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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 282****[EPA-R10-RCRA-2021-0452; FRL 8849-02-R10]****Washington: 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 Washington's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Washington's state program and incorporates by reference those provisions of the State's regulations that we have determined meet the requirements for approval. 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 sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

**DATES:** This rule is effective December 20, 2021, unless the EPA receives adverse comment by November 18, 2021. If EPA receives adverse comment, the EPA 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 material listed in the regulations is approved by the Director of the Federal Register, as of December 20, 2021.

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

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

2. *Email:* [boulind-yeung.charlotte@epa.gov](mailto:boulind-yeung.charlotte@epa.gov).

3. *Mail:* Charlotte Boulind-Yeung, Land, Chemicals and Redevelopment Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, MS: 15-H04, Seattle, Washington 98101.

4. *Hand Delivery or Courier:* Deliver your comments to Charlotte Boulind-Yeung, Land, Chemicals and Redevelopment Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, MS: 15-H04, Seattle, Washington 98101.

*Instructions:* Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2021-0452, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Charlotte Boulind-Yeung, (206) 553-6315, [boulind-yeung.charlotte@epa.gov](mailto:boulind-yeung.charlotte@epa.gov). To inspect the hard copy materials, please schedule an appointment with Charlotte Boulind-Yeung at (206) 553-6315.

**SUPPLEMENTARY INFORMATION:****I. Approval of Revisions to Washington's Underground Storage Tank Program***A. Why are revisions to state programs necessary?*

States that 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 underground storage tank program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal

Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program, and these changes must then be approved by the EPA.

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

On June 30, 2021, in accordance with 40 CFR 281.51(a), Washington submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Washington's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566, July 15, 2015), 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. We have reviewed the State Application and determined that the revisions to Washington'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 Washington program provides for adequate enforcement of compliance with these requirements (40 CFR 281.11(b)). Therefore, the EPA grants Washington 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 action on the regulated community?*

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 Washington, 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 the EPA using a direct final rule?*

The EPA is publishing this direct final rule without a prior proposed rulemaking because we view this action as noncontroversial and we anticipate

no adverse comment. Washington did not receive any substantive comments during its comment period when the rules and regulations being considered in this direct final rule were proposed at the state level.

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

This direct final rule 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 consider all comments received during the comment period before making any further decision on approval of the State Application. 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 Washington previously been approved?*

On October 8, 1993, the EPA finalized a rule approving the UST program that Washington proposed to administer in lieu of the Federal UST program.

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

To be approved, each state program application must meet the general requirements in 40 CFR 281.11, and 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). This is also 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 Washington UST program will continue to provide for adequate enforcement of compliance with these requirements as described in 40 CFR 281.11(b) and part 281, subpart D after this approval.

The Washington Department of Ecology ("Ecology") is the lead implementing agency for the UST program in Washington, except in Indian country.

Ecology continues to have broad statutory authority to regulate the installation, operation, maintenance,

and closure of USTs, as well as UST releases under two Washington statutes, chapter 70A.355 Revised Code of Washington (RCW), "Underground Storage Tanks," and chapter 70A.305 RCW, "Hazardous Waste Cleanup—Model Toxics Control Act." The Washington UST Program gets its enforcement authority from the powers and duties of Ecology, found in RCW 70A.355.020. Under RCW 70A.355.050, Ecology is authorized to require an owner to furnish records, conduct monitoring or testing, and provide access to tanks. Ecology is authorized to issue, modify, suspend, revoke or refuse to renew a permit under RCW 70A.355.020 and RCW 70A.355.040. Penalties for non-compliance may be assessed under RCW 70A.355.060 and 70A.355.070.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases are found under the Washington Administrative Code (WAC), as amended, in WAC 173–360A, "Underground Storage Tank Regulations," adopted on July 18, 2018 and effective on October 1, 2018, and in WAC 173–340, "Model Toxics Control Act—Cleanup," amended October 12, 2007. Ecology may prohibit delivery to any UST identified by Ecology as ineligible for delivery under WAC 173–360A–0270 and –0280. Reporting and recordkeeping requirements are found under WAC 173–360A–0230, –0240, –0700, –0740 and –0750, as well as WAC 173–340–450. The aforementioned statutory sections and regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Washington and the EPA, effective December 20, 2021, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. Washington has met the public participation requirements found in 40 CFR 281.42 by allowing intervention in the State enforcement process as provided under WAC 173–360A–0270(4). Ecology will not oppose intervention of right under Superior Court Civil Rule 24 (a)(2) in a civil enforcement action taken under WAC 173–360A or chapter 90.76 RCW on the grounds that the person's interest is adequately represented by the State.

