08-UST-2023-0563; FRL-11550-02-R8]

South Dakota: 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 South Dakota Department of Agriculture and Natural Resources (DANR) has applied to the EPA for final approval of the changes to its Underground Storage Tank (UST) program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed South Dakota's application and determined that South Dakota's UST program revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of South Dakota's State program and incorporates by reference those provisions of the State's regulations that we have determined meet the requirements for approval.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** unless EPA receives adverse written comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Should EPA receive such comments, it will publish a timely document either: withdrawing the direct final publication or affirming the publication and responding to comments. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for

submitting comments.

Email: fitzgibbons.jeffrey@epa.gov.

Fax: (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).

Mail, hand delivery or courier: Jeff Fitzgibbons, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8LCR-RC, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: EPA must receive your comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Direct your comments to Docket ID No. EPA-R08-UST-2023-0563; FRL-11550-02-R8. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment with any CD you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically through <https://www.regulations.gov>. For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeff Fitzgibbons, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number (303) 312-6633; email address: fitzgibbons.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to South Dakota’s Underground Storage Tank Program

EPA is publishing this rule without prior proposal because the EPA views this as a noncontroversial action and does not anticipate adverse comments. However, in the “Proposed Rules” section of this *Federal Register*, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the EPA receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize South Dakota’s UST program revision will take effect as provided below. The State’s federally authorized and codified UST program, as revised pursuant to this action, will remain subject to the EPA’s inspection and enforcement authorities under RCRA and other applicable statutory and regulatory provisions.

A. Why are revisions to State programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs to comply with the updated regulations and

submit these revisions to the EPA for approval. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) part 280.

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

On October 24, 2023, the State of South Dakota submitted a final complete program revision application seeking authorization of changes to its UST program that correspond to the EPA final rule promulgated 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, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. The EPA has reviewed South Dakota's application to revise its authorized program and determined that the revisions to South Dakota's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the South Dakota program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, we grant South Dakota final authorization to operate its UST program with the changes described in the program revision application and as outlined below in section I.G. of this document.

C. What is the effect of this authorization decision?

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 South Dakota and are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. South Dakota received comments during its comment period when the rules and regulations in this document were being considered and were proposed at the State level. All comments were addressed at public hearing and/or reflected in the adopted regulations.

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

If 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 base 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 South Dakota previously been authorized?

On May 15, 1995, the EPA finalized a rule approving the UST program that South Dakota proposed to administer in lieu of the Federal UST program. On May 15, 1995, EPA codified the approved South Dakota program that is subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is EPA authorizing with this action?

In order to be approved, each State program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR subparts B, C, and D. This also is true for proposed revisions to approved State programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST

program and because the EPA has confirmed that the South Dakota UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D after this approval.

The South Dakota Department of Agriculture and Natural Resources (Department) is the lead implementing agency for the UST program in South Dakota, except for (1) all lands located within formal Indian Reservations within or abutting the State of South Dakota, including the Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian Reservation, Sisseton Wahpeton Indian Reservation, Standing Rock Indian Reservation, Yankton Indian Reservation; (2) any land held in trust by the United States for an Indian Tribe; and (3) any other land, whether on or off a reservation that qualifies as “Indian country” within the meaning of 18 U.S.C. 1151.

The Department continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under South Dakota Codified Laws (SDCL), Title 34A Environmental Protection, Chapter 2 Water Pollution Control, section 99 Underground Storage Tanks (2021) and selected provisions from SDCL sections 34A-12 Regulated Substance Discharges (2021), 34A-93 Implementation of and Compliance with Certain Federal Energy Acts (2009), and 34A-98 Underground Storage Tanks (2021). The South Dakota UST Program gets its enforcement authority from the powers of the Department found in SDCL sections 34A-12-3 through 34A-12-12 and 34A-13-4. Under 34A-6-1.20, an employee or agent of the Department has the authority to enter and inspect any property premises or place where regulated substances are stored at any reasonable time. In the case of a release, SDCL provisions 34A-2-99(4) and 34A-13-4 provide employees or agents of the Department the authority to take such action is necessary, including the authority to enter any property, premises or place where an UST is located for inspection, in order to conduct sampling, and to have access to records. SDCL provision 34A-2-99(4) provides the Department with rulemaking authority for

