



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R07-UST-2023-0491; FRL-11446-02-R7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Missouri's Underground Storage Tank (UST) program submitted by the Missouri Department of Natural Resources (MDNR). This action also codifies EPA's approval of Missouri's State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under RCRA and other applicable statutory and regulatory provisions.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If EPA receives adverse comments, it will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

2. *E-mail: drouare.douglas@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA-R07-UST-2023-0491. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal <https://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and also with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the document for assistance.

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

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials either through

https://www.regulations.gov or by contacting Douglas Drouare at (913) 551-7299 or *drouare.douglas@epa.gov*. Please call or email the contact listed above if you need access to material indexed but not provided in the docket.

FOR FURTHER INFORMATION CONTACT: Douglas E. Drouare, Tanks, Toxics, and Pesticides Branch, Land, Chemical, and Redevelopment Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7299; email address: *drouare.douglas@epa.gov*.

SUPPLEMENTARY INFORMATION:

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

A. Why are revisions to State 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 an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved State may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, States must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or when responsibility for the State program is shifted to a new agency or agencies.

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

On August 11, 2023, in accordance with 40 CFR 281.51(a), Missouri submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Missouri’s revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State’s procedures to ensure adequate

enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State Application and determined that the revisions to Missouri'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 Missouri program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Missouri final approval to operate its UST program with the changes described in the program revision application and as outlined below in section I.G. of this document.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Missouri and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

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

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

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. The EPA will base any further decision on the approval of the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a

later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Missouri previously been approved?

On May 5, 2004, the EPA finalized a rule approving the UST program, effective June 5, 2004, to operate in lieu of the Federal program. The State’s program has not previously been codified.

G. What changes are we approving with this action?

On August 11, 2023, in accordance with 40 CFR 281.51(a), Missouri submitted a complete application for final approval of its UST program revisions adopted on May 17, 2017. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Missouri’s UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Missouri final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	10 CSR 26-2.019, 2.020 & 2.022
40 CFR 281.31, Upgrading Existing UST Systems	10-CSR 26-2.021
40 CFR 281.32, General Operating Requirements	10-CSR 26-2.030 through 2.036
40 CFR 281.33, Release Detection	10 CSR 26-2.040 through 2.048
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	10 CSR 26-2.050 through 2.053
40 CFR 281.35, Release Response and Corrective Action	10 CSR 26-2.070 through 2.083
40 CFR 281.36, Out-of-service Systems and Closure	10 CSR 26-2.060 through 2.064
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	10 CSR 26-3 and 10 CSR 100-1 through 100-6
40 CFR 281.39, Operator Training	10 CSR 100-6
40 CFR 281.41, Legal Authorities for Enforcement Response	10 CSR 26-4, Missouri Revised Statutes, Chapters 260, 319, 507, 644 and Missouri Supreme Court Rules, Rule 52, Rules of Civil Procedure

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The MDNR has broad

statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Missouri Revised Statutes, Chapters 260, 319, 507, 644, and Missouri Supreme Court Rules – Rule 52 and Missouri Rules (regulations) of Department of Natural Resources, Divisions 26 and 100.

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

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law pursuant to 40 CFR 281.12(a)(3)(ii):