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.

Ecology 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.

Title 40 CFR 281.39 describes the state operator training requirements that must be met to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Washington did not incorporate by reference Federal requirements for operator training, but rather has promulgated and is implementing its own operator training provisions under WAC 173–360A–0500 through –0560. After a thorough review, the EPA has determined that Washington's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Washington Attorney General certified that the State revisions meet the "equivalent to, consistent with, and no less stringent" 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.

*H. Where are the revised 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 is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following statutory and regulatory requirements are considered broader in coverage than the Federal program as these state-only regulations are not required by Federal regulation and are implemented by the State in addition to the federally approved program:

In addition to any person who sells a regulated UST system to a new owner, any person who leases a regulated UST system also must notify new operators of UST notification obligations. WAC 173–360A–0230(7).

UST operator training requirements for Class A also includes licensing and fees, facility compliance tags, authority to accept product delivery and certification and use of service providers. WAC 170–360A–0530(1).

Ecology expanded the reporting requirement for spills or overfills such that spills and overfills must be reported if they pose a threat to human health or the environment regardless of the volume of the regulated substance, rather than the 25-gallon spill and overfill reporting level in the Federal rules. WAC 173–360A–0740.

The State rules also include requirements for UST service providers by establishing a certification program, specifying the responsibilities of service providers, and identifying which services on UST systems must be performed by certified service providers. WAC 173–360A–0900 through –0940.

#### 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)(ii)). The following statutory and 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:

Local governments may designate environmentally sensitive areas, with Ecology's approval. In these areas, the local government may impose more stringent standards, and an additional local fee of no more than half the state fee may be imposed if necessary, to implement the local standards. WAC 173–360A–0130.

Fees and permits are required by the State's UST statute. USTs must be in compliance with the applicable requirements to obtain a permit. WAC 173–360A–0200 and –0210.

The State rules require that any changes affecting information reported on the initial notification form about an UST system be reported to Ecology. WAC 173–360A–0230(2).

Product deliverers and waste oil collectors must report any spill or overfill of regulated substances to the owner or operator. WAC 173–360A–0230(9).

Notice of intent to install an UST is required at least 30 days prior to tank installation. Owners or operators must notify Ecology and certify proper installation no later than 30 days after installation of the UST. Washington also requires additional documentation—a

manufacturer's installation checklist completed by the service provider and an as-built plan of the UST facility—when an UST system is installed and the owner or operator is applying for a license. WAC 173–360A–0300.

Cathodic protection systems must be tested when they are installed or repaired and again between one and six months after installation and at least every three years thereafter. WAC 173–360A–0430(2).

Class B operators must meet the same requirements as Class A operators, which is more stringent than the Federal requirement. WAC 170–360A–0530(1).

If Ecology determines that the owners and operators of an UST system are in noncompliance, then Ecology may require owners and operators to develop and maintain an operation and maintenance plan for each UST system. WAC 173–360A–0545.

The State rule requires that owners and operators post and maintain signage at each UST facility providing emergency response information. WAC 173–360A–0550(2).

Owners and operators must notify Ecology in writing within 30 days after any change in release detection methods used. WAC 173–360A–0600(4).

For reporting of suspected releases, owners and operators using inventory control must immediately investigate all larger-than-normal or reoccurring variations and report such variations if they are unaccounted for without waiting to obtain a second month of data. WAC 173–360A–0700(3)(c).