corrective action. Notice of violation may be issued, and penalties for noncompliance with South Dakota's UST Act may be assessed under SDCL section 34A-2-93. The State also includes requirements for delivery prohibitions in the event of noncompliance as described in the Administrative Rules of South Dakota (ARSD) section 75:56:01:56.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under SDCL 34A-2-99, in addition to the regulatory provisions of Administrative Rules of South Dakota (ARSD) Chapter 74:56:01 Underground Storage Tanks, as amended effective April 19, 2021 and ARSD Chapter 74:56:02 Financial Responsibility, as amended effective April 19, 2021. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of South Dakota and the EPA, signed by the EPA Region 8 Regional Administrator October 15, 2023, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42, including the provisions that the State will investigate and provide responses to citizen complaints and not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation. South Dakota has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a State's program must be "equivalent to, consistent with, and 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. The EPA analyzes revisions to approved State programs pursuant to

the criteria found in 40 CFR 281.30 through 281.39.

The Department has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Department has amended the Administrative Rules of South Dakota to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Section 281.39 describes the State operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal requirements. South Dakota has promulgated and is implementing its own operator training provisions under Administrative Rules of South Dakota section 74:56:01:38:01. After a thorough review, the EPA has determined that South Dakota's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Attorney General of South Dakota certified that the laws of the State of South Dakota provide adequate authority to carry out the "no less stringent" technical requirements submitted by the State in order to meet the criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on the EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking.

H. Where are the revised State Rules different from the Federal Rules?

Broader in Scope Provisions

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program and are not federally enforceable (40 CFR 281.12(a)(3)(ii)). South Dakota's State program does not include any regulatory requirements that are considered broader in coverage than the Federal program.

More Stringent Provisions

Where an approved State program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally approved program (40 CFR 281.12(a)(3)(i)).

We consider the following State requirements to be more stringent than the Federal requirements:

Under Administrative Rules of South Dakota (ARSD) 74:56:01

South Dakota does not adopt the extensive Energy Policy Act (EPAAct) changes to § 280.10(a), which subjects the listed types of tanks to different regulation under the Federal program based on the tank's installation date within the unnumbered paragraph following 74:56:01:03(6). As a result, South Dakota subjects UST systems with field-constructed tanks to full regulation under the "all owners or operators of an UST system" language of 74:56:01:03 introductory paragraph and airport hydrant fuel distribution systems and tanks installed before the effective date of the rule [§ 280.10(a)(1)(ii)] to all the requirements of chapter 74:56:01, making the State more stringent than Federal.

South Dakota does not have an analog to Federal provision § 280.10(c) which allows many UST systems to be excluded from the regulations of Federal part 280. The absence of a State analog to this Federal provision results in more tanks being subject to full regulation, which is more stringent than Federal.

At ARSD 74.56.01:11(3) South Dakota requires the submittal of plans and specifications of both new and upgraded systems for approval at least 30 days prior to installation for the State to determine installed or upgraded systems meet minimum requirements. This additional State-only approval is more stringent than the Federal.

Within the second unnumbered paragraph after 74:56:01:12(5) South Dakota requires an additional State-only notification in the event of any changes of information stated in a

certification of compliance form. The additional notification requirement is more stringent than Federal, which does not include a similar notification.

South Dakota does not have an analog to Federal provision § 280.43(h) which allows UST system owners and operators to use statistical inventory reconciliation as an alternative method to detect releases. The absence of a State analog to this Federal provision results in the State being more stringent as it does not allow for this alternative method to be used.