Missouri Revised Statutes

Revised Statutes of Missouri, RSMo section 260

Revised Statutes of Missouri, RSMo section 319.100

Revised Statutes of Missouri, RSMo section 319.103

Revised Statutes of Missouri, RSMo section 319.105

Revised Statutes of Missouri, RSMo section 319.107

Revised Statutes of Missouri, RSMo section 319.109

Revised Statutes of Missouri, RSMo section 319.111

Revised Statutes of Missouri, RSMo section 319.114

Revised Statutes of Missouri, RSMo section 319.117

Revised Statutes of Missouri, RSMo section 319.120

Revised Statutes of Missouri, RSMo section 319.123

Revised Statutes of Missouri, RSMo section 319.125

Revised Statutes of Missouri, RSMo section 319.127

Revised Statutes of Missouri, RSMo section 319.129

Revised Statutes of Missouri, RSMo section 319.130

Revised Statutes of Missouri, RSMo section 319.131

Revised Statutes of Missouri, RSMo section 319.132

Revised Statutes of Missouri, RSMo section 319.133

Revised Statutes of Missouri, RSMo section 319.135

Revised Statutes of Missouri, RSMo section 319.136

Revised Statutes of Missouri, RSMo section 319.137

Revised Statutes of Missouri, RSMo section 319.138

Revised Statutes of Missouri, RSMo section 319.139

Revised Statutes of Missouri, RSMo section 319.140

Revised Statutes of Missouri, RSMo section 507

Revised Statutes of Missouri, RSMo section 644

Missouri Code of State Regulations

Title 10 – Department of Natural Resources

Division 26 - Petroleum and Hazardous Substance Storage Tanks

Rules of Department of Natural Resources, Division 26 - Petroleum and Hazardous Substance Storage Tanks, Chapter 1 - Underground and Aboveground Storage Tanks - Organization

Rules of Department of Natural Resources, Division 26 - Petroleum and Hazardous Substance Storage Tanks, Chapter 4 - Underground Storage Tanks - Administrative Penalties

Rules of Department of Natural Resources, Division 26 - Petroleum and Hazardous Substance Storage Tanks, Chapter 5 – Aboveground Storage Tanks – Release Response

Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees

Rules of Department of Natural Resources, Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 1 – General Organization

Rules of Department of Natural Resources, Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 2 – Definitions

Rules of Department of Natural Resources, Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 3 – Transport Load Fee

Rules of Department of Natural Resources, Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 4 – Participation Requirements

Rules of Department of Natural Resources, Division 100 - Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 5 – Claims

More Stringent Provisions

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally approved program and are federally enforceable pursuant to 40 CFR 281.12(a)(3)(i):

Missouri has removed some federally allowed exceptions to corrosion protection making them more stringent: 10 CSR 26-2.020, 1, (A) & (B).

Missouri makes a number of stipulations requiring corrosion protection for all metal coming in contact with any “electrolyte” making them more stringent: 10 CSR 26-2.020 (B) and 10 CSR-2.021, (4).

Missouri has set a compliance date for new underground storage tank system performance standards of July 1, 2017 which would be earlier than Federal regulatory requirement making them more stringent: 10 CSR 26-2.020 (A), (A).5, (B), (B).3, (B).5 & (C).1.B,(III).(c).

Missouri is more prescriptive and offers fewer options than Federal regulations for certification of installation making them more stringent: 10 CSR 26-2.022.

Missouri has more restrictive thresholds (volumetric and timing) for overfill devices and alarms than Federal regulations making them more stringent: 10 CSR 26-2.020 (C).B.(II).

Missouri is more prescriptive than Federal regulations as to when ball float valves can and cannot be utilized for overfill prevention making them more stringent: 10 CSR 26-2.020 (C).B.(III).

Missouri is more prescriptive than Federal regulations regarding compatibility and approval of overfill devices utilized for pressurized delivery systems making them more stringent: 10 CSR 26-2.020 (C).B.(IV).

Missouri offers fewer acceptable standards and practices for spill and overfill prevention than Federal regulations making them more stringent: 10 CSR 26-2.030 (9).

Missouri has added operation and maintenance of corrosion protection reporting (performance logs, testing reports) and action (what to do if tests fail, cathodic protection found

off or not working) criteria that is more specific than Federal regulations making them more stringent: 10 CSR 26-2.031 (B), (C) and (D).

Missouri regulations indicate that documents demonstrating compatibility of all UST systems, including tanks, piping, release detection equipment and all other ancillary equipment with the regulated substance being stored are required. This is more expansive and stringent than Federal regulations: 10 CSR 26-2.034 (1).(B).3.