Owners and operators conducting a site check as part of a release investigation must complete the site check within 30 days of identifying a suspected release or receiving notice that the department requires investigation of a suspected release. The Federal rule at 40 CFR 280.52(b) does not specify a timeframe. WAC 173–360A–0720(2).

For site assessments at closure and site checks to investigate a possible release, Ecology established specific requirements regarding the selection of service providers, the determination of sample types, locations, and measurement methods, and what information must be in the final report. Records are to be kept for at least six years after the UST system is permanently closed or undergoes a change-in-service, versus the three years required by 40 CFR 280.74. Ecology requires that a sampling and analysis plan be submitted for review at least 30 days before any sampling is performed. WAC 173–360A–0730.

If a release is confirmed, then the UST system must be secured within 24 hours

of confirming the release to prevent further delivery or deposit of regulated substances until the defective UST system components are repaired, replaced or closed. WAC 173–360A–0750(2).

Prior to putting back into service an UST system that has been closed for 90 days or more, the State rule requires that the owner and operator complete a tank tightness test, inspections and tests of spill and overfill protection equipment, and release detection and containment testing and inspection. WAC 173–360A–0800(5)(b).

Only certified individuals may carry out UST system installation, closure, retrofit and tightness testing, and installation and maintenance of cathodic protection equipment. WAC 173–360A–0150(65), –0920, and –0930).

Site checks and site assessments can only be performed by a service provider who is certified by the International Code Council (ICC) via a Washington-specific site assessment certification or is licensed as a professional engineer or hydrogeologist in Washington. WAC 173–360A–0730(2) and –0930.

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

The EPA's approval of Washington's Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within Washington's state borders: Chehalis, Colville, Cowlitz, Hoh, Jamestown S'Klallam, Kalispel, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble, Puyallup, Quileute, Quinault, Samish, Sauk-Suiattle, Shoalwater Bay, Skokomish, Snoqualmie, Spokane, Squaxin Island, Stillaguamish, Suquamish (Port Madison), Swinomish, Tulalip, Upper Skagit, and Yakama Reservations; any land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. See 40 CFR 281.12(a)(2). The one exception regards all USTs located on non-trust and non-restricted lands inside the boundaries of the Puyallup Reservation. The State of Washington has been delegated primary jurisdiction over these USTs as a result of a 1988 settlement agreement between the

Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States, and certain property owners, ratified at 25 U.S.C. 1773.

## 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 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 Washington's UST program?

The EPA incorporated by reference Washington's approved UST program in 40 CFR 282.97, effective October 8, 1993 (77 FR 25368, April 30, 2012). Through this action, the EPA is incorporating by reference and codifying Washington's state program in 40 CFR 282.97 to include the approved revisions.

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

In this rule, the EPA is finalizing the regulatory text that incorporates by reference the federally authorized Washington UST Program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Washington 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 [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 10 office (see the ADDRESSES section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Washington'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 Washington UST program addressed in

this direct final rule become final. If, however, the EPA receives substantive comment on this 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 Washington program and by amending the Code of Federal Regulations, the public will more easily be able to discern the status of the federally approved requirements of the Washington program.

The EPA is incorporating by reference the Washington approved UST program in 40 CFR 282.97. Section 282.97(d)(1)(i)(A) and (B) incorporate by reference for enforcement purposes the State's relevant statutes and regulations. Section 282.97 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 Washington, then 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 282.97(d)(1)(i), the EPA is not incorporating by reference Washington'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. 40 CFR 281.12(a)(3)(ii) states that 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. As a result, state provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 282. Title

40 CFR 282.97(d)(1)(iii) lists for reference and clarity the Washington 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 in this rule. Provisions that are broader in coverage cannot be enforced by the 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 Washington's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### B. 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).

### C. 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.

*D. 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, April 23, 1997), because it is not economically significant, as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*E. 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.

*F. 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 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.

*G. 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.

*H. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

The EPA has complied with Executive Order 12630 (53 FR 8859, March 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.

*I. 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).

*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) 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.