At section 74:56:01:40(2) South Dakota does not adopt the exceptions to the reporting of suspected releases included in Federal § 280.50(b)(1) through (3). As a result, South Dakota's regulations are more stringent than Federal because the State continues to require the reporting of releases in circumstances where, otherwise, under the Federal program, they would not be required to report.

Within the introductory paragraph of section 74:56:01:47(3) South Dakota requires the preparation and submittal of a free product removal report within 30 days, unlike the 45-day requirement in the Federal provision at § 280.64 introductory text. South Dakota's shorter timeline makes the State more stringent than Federal.

I. How does this action affect Indian Country (18 U.S.C. 1151) in South Dakota?

South Dakota is not authorized to carry out its UST program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of South Dakota:
 - a. Cheyenne River Indian Reservation,
 - b. Crow Creek Indian Reservation,
 - c. Flandreau Indian Reservation,
 - d. Lower Brule Indian Reservation,
 - e. Pine Ridge Indian Reservation,

- f. Rosebud Indian Reservation,
 - g. Sisseton Wahpeton Indian Reservation,
 - h. Standing Rock Indian Reservation,
 - i. Yankton Indian Reservation;
2. Any land held in trust by the U.S. for an Indian Tribe, and
 3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the UST program in these lands. *See 40 CFR 281.12(a)(2)*.

II. Codification

A. What is codification?

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

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

EPA incorporated by reference South Dakota's then approved UST program effective May 15, 1995 (60 FR 14334; March 16, 1995). Through this action, the EPA is revising 40 CFR 282.91 to include the approval revision actions.

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

In this rule, we are finalizing the Federal regulatory text that incorporates by reference the federally authorized South Dakota UST Program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the South Dakota rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and/or in hard copy at the EPA Region 8 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this *Federal Register* document is to codify South Dakota's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the South Dakota UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule, then 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 South Dakota program and by amending the CFR, the public will more easily be able to discern the status of the federally approved requirements of the South Dakota program.

The EPA is incorporating by reference the South Dakota approved UST program in 40 CFR 282.91. Section 282.91(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.91 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under subtitle I of RCRA.

D. What is the effect of EPA's codification of the federally authorized State 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 South Dakota, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, though the EPA has approved the State procedures listed in 40 CFR 282.91(d)(1)(ii), the EPA is not incorporating by reference South Dakota's procedural and enforcement authorities.

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

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA subtitle I program because they are "broader in coverage" than subtitle I of RCRA. Section 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.91(d)(1)(iii) lists for reference and clarity the South Dakota statutory and regulatory provisions which are "broader in coverage" than the Federal program and which are not, therefore, part of the approved program being codified. Provisions that are "broader in coverage" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (E.O.) Reviews

This action only applies to South Dakota's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable E.O.s and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821,

Jan. 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law.

Therefore, this action is not subject to review by OMB.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of South Dakota's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

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

D. Executive Order 13132: Federalism

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

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

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997),

because it is not economically significant and it does not make decisions based on environmental health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

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

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, 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.

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

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

J. Paperwork Reduction Act

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

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

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

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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); however, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

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

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances,
Incorporation by reference, State program approval, Underground storage tanks.

Dated: April 30, 2024.

KC Becker,
Regional Administrator,
Region 8.

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

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

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

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

2. Revise § 282.91 to read as follows:

§ 282.91 South Dakota State-Administered Program.

(a) The State of South Dakota is approved to administer and enforce an underground storage tank program in lieu of the Federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the South Dakota Department of Agriculture and Natural Resources (Department), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. On March 16, 1995, EPA published the notice of final determination approving the South Dakota underground storage tank base program effective May 15, 1995. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(b) South Dakota has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under 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) To retain program approval, South Dakota must revise its approved 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 South Dakota obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the *Federal Register*.