Missouri has a more restricted list of allowable standards and practices for repairs allowed than Federal regulations making them more stringent: 10 CSR 26-2.033, (2).(A).1.

Missouri specifies that when repairing cathodically protected metal piping that released a regulated substance, the entire length of electrically continuous pipe must be replaced. This is more expansive and stringent than Federal regulations: 10 CSR 26-2.033, (2).(C).

Missouri specifies repairs must be done by a person registered with the Missouri Department of Agriculture and who has a financial responsibility mechanism. This is more expansive and stringent than Federal regulations: 10 CSR 26-2.033, (2).(D).

Missouri is more prescriptive in details and criteria regarding testing of containment sumps. In addition, Missouri requires testing of all containment sumps. This is more expansive and stringent than Federal regulations: 10 CSR 26-2.035, (1) and (2).

Missouri requires walkthrough inspections immediately for new underground storage tank installs. There is not a lessening in frequency if deliveries are received less than every thirty days. This is more stringent than Federal regulations: 10 CSR 26-2.036, (1), (C), 1.

Missouri does not allow groundwater or vapor monitoring for release detection after July 1, 2020; except where vapor monitoring is accompanied by a tracer chemical. This is more stringent than Federal regulations: 10 CSR 26-2.041, (1), (A), 4 and 5.

Missouri stipulates that interstitial monitoring can only be performed with a double-walled tank: not with systems with secondary barriers or internal linings. This is more stringent than Federal regulations: 10 CSR 26-2.043, (1), (H).

Missouri allows for only 24 hours for completion of initial release response action. There is no flexibility on the timing. This is more stringent than Federal regulations: 10 CSR 26-2.071, (1).

Missouri allows for only 20 days for completion of initial abatement actions. There is no flexibility on the timing. This is more stringent than Federal regulations: 10 CSR 26-2.072, (2).

Missouri allows for only 45 days for completion of site characterization actions. There is no flexibility on the timing. This is more stringent than Federal regulations: 10 CSR 26-2.074, (2).

Missouri does not allow temporary underground storage tank closures with product in the tank. This is more stringent than Federal regulations: 10 CSR 26-2.012, (1), O, 4.

Missouri requires permanent closure after 5 years of out of service or out of use status. This is more stringent than Federal regulations: 10 CSR 26-2.060, (4).

Missouri has prescriptive requirements for bringing an out of service or out of use underground storage tank back into service or use. This is more stringent than Federal regulations: 10 CSR 26-2.060, (5), (6) and (7).

Missouri has a notification requirement for out of service or out of use underground storage tank status changes. This is more stringent than Federal regulations: 10 CSR 26-2.060, (9).

Missouri does not allow leak detection equipment/methods to be used to meet the assessing the site at closure or change in service requirement. A written procedure for sampling and testing must be followed. This is more stringent than Federal regulations: 10 CSR 26-2.062.

Missouri regulations have a definition of “corrosion expert” that is limited to those with a National Association of Corrosion Engineers International certification. This is more stringent than Federal regulations: 10 CSR 26-2.012, (1), (C), 7.

Missouri regulations have a definition of “replaced” as it pertains to piping that includes the language “or single compartment” that addresses specific situations involving

compartmentalized underground storage tanks. This is more stringent than Federal regulations: 10 CSR 26-2.012, (1), (R), 5, B.

Missouri regulations have a definition of “septic tank” that includes the language “and constructed”. This is more stringent than Federal regulations: 10 CSR 26-2.012, (1), (S), 3.

II. Codification

A. What is codification?

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

B. What is the history of codification of Missouri’s UST program?

The EPA has not previously incorporated by reference and codified State’s approved UST program. Through this action, the EPA is incorporating by reference and codifying State’s State program in 40 CFR 282.75 to include the program and the approved revisions.

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

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the federally approved Missouri UST program described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, this document generally available through <https://www.regulations.gov> or by contacting the EPA Region 7 contact listed in the **ADDRESSES** section of this preamble.