*K. 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 December 20, 2021 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 Part 282**

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by

reference, State program approval, and Underground storage tanks.

Dated: September 30, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

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. Add § 282.97 to read as follows:

**§ 282.97 Washington State-Administered Program.**

(a) *History of the approval of Washington’s program.* The State of Washington 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 Washington Department of Ecology (Ecology), was approved by the EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA published the notice of final determination approving the Washington underground storage tank base program effective on October 8, 1993. A subsequent program revision application was approved by the EPA and became effective on December 20, 2021.

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

(c) *Retention of program approval.* To retain program approval, Washington 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 Washington 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 approval*. Washington has final approval for the following elements of its program application originally submitted to the EPA and approved effective October 8, 1993, and the program revision application approved by the EPA effective on December 20, 2021:

(1) *State statutes and regulations*—(i) *Incorporation by reference*. The materials cited in this paragraph (d)(1) are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, Washington 98101, phone number (206) 553-6693. Copies of Washington's program application may be obtained from the Underground Storage Tank Program, Washington Department of Ecology, P.O. Box 4765, Olympia, Washington 98504. All approved material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(A) "Washington Statutory Requirements Applicable to the Underground Storage Tank Program," June 2021.

(B) "Washington Regulatory Requirements Applicable to the Underground Storage Tank Program," June 2021.

(ii) *Legal basis*. The EPA evaluated the statutes and regulations listed in appendix B to this part that provide the legal basis for the State's implementation of the underground storage tank program but are not incorporated by reference and do not replace Federal authorities.

(iii) *Broader in scope*. The specifically identified sections and rules applicable to the Washington underground storage tank program listed in appendix C to this part are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(2) *Statement of legal authority*. The Attorney General Statement, signed on October 10, 2018, though not incorporated by reference, is referenced

as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement*. The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the application for approval on June 30, 2021, 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 June 30, 2021, 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 10 and the Washington Department of Ecology, signed by the EPA Regional Administrator on March 19, 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. Amend appendix A to part 282 by adding an entry for "Washington" in alphabetical order by State to read as follows:

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

\* \* \* \* \*

*Washington*

(a) The statutory provisions include:

(1) Chapter 70A.355 RCW, "Underground Storage Tanks"; Sections 70A.355.010, "Definitions"; 70A.355.020, "Department's Powers and Duties—Rule-Making Authority", Subsections 020(1), 020(2), 020(3); 70A.355.030, "Environmentally Sensitive Areas"; 70A.355.090, "Underground storage tank account"; 70A.355.100, "Preemption"; 70A.355.900, "Captions not law"; 70A.355.901 "Severability—1989 c 346"; and 70A.355.902, "Effective Date—1989 c 346".

(b) The regulatory provisions include:

(1) Washington Administrative Code, Chapter 173-360A:

173-360A-0100 Purpose of chapter  
173-360A-0110 Applicability of chapter  
173-360A-0120 Preemption of local programs  
173-360A-0130 Approval of more stringent local requirements  
173-360A-0150 Definitions, except subsections -150(24), -150(54), and -150(56)  
173-360A-0190 Severability  
173-360A-0230 Reporting requirements, except subsections -0230(1), (7), (8) and (9)