(d) South Dakota has final approval for the following elements of its program application originally submitted to EPA and approved effective May 15, 1995, and the program revision application approved by EPA effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**:

(1) *State statutes and regulations*—(i) *Incorporation by reference*. The South Dakota provisions cited in this paragraph (d)(1)(i) are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the South Dakota statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070; Phone number: 605-773-3251; email: LRC@sdlegislature.gov; Website: <https://sdlegislature.gov>.

(A) You may inspect all approved material at EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, phone number 303-312-6633, or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, call 202-741-6030 or go to <https://www.archives.gov/federal-register/cfr/ibr-locations>.

(B) EPA-Approved South Dakota Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, dated June 2022.

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

(A) The statutory provisions include:

(1) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 2 Water Pollution Control: Sections 98 Underground Storage Tanks – Definitions and 99 Underground Storage Tanks – Promulgation of rules – Violation.*

(2) *South Dakota Codified Laws (2011), Title 34A Environmental Protection, Chapter 6 Solid Waste Management*: selected sections.

(3) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 10 Remedies for Protection of Environment*: Sections 1 through 17.

(4) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 12 Regulated Substance Discharges*: Sections 1 through 16.

(5) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 13 Petroleum Inspection and Release Compensation*: Sections 1, 4, 5, and 20.

(6) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 17 Uniform Environmental Covenants Act*: Sections 1 through 14.

(7) *South Dakota Codified Laws (2009), Title 34A Environmental Protection, Chapter 93 Implementation of and Compliance with Certain Federal Energy Acts*: Sections 1 through 8.

(8) *South Dakota Codified Laws (2021), Title 1 State Affairs and Government, Chapter 50 State Emergency Response Commission*: Sections 1 through 11.

(9) *South Dakota Codified Laws (1969), Title 15 Civil Procedure, Chapter 6 Rules of Procedure in Circuit Courts*: Section 24(a) Intervention of Right.

(B) The regulatory provisions include:

(1) *Administrative Rules of South Dakota (April 19, 2021), Title 74 Department of Agriculture and Natural Resources, Article 74:56 Storage facilities – remediation: Chapter 74:56:01 Underground Storage Tanks*, Section 74:56:01:56 Failure to comply.

(2) [Reserved]

(iii) *Provisions not incorporated by reference*. None of the identified statutes and rules applicable to the South Dakota underground storage tank program are broader in coverage than the Federal program; therefore, all provisions are incorporated by reference.

(2) *Statement of legal authority*. The Attorney General's Certification, signed by the Attorney General for the State of South Dakota on September 2, 2022, 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 Procedures for Adequate Enforcement” submitted as part of the final program application on October 24, 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 and any other material submitted as part of the final program revision application on October 24, 2023, 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 8 and the South Dakota Department of Agriculture and Natural Resources, signed by the EPA Regional Administrator on October 15, 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. Amend appendix A to part 282 by revising the entry for “South Dakota” to read as follows:

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

* * * * *

South Dakota

(a) The statutory provisions include:

(1) *South Dakota Codified Laws (2021), Title 34A Environmental Protection, Chapter 2 Water Pollution Control: Section 98 Underground Storage Tanks: section 34A-2-98(5)*

Definition “underground storage tank.”

(2) [Reserved]

(b) The regulatory provisions include:

(1) *Administrative Rules of South Dakota (April 19, 2021), Title 74 Department of Agriculture and Natural Resources, Article 56 Storage facilities – remediation:*

Chapter 74:56:01 Underground Storage Tanks:

Sections 74:56:01:01 Definitions; 74:56:01:02 Underground storage tank defined; 74:56:01:03 Applicability; 74:56:01:04 Performance standards for new UST systems – General requirements; 74:56:01:05 Performance standards for new UST systems – Tanks; 74:56:01:06 Performance standards for new UST systems – Piping; 74:56:01:07 Performance standards for new UST systems – Spill and overfill protection; 74:56:01:08 Performance standards for new UST systems – Installation requirements and submission of proof of compliance with requirements; 74:56:01:09 Upgrading of existing UST systems – General requirements and deadlines; 74:56:01:10 Upgrading of existing USTs – Specific requirements; 74:56:01:10.01 Replacement of existing UST systems – Tanks; 74:56:01:10.02 Replacement of existing UST systems – Piping; 74:56:01:10.03 Installation of under-dispenser sumps; 74:56:01:11 Notification requirements for UST systems; 74:56:01:12 Completion of certification of compliance form for UST systems; 74:56:01:13 Spill and overfill control; 74:56:01:14 Operation and maintenance of cathodic protection; 74:56:01:15 Operation and maintenance of cathodic protection – Criteria for taking tests; 74:56:01:16 Operation and maintenance of cathodic protection – Recordkeeping; 74:56:01:17 Compatibility; 74:56:01:18 Repairs allowed – General requirements; 74:56:01:19 Repairs allowed – Lining; 74:56:01:20 Repairs allowed – Fiberglass-reinforced plastic tank systems; 74:56:01:21 Repairs allowed – Piping; 74:56:01:22 Repairs allowed – Recordkeeping; 74:56:01:23 Maintenance and availability of records; 74:56:01:23.01 Periodic testing of spill prevention equipment and containment sumps – General requirements; 74:56:01:23.02 Periodic operation and maintenance walkthrough inspections; 74:56:01:24 Release detection for all UST systems – General requirements and deadlines; 74:56:01:25 Release detection requirements for regulated substance UST systems – Excluding hazardous

substances; 74:56:01:26 Release detection requirements – Tank tightness testing and inventory reconciliation; 74:56:01:27 Release detection requirements – Vapor monitoring; 74:56:01:28 Release detection requirements – Groundwater monitoring; 74:56:01:29 Release detection requirements – Automatic tank monitoring; 74:56:01:30 Release detection requirements – Secondary containment with interstitial monitoring; 74:56:01:31 Release detection requirements – Manual tank monitoring; 74:56:01:32 Release detection requirements – Hazardous substance UST systems; 74:56:01:33 Release detection requirements – Other; 74:56:01:34 Release detection requirements for pressure piping; 74:56:01:35 Release detection requirements for suction piping; 74:56:01:36 Release detection requirements for piping – Regulated hazardous substances; 74:56:01:38 Recordkeeping; 74:56:01:38.01 Training of owners and operators; 74:56:01:40 Reporting of suspected releases; 74:56:01:41 Reporting of spills and overfills; 74:56:01:42 Release investigation and confirmation; 74:56:01:43 Off-site impacts and source investigation; 74:56:01:44 General requirements for corrective action for releases from UST systems; 74:56:01:45 Initial abatement requirements and procedures for releases from UST systems; 74:56:01:46 Additional abatement requirements for hazardous substances; 74:56:01:47 Free product removal; 74:56:01:48 Additional site investigation for releases from UST systems; 74:56:01:49 Soil and groundwater cleanup for releases from UST systems; 74:56:01:51 Reporting of hazardous substance releases from UST systems; 74:56:01:52 Temporary removal from use; 74:56:01:53 Temporary closure; 74:56:01:54 Permanent closure; 74:56:01:55 Postclosure requirements; and 74:56:01:57 Field constructed tanks/airport hydrant systems.

Chapter 74:56:02 Financial responsibility:

Sections 74:56:02:01 Applicability; 74:56:02:02 Definitions; and 74:56:02:03 Financial responsibility and lender liability rules.

(2) [Reserved]

(c) Copies of the South Dakota statutes and regulations that are incorporated by reference are available from the South Dakota Legislative Research Council, 3rd Floor, State Capitol, 500

East Capitol Avenue, Pierre, South Dakota 57501-5070; Phone number: 605-773-3251; email:

LRC@sdlegislature.gov; Website: <https://sdlegislature.gov>.

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