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

EPA is incorporating by reference the Missouri approved UST program in 40 CFR 282.75. Section 282.75(d)(1)(i) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.75 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

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

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Missouri procedural and enforcement authorities. Section 282.75(d)(1)(ii) of 40 CFR lists those approved Missouri authorities that would fall into this category.

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

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA

Subtitle I program because they are “broader in scope” than Subtitle I of RCRA. Section 281.12(a)(3)(ii) of 40 CFR states that where an approved State program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of Federal enforcement in part 282. Section 282.75(d)(1)(iii) lists for reference and clarity the Missouri statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Missouri’s UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows. Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), because 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 was not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.*, because this action authorizes State requirements pursuant to RCRA section 9004 and imposes no requirements beyond those imposed by State law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1501 *et seq.*, and does not significantly or uniquely affect small 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.

E. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67429, November 9, 2000) because currently there are no federally recognized Tribes in Pennsylvania. Thus, Executive Order 13175 does not apply to this action.

F. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action”

in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a State program.

H. 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.

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

Executive Order 12898 (59 FR 7629, February 16, 1994) 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 (people of color and/or Indigenous peoples) and low-income populations. Because this action approves pre-existing State rules that are 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, this rule is not subject to Executive Order 12898.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report containing this document and other required information to each House of the Congress 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 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

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

Dated: May 9, 2024.

Meghan McCollister,
Regional Administrator,
EPA Region 7.

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

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

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

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

2. Add § 282.75 to read as follows:

§ 282.75 Missouri State-Administered Program.

(a) *History of the approval of Missouri's program.* The State of Missouri 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 Missouri Department of Natural Resources, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this Chapter. EPA approved the Missouri program on May 5, 2004 and it was effective on June 5, 2004. 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) *Enforcement authority.* Missouri has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retaining program approval.* To retain program approval, Missouri must revise its approved program to adopt new changes to the federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281,

subpart E. If Missouri 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) *Final program approval*. Missouri has final approval for the following elements of its program application originally submitted to EPA and approved on May 5, 2004 and effective June 5, 2004, 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 provisions cited in this paragraph, and listed in appendix A to part 282, 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. This material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). You may inspect all approved material at the EPA Region 7 Office, 11201 Renner Boulevard, Lenexa, KS 66219; phone number: (913) 551-7299. For information on the availability of this material at NARA, email:

fr.inspection@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations>.

You may obtain copies of the Missouri regulations and statutes that are incorporated by reference in this paragraph from the Missouri Department of Natural Resources website at:

<https://www.dnr.mo.gov/waste-recycling/business-industry/guidance-technical->

[assistance/underground-storage-tank-requirements](https://www.dnr.mo.gov/waste-recycling/investigations-cleanups/regulated-storage-tank-closure), [https://www.dnr.mo.gov/waste-](https://www.dnr.mo.gov/waste-recycling/investigations-cleanups/regulated-storage-tank-closure)

[recycling/investigations-cleanups/regulated-storage-tank-closure](https://www.dnr.mo.gov/waste-recycling/investigations-cleanups/regulated-storage-tank-closure) or the Missouri Department of Natural Resources, Underground Storage Tanks Section, P.O. Box 176, Jefferson City, Missouri, 65102-0176; phone number: (573) 751-6822.

(A) EPA-Approved Missouri Statutory Requirements Applicable to the Underground Storage Tank Program, May 2017.

(B) EPA-Approved Missouri Regulatory Requirements Applicable to the Underground Storage Tank Program, May 2017.

(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 for enforcement purposes and do not replace Federal authorities. Missouri's no less stringent underground storage tank program compliance criteria is included in their regulations. Missouri includes brief statements in their statutes establishing the authority of the Missouri Department of Natural Resources to create and implement the underground storage tank program. None of these statutes are incorporated by reference.

(A) Revised Statutes of Missouri, RSMo section 260.