173-360A-0240 Recordkeeping requirements, except subsection -0240(5)  
173-360A-0260 Information sharing  
173-360A-0300 Installation of UST systems and components  
173-360A-0310 Performance standards for new UST systems and components  
173-360A-0320 Upgrade requirements for existing UST systems  
173-360A-0330 Upgrade requirements for previously deferred UST systems  
173-360A-0340 Performance standards for partially exempt UST systems  
173-360A-0350 Compatibility requirements for UST systems  
173-360A-0400 Transfer of regulated substances—Owners and operators  
173-360A-0405 Transfer of regulated substances—Product deliverers and waste oil collectors  
173-360A-0410 Change in regulated substances  
173-360A-0420 Operation and maintenance walkthrough inspections  
173-360A-0430 Operation and maintenance corrosion protection  
173-360A-0440 Operation and maintenance internal linings  
173-360A-0450 Operation and maintenance of containment sumps used for interstitial monitoring of piping  
173-360A-460 Operation and maintenance of spill prevention equipment  
173-360A-0470 Operation and maintenance of overfill protection equipment  
173-360A-0480 Operation and maintenance of release detection equipment  
173-360A-0500 Purpose and applicability  
173-360A-0510 Designation of Class A, Class B, and Class C operators  
173-360A-0520 Timing of operator training  
173-360A-0530 Requirements for operator training, except subsection -530(1)(b)(i)(A), 0530(1)(b)(i)(B), 0530(1)(b)(i)(C) and 0530(1)(b)(ii)  
173-360A-0540 Retraining requirements for Class A and Class B operators  
173-360A-0545 Operation and maintenance plans  
173-360A-0550 Emergency response requirements  
173-360A-0560 Documentation and recordkeeping  
173-360A-0600 General release detection requirements  
173-360A-0610 Release detection requirements for tanks  
173-360A-0615 Release detection requirements for piping  
173-360A-0620 Inventory control  
173-360A-0625 Weekly manual tank gauging  
173-360A-0630 Automatic tank gauging  
173-360A-0635 Tank tightness testing  
173-360A-0640 Automatic line leak detectors  
173-360A-0650 Line tightness testing  
173-360A-0655 Interstitial monitoring  
173-360A-0660 Vapor monitoring  
173-360A-0665 Groundwater monitoring  
173-360A-0670 Statistical inventory reconciliation  
173-360A-0675 Other release detection methods  
173-360A-0700 Reporting of suspected releases  
173-360A-0710 Investigation due to off-facility impacts

173–360A–0720 Release investigation and confirmation steps  
 173–360A–0730 Site assessment requirements  
 173–360A–0740 Reporting and cleanup of spills and overfills, except subsection –0740(1)(a) insofar as not to include groundwater contamination  
 173–360A–0750 Reporting and cleanup of confirmed releases  
 173–360A–0800 Temporary closure of UST systems  
 173–360A–0810 Permanent closure of UST systems  
 173–360A–0820 Change-in-service of UST systems  
 173–360A–0830 Previously closed UST systems  
 173–360A–1000 Applicability  
 173–360A–1005 Definition of terms  
 173–360A–1010 Period of financial responsibility  
 173–360A–1015 Scope and amount of financial responsibility  
 173–360A–1020 Allowable mechanisms and combination of mechanisms  
 173–360A–1025 Substitution of mechanisms by owners or operators  
 173–360A–1030 Termination of mechanisms by providers  
 173–360A–1035 Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance  
 173–360A–1040 Recordkeeping by owner and operators  
 173–360A–1045 Reporting by owners and operators  
 173–360A–1050 Use of standby trusts  
 173–360A–1055 Use of local government guarantees without standby trusts  
 173–360A–1060 Mechanism—Financial test of self-insurance  
 173–360A–1061 Mechanism—Guarantee  
 173–360A–1062 Mechanism—Insurance and risk retention group coverage  
 173–360A–1063 Mechanism—Surety bond  
 173–360A–1064 Mechanism—Letter of credit  
 173–360A–1065 Mechanism—Trust fund  
 173–360A–1066 Mechanism—Standby trust fund  
 173–360A–1070 Mechanism—Local government bond rating test  
 173–360A–1071 Mechanism—Local government financial test  
 173–360A–1072 Mechanism—Local government guarantee  
 173–360A–1073 Mechanism—Local government fund  
 173–360A–1080 Appendix A—Letter from chief financial officer  
 173–360A–1081 Appendix B—Guarantee  
 173–360A–1082 Appendix C—Endorsement  
 173–360A–1083 Appendix D—Certificate of insurance  
 173–360A–1084 Appendix E—Performance bond  
 173–360A–1085 Appendix F—Irrevocable standby letter of credit  
 173–360A–1086 Appendix G—Trust agreement  
 173–360A–1087 Appendix H—Certification of acknowledgement

173–360A–1088 Appendix I—Local government bond rating test—Letter from chief financial officer of general purpose local governments  
 173–360A–1089 Appendix J—Local government bond rating test—Letter from chief financial officer of nongeneral purpose local governments  
 173–360A–1090 Appendix K—Local government financial test—Letter from chief financial officer  
 173–360A–1091 Appendix L—Local government guarantee with standby trust made by a state  
 173–360A–1092 Appendix M—Local government guarantee with standby trust made by a local government  
 173–360A–1093 Appendix N—Local government guarantee without standby trust made by a state  
 173–360A–1094 Appendix O—Local government guarantee without standby trust made by a local government  
 173–360A–1095 Appendix P—Local government fund—Letter from chief financial officer  
 173–360A–1096 Appendix Q—Certification of financial responsibility  
 173–360A–1097 Appendix R—Certification of valid claim  
 (2) Washington Administrative Code, Chapter 173–340, “Model Toxics Control Act Cleanup Regulation”:  
 173–340–450 Releases from underground storage tanks  
 173–340–600 Public notice and participation  
 \* \* \* \* \*

■ 4. Add appendix B to part 282 to read as follows:

**Appendix B to Part 282—State Requirements Not Incorporated by Reference in Part 282 of the Code of Federal Regulations**

The EPA evaluated the following statutes and regulations that are part of the approved program but are not being incorporated by reference for enforcement purposes and do not replace Federal authorities.

*Washington*

(a) The statutory provisions include:  
 (1) RCW 70A.355, “Underground Storage Tanks,” Sections 70A.355.005, 020(5), 020(6), 040(2), 050, 060, and 070.  
 (2) RCW 43.21B, “Environmental Land Use & Hearing Office—Pollution Control Hearings Board” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (b) The regulatory provisions, insofar as these sections identify specific authorities for the implementation, compliance monitoring and enforcement of the underground storage tank program, include:  
 (1) WAC 173–360A (July 18, 2018), “Underground Storage Tank Regulations,” Sections:  
 173–360A–0140, “Intergovernmental agreements”

173–360A–0150(24), “Facility compliance tags”  
 173–360A–0150(54), “Product deliverer”  
 173–360A–0150(56), “Red tag”  
 173–360A–0220, “Facility compliance tags”  
 173–360A–0250, “Compliance monitoring, investigation, and access”  
 173–360A–0270, “Enforcement”  
 173–360A–0280, “Delivery Prohibition”  
 173–360A–0290, “Civil penalties”  
 (2) WAC 371–08–485(2) and (3), “Practice and Procedure.”  
 (3) Washington Superior Court Civil Rule 24(a)(2).

■ 5. Add appendix C to part 282 to read as follows:

**Appendix C to Part 282—Other State Provisions Not Incorporated by Reference in Part 282 of the Code of Federal Regulations**

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 herein. These provisions are not federally enforceable.

*Washington*

(a) The statutory provisions include:  
 (1) RCW 70A.355, “Underground Storage Tanks”: Sections 020(4), 020(7), 020(8), 040(1), 040(3) and 080.  
 (2) RCW 70A.305, “Hazardous Waste Cleanup—Model Toxics Control Act” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (3) RCW 70A.325, “Underground Petroleum Tanks” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (4) RCW 70A.330, “Petroleum Storage Tank Systems Pollution Liability Protection Act” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (5) RCW 70A.345, “Underground Storage Tank Revolving Loan and Grant Program” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (6) RCW 82.23A, “Petroleum Products—Underground Storage Tank Program Funding” insofar as the provisions and procedures serve to implement the underground storage tank program.  
 (b) The regulatory provisions include:  
 (1) WAC 173–360A (July 18, 2018), “Underground Storage Tank Regulations,” Sections 0200, 0210, 0230(1), (7) and (8), 0240(5), 0530(1)(i)(A), 0530(1)(b)(i)(B), 0530(1)(b)(i)(C) and 0530(1)(b)(ii), 0740(1)(a), and 0900 through 0940.

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