(B) Revised Statutes of Missouri, RSMo sections 319.100, 319.103, 319.105, 319.107, 319.109, 319.111, 319.114, 319.117, 319.120, 319.123, 319.125, 319.127, 319.129, 319.130, 319.131, 319.132, 319.133, 319.135, 319.136, 319.137, 319.138, 319.139, 319.140.

(C) Revised Statutes of Missouri, RSMo section 507.

(D) Revised Statutes of Missouri, RSMo section 644.

(E) Missouri Supreme Court Rules - Rule 52 - Rules of Civil Procedure.

(F) Rules of Department of Natural Resources, Division 26 - Chapters 1 and 4.

(G) Rules of Department of Natural Resources, Division 100 - Chapters 1 through 5.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference in this section for enforcement purposes:

(A) Missouri Revised Statutes.

(1) Revised Statutes of Missouri, RSMo section 260.

(2) Revised Statutes of Missouri, RSMo sections 319.100, 319.103, 319.105, 319.107, 319.109, 319.111, 319.114, 319.117, 319.120, 319.123, 319.125, 319.127, 319.129, 319.130, 319.131, 319.132, 319.133, 319.135, 319.136, 319.137, 319.138, 319.139, 319.140.

(3) Revised Statutes of Missouri, RSMo section 507.

(4) Revised Statutes of Missouri, RSMo section 644.

(B) Missouri Code of State Regulations.

(1) Rules of Department of Natural Resources, Division 26 - Chapters 1, 4 and 5.

(2) Rules of Department of Natural Resources, Division 100 - Chapters 1 through 5.

(2) *Statement of legal authority.* The “Attorney General’s Statement”, signed by the Missouri Attorney General on May 5, 2004, and August 11, 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 “Adequate Enforcement of Compliance” submitted as part of the original application on May 5, 2004 , and as part of the program revision application on August 11, 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 original application on May 5, 2004, and as part of the program revision application on August 11, 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 7 and the State of Missouri, signed by the EPA Regional Administrator on April 15, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. In appendix A to part 282 add in alphabetical order the entry “Missouri” to read as follows:

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

* * * * *

Missouri

(a) The statutory provisions include:

None.

(b) The regulatory provisions include:

Rules of Department of Natural Resources, Division 2 - Petroleum and Hazardous Substance Storage Tanks, Chapter 2 - Underground Storage Tanks - Technical Regulations, except for:

10 CSR 26-2.020, 1, (A) and (B) language that removed some federally allowed exceptions to corrosion protection making them more stringent.

10 CSR 26-2.020 (B) and 10 CSR-2.021, (4) language that makes a number of stipulations requiring corrosion protection for all metal coming in contact with any “electrolyte” making them more stringent.

10 CSR 26-2.020 (A), (A).5, (B), (B).3, (B).5 and (C).1.B,(III).(c) language that stipulates a compliance date for new underground storage tank system performance standards of July 1, 2017 which would be earlier than Federal regulatory requirement making them more stringent.

10 CSR 26-2.022 language that stipulates fewer options than Federal regulations for certification of installation making them more stringent.

10 CSR 26-2.020 (C).B.(II) language that stipulates more restrictive thresholds (volumetric and timing) for overfill devices and alarms than Federal regulations making them more stringent.

- 10 CSR 26-2.020 (C).B.(III) language that stipulates more prescriptive uses of ball float valves making them more stringent.
- 10 CSR 26-2.020 (C).B.(IV) language that stipulates more prescriptive regulations regarding compatibility and approval of overfill devices utilized for pressurized delivery systems making them more stringent.
- 10 CSR 26-2.030 (9) language that stipulates fewer acceptable standards and practices for spill and overfill prevention making them more stringent.
- 10 CSR 26-2.031 (B), (C) and (D) language that added operation and maintenance of corrosion protection reporting (performance logs, testing reports) and action (what to do if tests fail, cathodic protection found off or not working) criteria that is more specific than Federal regulations making them more stringent.
- 10 CSR 26-2.034 (1).(B).3 language that stipulates documents demonstrating compatibility of all UST systems, including tanks, piping, release detection equipment and “all other ancillary equipment” with the regulated substance being stored are required. This is more expansive and stringent than Federal regulation.
- 10 CSR 26-2.033, (2).(A).1 language that stipulates a more restricted list of allowable standards and practices for repairs allowed than Federal regulations making them more stringent.
- 10 CSR 26-2.033, (2).(C) language that stipulates when repairing cathodically protected metal piping that released a regulated substance, the entire length of electrically continuous pipe must be replaced. This is more expansive and stringent than Federal regulations.
- 10 CSR 26-2.033, (2).(D) language that stipulates repairs must be done by a person registered with the Missouri Department of Agriculture and who has a financial responsibility mechanism. This is more expansive and stringent than Federal regulations.

- 10 CSR 26-2.035, (1) and (2) language that stipulates the testing of all containment sumps. This is more expansive and stringent than Federal regulations.
- 10 CSR 26-2.036, (1), (C), 1 language that requires an immediate walkthrough inspection for new underground storage tank installs and no lessening in frequency of walkthrough inspections if deliveries are received less than every thirty days. This is more stringent than Federal regulations.
- 10 CSR 26-2.041, (1), (A), 4 and 5 language that does not allow groundwater or vapor monitoring for release detection after July 1, 2020; except where vapor monitoring is accompanied by a tracer chemical. This is more stringent than Federal regulations.
- 10 CSR 26-2.043, (1), (H). language that stipulates interstitial monitoring can only be performed with a double-walled tank: not with systems with secondary barriers or internal linings. This is more stringent than Federal regulations.
- 10 CSR 26-2.071, (1) language that stipulates only 24 hours for completion of initial release response action. There is no flexibility on the timing. This is more stringent than Federal regulations.
- 10 CSR 26-2.072, (2) language that stipulates only 20 days for completion of initial abatement actions. There is no flexibility on the timing. This is more stringent than Federal regulations.
- 10 CSR 26-2.074, (2) language that stipulates only 45 days for completion of site characterization actions. There is no flexibility on the timing. This is more stringent than Federal regulations.
- 10 CSR 26-2.012, (1), O, 4 language that does not allow temporary underground storage tank closures with product in the tank. This is more stringent than Federal regulations.

10 CSR 26-2.060, (4) language that requires permanent closure after 5 years of out of service or out of use status. This is more stringent than Federal regulations.

10 CSR 26-2.060, (5), (6) and (7) language that stipulates prescriptive requirements for bringing an out of service or out of use underground storage tank back into service or use. This is more stringent than Federal regulations.

10 CSR 26-2.060, (9) language that stipulates a notification requirement for out of service or out of use underground storage tank status changes. This is more stringent than Federal regulations.

10 CSR 26-2.062 language that stipulates leak detection equipment/methods cannot be used to meet the assessing the site at closure or change in service requirements. A written procedure for sampling and testing must be followed. This is more stringent than Federal regulations.

10 CSR 26-2.012, (1), (C), 7 language that stipulates a “corrosion expert” is limited to those with a National Association of Corrosion Engineers International certification. This is more stringent than Federal regulations.

10 CSR 26-2.012, (1), (R), 5, B language that stipulates a definition of “replaced” as it pertains to piping that includes the language “or single compartment” that addresses specific situations involving compartmentalized underground storage tanks. This is more stringent than Federal regulations.

10 CSR 26-2.012, (1), (S), 3 language that stipulates a definition of “septic tank” that includes the language “and constructed”. This is more stringent than Federal regulations.

Rules of Department of Natural Resources, Division 26 - Petroleum and Hazardous Substance Storage Tanks, Chapter 3—Underground Storage Tanks - Financial Responsibility

Rules of Department of Natural Resources, Division 100—Petroleum Storage Tank Insurance Fund Board of Trustees, Chapter 6 – UST Operator Training

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